
MONTANA LEGISLATIVE REPORT

MONTANA RAIL SERVICE COMPETITION COUNCIL
September 2006—September 2008

MEMORANDUM

December 2008

TO: MONTANA LEGISLATORS
State Capitol
Helena, MT 59620

FR: Mike O'Hara, Chair
Montana Rail Service Competition Council
State Capitol, Helena, MT 59620

It is my privilege to submit to you this report summarizing the activities of the Rail Service Competition Council (RSCC) from September 2006 to date. As you know, the statute calls for the development of a comprehensive and coordinated plan for rail service competition. The council has been working diligently on the plan which is a "work in progress" as rail service competition issues evolve. During the 2007 Legislative session, the RSCC budget request was reduced from \$400,000 to \$100,000 for the biennium. This reduction allowed for no consulting funds and no FTE.

In spite of these restrictions, the RSCC has continued extensive efforts to gather information upon which to move forward. We hope you find, as we have, that the efforts of the council have been a major step forward in developing plans for better rail competition in Montana to serve the long term economic development needs of the state.

We look forward to working with you, the members of the committee and other members of the legislature to secure needed changes in the statute as we move forward toward its important objectives.

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FORMATION OF THE RAIL SERVICE COMPETITION COUNCIL

FORMATION AND REVISION OF THE MONTANA RAIL SERVICE COMPETITION COUNCIL (RSCC)

As Montana's economy is primarily resource based, rail freight transportation is considered to be a major segment of the infrastructure supporting the state's economy. The vast majority of Montana's production and extractive industries are weight intensive, move in large volumes, and are transported considerable distances. As a result, rail transportation is frequently the most economical or feasible transport mode for shippers. This is true of agricultural products, coal, woodchips and ores.

The spatial economy of the state is dependent on rail services.

1978 Montana Rail Plan

During the 2003 Legislative Session, SB 315 – Rail Freight Competition Study Act introduced by Senator Trudy Schmidt (See Attachment A) – was passed and signed into law. The act provided for a feasibility study to assess conditions affecting rail freight competition in Montana and to analyze possibilities of improving competition. Legislators considered a greater understanding of the economic benefits of rail freight competition and the barriers to rail freight competition to be key in finding ways to promote economic development in Montana. The study was not funded by the Legislature. (See Attachment C, HB757)

After receipt of a USDA Rural Development grant, the Montana Governor's Office of Economic Development commissioned a study by R. L. Banks, a multi-disciplinary consulting firm based in Washington, DC, that provides railroad transportation economic, engineering, operations, negotiations and institutional counsel the firm completed the study which covered the following items:

Part One: Competition Issues

- Historical Background
- Factors Affecting Rail Freight Competition
- Pertinent Railroad Regulation—Federal Law and Regulation of Railroads; Results of Deregulation
- Montana's Use of Railroads—including Montana Ports and Intermodal Facilities, Potential Markets, Opinions of Business Development Officials and Shippers
- Impacts Resulting from Montana's Rail Issues—Limited Wheat Transportation Competition, Rail Transportation of Montana Products, Impact on Montana of Lack of Transportation Competition: Other than Wheat, Other Evidence Regarding Rates and Services, Benchmarks: Comparable Issues in Other States, Impact of Shuttle trains.
- Potential Benefits of Improved Rail Service on Economic Development—Today's Negative Impacts, Factors Other than Competition, Benefits of State-Owned Infrastructure

Part Two: What Can Be Done

- Potential Actions to Improve Rail Freight Competition in Montana—Surface Transportation Board, Federal Legislation, Montana Actions
- Advocacy Activity
- Other Considerations

Some of the rail system overview statistics in the report showed the following:

- Montana Railroad Route Miles in 2005: 3,236; Montana Railroad Route Miles in 1982: 5,126
- Percent of Montana Railroad owned by BNSF: 94.2%
- Montana Rank nationally in percent of rail system owned by Class 1 Railroad: 1
- Montana 2002 Carload Statistics
 - * Originated 346,858
 - * Terminated: 55,617
 - * Bridged: 1,201,190

The study delineated major factors affecting Montana businesses that rely on rail:

- Limited rail competition
- Relatively small transportation market especially for inbound movements
- Montana's geographic position and distance from more robust markets on the West Coast and in the Midwest
- Staggers Rail Act emphasis on financial health of the railroads, and the interpretation of Staggers by the Interstate Commerce Commission and Surface Transportation Board
- Limited bulk commodity transportation options other than rail
- Class 1 railroads are operating at or near capacity

These findings were reviewed by a committee consisting of Whiteside and Associates, the Governor's Office of Economic Development and the Montana Departments of Agriculture, Commerce and Transportation. The group recommended that a Rail Service Competition Council be formed to implement the findings of the R.L. Banks report. As a result of that recommendation, House Bill 769, the Rail Service Competition Council Act, sponsored by Representative George Golie, was introduced, passed and signed into law during the 2005 Legislative Session (See Attachment B).

During the 2007 Legislative Session, HB26 was sponsored by Rep. Tom McGillvray, to revise the Rail Service Competition Council. The Council had requested funding in the amount of \$200,000 per year for operations and to provide staff on a permanent basis, plus funds for technical services as needed. The final bill was reduced to \$50,000 per year, moved the Council under the administration of the Montana Department of Transportation and added an individual with coal shipping experience to the Council. (See Attachment D)

The legal makeup of the RSCC is delineated in Attachment B of this report. The specific members of the RSCC are shown on page 14 of this report. The responsibilities of the RSCC are found on page 13 of this report.

The reduced funding has inhibited the Council's work as the complicated task given the Council requires a great deal of technical assistance.

RSCC SUBCOMMITTEE MEMBERS

Sub Committee:

Agriculture (Chair)

Carla	Allen	Central MT Rail	Denton
Rep. Mike	Milburn	Montana Legislature	Cascade
Sen. Ken	Hansen	Montana Legislature	Harlem
Frank	Schoonover		Dutton
Joel	Clairmont	Dept. of Agriculture	Helena
Rep. Mike	Jopek	Montana Legislature	Whitefish

Coal (Chair)

Evan	Barrett	Governor's Office of Ec Dev	Helena
Dan	Bucks	MT Dept. of Revenue	Helena
Mike	Scanlan	PPL Energy Plus LLC	Allentown
John	DeMichiei	Bull Mountain Energy	Billings

Forest/Paper (Chair)

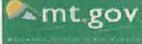
Russ	Hobbs	Plum Creek	Columbia Falls
Doug	Miller	Troy Mine	Troy
Jim	Lynch	Dept. of Transportation	Helena

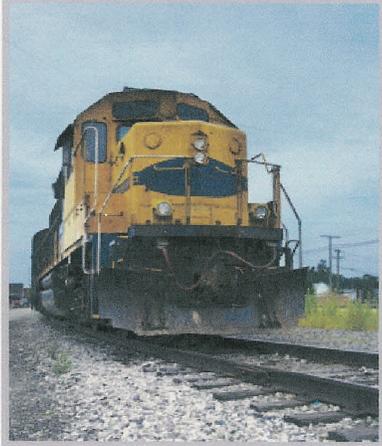
Ports/Intermodal (Chair)

Bill	Fogarty		Ovando
Larry	Bonderud	Port of Northern MT	Shelby
George	Paul	Port of Montana	Butte
Andre	Giles	Montana Flour and Grains	Fort Benton
Sen. Trudi	Schmidt	Montana Legislature	Great Falls

RAIL SERVICE COMPETITION COUNCIL WEB PAGES

<http://www.mdt.mt.gov/business/rscc>

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Montana's Official State Website					
About MDT		Traveler Information	Public Involvement	Doing Business	Publications
		Search/Index			
RSCC COUNCIL Council Duties Membership Council Meetings		Rail Service Competition Council (RSCC)			
SUBCOMMITTEES Agriculture Coal Forest/Paper Ports/Intermodal Taxation Transportation		<p>The Rail Service Competition Council was created in 2005 by the State of Montana Legislature to promote rail service competition in Montana.</p> <p>The council works to promote rail service competition in the state, develop related plans, evaluate taxing practices, assess organizational structures to help facilitate development of rail services, coordinate with railroads, and promote expansion and construction of rail services.</p> <p>The 13 member council is organized into six subcommittees and meets on a regular basis.</p>			
RESOURCES RSCC Reports Helpful Links		read more...			
CONTACT US Gloria O'Rourke RSCC Coordinator 118 E. Seventh St; Suite 2A Anaconda, MT 59711 Phone: 406-563-5259 Cell: 406-490-0462 Fax: 406-563-5476 Email Gloria					
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RSCC COUNCIL Council Duties Membership Council Meetings		RSCC Duties <p>The rail service competition council shall perform the following duties:</p>			
SUBCOMMITTEES Agriculture Coal Forest/Paper Ports/Intermodal Taxation Transportation		<p>(a) promote rail service competition in the state that results in reliable and adequate service at reasonable rates;</p> <p>(b) develop a comprehensive and coordinated plan to increase rail service competition in the state;</p> <p>(c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates;</p> <p>(d) develop various means to assist Montanans impacted by high rates and poor rail service;</p> <p>(e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;</p> <p>(f) provide advice and recommendations to the department of transportation on the department's activities under 60-11-113 through 60-11-116;</p> <p>(g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition;</p> <p>(h) act as the state's liaison in working with Class I railroads to promote rail service competition; and</p> <p>(i) promote the expansion of existing rail lines and the construction of new rail lines in the state.</p>			
RESOURCES RSCC Reports Helpful Links					
CONTACT US Gloria O'Rourke RSCC Coordinator 118 E. Seventh St; Suite 2A Anaconda, MT 59711 Phone: 406-563-5259 Cell: 406-490-0462 Fax: 406-563-5476 Email Gloria					
RSCC Home		<p>The Council shall report to the 2009 Legislature on its activities and its progress in performing the duties listed above.</p> <p>The council shall cooperate with and report to any standing or interim legislative committee that is assigned to study or has oversight duties for rail service competition issues.</p> <p>The council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.</p> <p>The council is attached for administrative purposes only to the Department of Transportation, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.</p> <p>Staffing and other resources may be provided to the council only from state and nonstate resources donated to the council and from direct appropriations by each legislature.</p>			
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RSCC Council Meetings

Next meeting:

January 27, 2009 from 7:00 pm - 10:00 pm
 Commission Room, MT Dept. Of Transportation - Helena, MT

November 18, 2008 from 10:00 am - 3:00 pm
Commission Room, MT Dept. Of Transportation - Helena, MT

- [Agenda](#)
- [Minutes \(draft\)](#)
- [Report](#)

September 17, 2008 from 10:00 am - 3:00 pm
Commission Room, MT Dept. Of Transportation - Helena, MT

- [Agenda](#)
- [Minutes](#)

June 18, 2008 from 10:00 am - 3:00 pm
Commission Room, MT Dept. Of Transportation - Helena, MT

- [Agenda](#)
- [Minutes \(draft\)](#)
- [Report \(draft\)](#)

April 2, 2008 11:00am - 3:00pm
Commission Room, MT Dept. Of Transportation - Helena, MT

- [Agenda](#)
- [Minutes](#)

January 9, 2008 11:00am - 3:00pm
Commission Room, MT Dept. Of Transportation - Helena, MT

- [Agenda](#)
- [Minutes](#)

October 11, 2007 at 11:00am
Commission Room, MT Dept. Of Transportation - Helena, MT

- [Agenda](#)
- [Minutes](#)

May 17, 2007 at 11:00am
Park Plaza/Kumamoto Plaza Rm 500 - Helena, MT

- [Agenda](#)
- [Minutes](#)
- [Whiteside Report](#)

February 26, 2007 at 11:00am
Commission Room, MT Dept. Of Transportation - Helena, MT

- [Agenda](#)
- [Minutes](#)
- [Whiteside Report](#)

December 6, 2006 at 9:00am
Prairie Room, Great Falls International Airport



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RSCC Reports

- [Rail Grain Transportation Survey 2006 Final](#)
- [Report for Economic Affairs Interim Committee September 2006](#)
- [Montana Taxation of Railroads](#)
- [Montana Rail Overview](#)
- [White & Briefing Paper For Governor's Schweitzer's Meeting With Vice Chairman Doug Buttrey, STB](#)
- [Surface Transportation Board \(STB\) Notice](#)
- [STB Timetable for Class Exemption Proceedings](#)
- [52 Car Wheat Rail Rates to PNW](#)
- [U.S. Westbound vs Canadian Westbound Wheat 50+car Revenue/Variable Cost Feb. 2005](#)

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QUALIFICATIONS AND APPOINTMENT OF COUNCIL MEMBERS

Section 1, MCA 2-15-246 provides that the Rail Service Competition Council shall perform the following duties:

- (a) promote rail service competition in the state of Montana that results in reliable and adequate service at reasonable rates;
- (b) develop a comprehensive and coordinated plan to increase rail service competition in the state of Montana;
- (c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates;
- (d) develop various means to assist Montanans impacted by high rates and poor rail service;
- (e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;
- (f) provide advice and recommendations to the department of transportation on the department's activities under 60-11-113 through 60-11-116;
- (g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition; and
- (h) act as the state's liaison in working with Class I railroads to promote rail service competition.

MONTANA RAIL SERVICE COMPETITION COUNCIL

<u>Executive Appointments</u>	<u>Legislative Appointments</u>
<p>Carla Allen Knowledge of Class II Railroads Denton Term Ends: January 1, 2011</p>	<p>Senator Ken Hansen Harlem Term Ends: July 1, 2009</p>
<p>Larry Bonderud Knowledge of the Trucking Industry Shelby Term Ends: January 1, 2011</p>	<p>Representative Mike Milburn Cascade Term Ends: July 1, 2009</p>
<p>John DeMichiei Knowledge of Transportation for the Coal Industry Billings Term Ends: January 1, 2009</p>	<u>Statutory Appointments</u>
<p>William Fogarty Knowledge of Class I Railroads Ovando Term Ends: January 1, 2009</p>	<p>Department of Revenue Director Dan Bucks</p>
<p>Russell Hobbs Knowledge of Transportation for the Wood Products Industry Columbia Falls Term Ends: January 1, 2011</p>	<p>Department of Agriculture Director Ron de Yong</p>
<p>Doug Miller Knowledge of Transportation for the Mineral Industry Troy Term Ends: January 1, 2009</p>	<p>Department of Transportation Director Jim Lynch</p>
<p>Michael O'Hara, Chair Knowledge of Transportation of Farm Commodities Fort Benton Term Ends: January 1, 2009</p>	<p>Governor's Office of Economic Development Chief Business Officer Evan Barrett</p>
	<hr/> <p>Coordinator: Gloria O'Rourke, 118 E. Seventh St.; Suite 2A, Anaconda, MT 59711 Ph: 406.563.5259 Fx: 406.563.5476 Cell: 406.490.0462 Email: gloria@medamembers.org Web: http://rscclt.gov</p>

Mike O'Hara serves as Chair; Carla Allen, Vice Chair.

Note: Mike Scanlan, PPL Energy Plus, serves as an expert advisor regarding coal transportation issues.

MONTANA RAIL SERVICE COM- PETITION COUNCIL ACTIVITIES AND PROGRESS TO DATE

ACTIVITIES AND PROGRESS TO DATE**July–September 2005 RSCC Members Appointed**

- *Ex officio* members of the RSCC were on board the Council on July 1, 2005, the effective date of the act. The other appointed members meeting the qualifications outlined by statute were appointed on September 7, 2006. Note: Appointment shows when terms began but not when terms end. The statute failed to set the time frame of terms. That will have to be rectified by passage of legislation in the next session.

October 2005

- At the request of RSCC member Evan Barrett, A white paper and briefing paper for Governor Schweitzer's meeting in Big Sandy and Scobey with Vice Chairman Doug Buttrey, Surface Transportation Board was compiled by Whiteside and Associates. This 23 page report is available on the RSCC website at http://rscclt.gov/docs/White_Paper_Meeting_10_05.pdf and summarizes the current rail situation in Montana.

December 16, 2005

- Governor Schweitzer met with the Vice President of the Surface Transportation Board, RSCC members and agriculture producers in Big Sandy and Scobey.
- Producers articulated problems faced with uncompetitive rail rates that are paid to perhaps the most profitable leg of BNSF service in the nation.

December 20, 2005 first RSCC meeting held

- Michael O'Hara elected as Chair; Carla Allen elected as Vice Chair
- Presentation by Dick Turner, Bureau Chief Montana Department of Transportation on the history of rail and transit in Montana. The presentation included slides from Whiteside and Associates regarding shipping rates and how Montana rates compare with the rest of the nation.

January 2006

- Governor Schweitzer and members of the RSCC met with Great Falls and Helena "rails to trails" representatives relative to converting the BNSF Great Falls to Helena line into a trail. They also met with a group of land owners and rail enthusiasts who were in opposition to such a change. The Schweitzer administration has taken a position that any rail that can be saved should be and that a trail should be a last resort to save the corridor.

January 19, 2006 RSCC Meeting in Helena

- RSCC members were updated on the Great Falls to Helena line status by Jim Lynch, Montana Department of Transportation Director; BNSF has no intention of abandoning the line.
- Nancy K. Peterson, Director of Montana Department of Agriculture, updated the Council on BNSF rate adjustments: analysis indicated the rate adjustments will remain virtually the same.
- RSCC members determined to gather additional information before developing a document that will drive the actions of the council.

March 16, 2006 RSCC Meeting in Helena

- A Legislative intent report was given by Rep. Tom McGillvray who reiterated the need for the Council to develop a strategic plan as well as the importance of the council's role in representing the captive shippers of Montana on a state and national level.
- Two separate conference calls were held with representatives from North and South Dakota to provide a history of the rail competition situation in these states. South Dakota reported on short line operations running on a BNSF line no longer in use. North Dakota is pursuing a rate case and reported on the timeline, cost and transferability of that case.
- Overview of the rail situation in Montana was provided by Montana Department of Transportation Director Jim Lynch. This report is online at <http://rscclt.gov/reports.asp>.
- Council members reviewed the Interstate Commerce Commission, Staggers Act and Surface Transportation Board abandonment and de facto abandonment
- Railroad taxation briefing provided to the RSCC by Dan Bucks, Larry Finch and Kory Hofland of the Montana Department of Revenue. This report is available online at <http://rscclt.gov/reports.asp>.
- Governor Schweitzer updated the RSCC members regarding meetings with the Surface Transportation Board (STB) and the STB's lack of action taken to protect captive shippers.
- RSCC members were updated on issues and events concerning the Union Pacific, Canadian Pacific, Montana Rail Link, BNSF, Central Montana Railroad, Watco and on Captive Shipper Day in Washington DC.
- Nancy K. Peterson reported on meeting with STB Chairman Buttery: they flew the Helena to Great Falls line and proceeded to a meeting with Governor Schweitzer and shippers in Denton, Montana. Members of the council also attended.
- RSCC was authorized to send a letter to STB expressing its concern on the abandonment proceedings for the Lewistown rail line by BNSF.

ACTIVITIES AND PROGRESS TO DATE**April, 2006 Meeting in Lewistown and Letter to Surface Transportation Board**

- A video conference meeting with Lewistown/Fergus County local officials and members of the RSCC was held to review the issue of abandonment proceedings of the Moore to Lewistown Rail by BNSF. As a result of that video conference and the previous RSCC meeting, a letter was sent to Douglas Buttrey, Surface Transportation Board, to request that the line not be abandoned or acquired by a short line operator. See letter Attachment E. At the request of the Lewistown City Council and the Fergus County Commission, the RSCC eventually dropped its objections to this abandonment because of the arrangements being worked out with the local governments and BNSF.

June 28, 2006 RSCC Meeting; Conference Call

- Whiteside and Associates was approved for a contract to provide Technical Assistance to the RSCC.
- As Adam deYong, who was providing staff assistance for the RSCC, was promoted to work with the Work Innovation in Regional Economic Development (WIRED) program, Montana Economic Development Services (MEDS) was awarded a contract to provide administrative support for the RSCC.
- It was reported to the RSCC that Governor Schweitzer talked to James Young of the Union Pacific Railroad urging UP to continue to provide service to Montana at Silver Bow (Port of Montana). Mr. Young reportedly responded positively.
- The RSCC was updated regarding the Tongue River Railroad and its relationship to the Otter Creek Tracts.
- A letter was written from the Council to Union Pacific to continue to provide service to Montana at Port of Montana Butte. Mr. Young reportedly responded positively. See letter Attachment F.

August Union Pacific Meeting Held in Butte

- Following Governor Schweitzer's call to Union Pacific, a meeting was held in Butte to encourage UP to remain in Montana. George Paul, Director of the Port of Montana in Butte thanked the Governor and the Governor's Office of Economic Development, the entire Butte legislative delegation as well as the Council for actively supporting the Port of Montana and becoming involved in the UP issue. As a result of the meetings with the above mentioned officials and UP representatives, UP expressed great appreciation for the collective message they received and decided to remain in Montana. The Port of Montana is moving forward and developing a strategy to create more business opportunities for the area for UP service.

August 14, 2006 RSCC Meeting in Shelby at the Port of Northern Montana

- It is common knowledge that costs are increasing, but there are no solid numbers in place for measurement purposes. The RSCC commissioned Whiteside and Associates to develop a survey to substantiate the following: 1. The shipper's experience during this harvest; 2. Cost of transportation as producers haul farther and farther to elevators and the cost to the highway system to handle these loads.
- Terry Whiteside of Whiteside and Associates gave a detailed presentation on Determining Parameters for Competition Analysis, provided a starting-point outline to promote rail competition in Montana and suggested six future strategies for transportation in Montana. This presentation is available online at <http://rscclt.mt.gov/presentation081406.ppt>
- As a result of Terry's presentation, two RSCC subcommittees were formed. The subcommittees will review Terry's questions for the survey mentioned above:
 - * Purpose(s) of the Taxation Subcommittee: Evaluate state's taxation practices to ensure reasonable competition while minimizing any transfer of tax burden to shippers or producers. Include goals, objectives and strategies. Members include: Dan Bucks, Rep. Tom McGillvray, Bill Fogarty and Carla Allen.
 - * Purpose(s) of the Transportation Subcommittee: To develop RSCC strategies that will be utilized to develop and pursue joint projects with transportation providers and transportation users that provide for a gain in capacity, increased flexibility and deliver increased choices to transportation consumers of the Montana transportation system. The idea is to provide a benefit to all Montana industries. The work of this Committee will include development of goals, objectives and strategies that meet with goals of HB769. Members include: Russ Hobbs, Doug Miller, Sen. Ken Hansen, Mike O'Hara and Evan Barrett.
- BNSF spokesperson Barbara Ranf reported the results of public meetings held in Wolf Point, Havre and Great Falls. Barbara said BNSF received good feedback and is planning additional forums. BNSF needs to build understanding with agriculture producers and improve communications. Regarding the status of the Great Falls to Helena rail and based on a study conducted in 2005 that indicated the potential for Canadian traffic in the future, BNSF decided to not abandon that section of rail at this time. BNSF has committed to work with the STB regarding the fuel charge hearing. Barbara offered to present a formal presentation the issue in the future.
- The RSCC Members and the public in attendance toured the Port of Northern Montana facilities.

NEXT MEETING: SEPTEMBER 27, 2006 PORT OF MONTANA, BUTTE

ACTIVITIES AND PROGRESS TO DATE

September 27, 2006 Port of Montana, Butte

- Summary of findings of Transportation Subcommittee
 - * Communicate with railroads to ascertain from the railroad perspective what incentives the RSCC could provide to them that would encourage rail infrastructure development in Montana.
 - * In a similar fashion, communicate with motor carriers to determine if there are any incentives for development of the trucking industry.
 - * Request railroad plans from the railroads for the RSCC to ascertain the rail company's investment targets.
 - * Communicate with port authorities to determine impediments and identify ways to facilitate development.
 - * Work with Montana Department of Transportation to identify and support a "core" system for the state's rail branch lines. The identification of a core system would encourage investors, guide local officials with rail decisions and preserve Montana's remaining branch lines.
 - * Define recommendations for the legislature.
- Summary of findings of Taxation Subcommittee
 - * Due to language in the 4R Act, tax incentives to preserve branch lines and/or to encourage new development in active areas would be viewed as discriminatory and not survive legal argument.
 - * However, the state could possibly make a case for rate discrimination based on the assumption it is cheaper for grain to be shipped from the Midwest to the west coast than from Montana to the west coast. This situation involves interstate commerce and could be defensible under the 4R Act.
 - * An official finding is needed to determine actual rate discrimination. There has been no official documentation since 1980 and this needs to be brought current through a state body. Once such a finding is established, a means to address the issue via tax resolve, either incentives or disincentives would be proposed.
 - * A second finding would need to establish that the federal government has failed to regulate interstate commerce to not discriminate against Montana's citizens and businesses.
 - * Take this request to the legislature along with a plan of action should discrimination be found.
 - * The RSCC Taxation Subcommittee will further explore these items and report back to the RSCC.
- A budget figure needs to be established and submitted for appropriation in House Bill 2. Before setting the amount a subcommittee consisting of Evan Barrett, Larry Bonderud, Rep. Tom McGillvray, Sen. Ken Hansen and Director Jim Lynch will meet to discuss staffing options, etc. Mr. Barrett noted the figure is needed in the Budget Office prior to November 15th.
- A letter from Dr. Daniel Fierher of Helena stated "We are in the process of applying to the U.S. Surface Transportation Board for approval to acquire and restore service to BNSF's *de facto* abandoned rail line from Great Falls to Helena." Barbara Ranf said that the rail line is out of service and not for sale.

ACTIVITIES AND PROGRESS TO DATE

December 6, 2006 Great Falls International Airport, Great Falls, MT

- The following changes were requested after reviewing the language of HB26, “An Act transferring the Rail Service Competition Council from the Office of the Governor to the Department of Transportation for administrative purposes; increasing the membership of the council; expanding the duties of the council to include promoting the expansion of existing rail lines and the construction of new rail lines in Montana; and amending Section 2-15-246, MCA.”
 - * Change Section 1. 2-15-246 (e) to read seven people and delete (iii) which would add a railroad employee of a railroad engaged in interstate commerce to the RSCC.
 - * Add staggered term language to Section 1. 2-15-246 (e)
 - * Request \$400,000 for biennium.
- Chairman Mike O’Hara reported good progress with the Farm Producer’s Survey; it should be completed by the end of December. In addition, letters have been sent to each rail carrier in the state requesting information about their plans for expansion, investment, etc.
- The RSCC reviewed background Information on the Great Falls to Helena Line and issues between Rarus Rail and BNSF.

February 26, 2007, MT Dept. of Transportation, Helena, MT

- HB 26 is being carried by Rep. Tom McGillvray. The bill contains the RSCC request to include staggered term language but was reduced from \$400,000 to \$100,000 for the biennium. As the RSCC can justify the request for \$200,000 per year, Bill Fogarty moved to reiterate the council’s support for \$400,000 for the biennium. All voted in favor.
- Completion of Montana 2006 Farm Producer Survey and results – 13 findings. Produced by Montana Department of Transportation and Whiteside & Associates.
 1. Grain is being hauled further and further over the state and county highway systems.
 2. The majority of farm producers have experienced increasing hauling distances over the past 10 and 20 years.
 3. Those farm producers experiencing increased haulage are hauling over 3 times as far as those farm producers who have not experienced any increased hauling distances.
 4. The non-wheat crops are experiencing significantly greater hauling distances than wheat crops further burdening alternative and rotational crop practices.
 5. Some counties show average hauling distances upwards of 80+ miles.
 6. The 2006 harvest in Montana could be best described as a tale of two cities – with Winter wheat showing average to above average yields and Spring wheat, durum, barley, pulse, peas and lentils showing average to below average yields.
 7. The vast majority of farm producers have the capabilities of storing most if not all of their grain production.
 8. Even with the diversity of yields, most Montana farm producers experienced elevator pluggings multiple times during harvest – due to lack of rail cars.
 9. With the multiple elevator pluggings, most farm producers held onto to their crops and waited for the rail car shortages to abate rather than take their grain to more distant elevators.

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10. Farm producers generally thought these delays and elevator pluggings were 'about average' and par for the course.
11. Farm producers are finding unloading delays at ever more distant elevators each year.
12. As the elevator system is being forced to larger, more rail efficient shuttles coupled with the loss of thousands of miles of rail branchlines in the state, the costs of transportation for gathering grain seem to be shifting from the railroads to the farm producers and to the State and local highway system.
13. Service levels seeing little improvement with the transition to larger grain handling facilities

May 17, 2007 Park Plaza, Helena, MT

- Evan Barrett reported HB26, a bill sponsored by Representative Tom McGillvray to revise the Rail Service Competition Council passed both houses. The bill was originally submitted with a recommendation by the RSCC for \$200,000 per year for operations and to provide staff on a permanent basis, plus funds for services as needed. When the bill came before the House Appropriations Committee, the bill was reduced to \$50,000; It was hoped that when the bill would appear before the Senate Finance and Claims committee, funding could be restored. The bill, however, was sent directly to the floor and passed as written.
- As per the bill language, an individual with coal shipping experience will be added to the Council and the operations of the council will be transferred to Montana Department of Transportation. It will be up to Montana Department of Transportation to work with the RSCC to determine how the \$50,000 per year will be allocated. Evan Barrett explained that the individual to be added to the RSCC will be appointed by the Governor.
- In a different bill, the Legislature passed a \$3 million appropriation for litigation and preparation for litigation if needed relating to rail rates in Montana. Should a law suit happen, it would involve the Surface Transportation Board, Montana Department of Transportation and Montana Department of Justice. As this litigation relates to the RSCC mission, the RSCC will be kept informed and involved in the information flow.
- Four working groups were formed to identify problems and outline transportation alternatives in the following sectors: Coal—Chair Evan Barrett; Ports/Intermodal—Chair, Bill Fogarty, Industrial/Forest Products/Minerals - Chair Russ Hobbs and Agriculture—Chair Carla Allen. Challenges that need to be overcome will be identified as well as strengths and opportunities, then the RSCC can proceed to solutions.
- MDT Intermodal Study Begins—a project being funded by MDT's research program. Every year the department solicits proposals for research projects. Larry Bonderud submitted a project to address the declining container and trailer flat car service facing Montana. When the facility closed in Shelby, the reason given was lack of volume to provide service. Mr. Bonderud requested research that would lead to a solution to provide enough business to attract interest of Class One railroads. It is suspected that many of the containers and trailers are leaving Montana empty. If this is indeed true, a way needs to be found to utilize this resource.
- Evan Barrett asked the RSCC to consider using some of the \$42,000 available from FY2007 to fund the exploration of taxation and its effect on coal and rail service issues. Taxation and the evaluation of taxation surrounding transportation in Montana is part of the charge of this council. There are many opinions on the matter, but little factual documented information. For example, if the coal severance tax were to be reduced, would that make a difference in freight rates? Does the severance tax have a detrimental effect on coal production in the state because the tax increases freight rates? What is the role of Montana's tax on Montana's coal development? Toward that end, Mr. Barrett spoke with Scott Rickard, Center for Applied Economic Research, at MSU, Bozeman. The RSCC authorize the Chair to execute on behalf of the Council a contract to focus on railroad and the Coal Severance Tax vs. rate competition issues with flexibility to adapt the mission as progress and research develop.

ACTIVITIES AND PROGRESS TO DATE

October 11, 2007 MT Dept. of Transportation, Commission Room, Helena, MT

- Chairman O'Hara provided an update on the status of the RSCC. As funding was not available until October 1st, the RSCC could not hold a meeting until today. The RSCC was transferred from the Governor's Office of Economic Development to Montana Department of Transportation. Regarding the RSCC budget, Evan Barrett explained that remaining funds from last year were used for the research being conducted by MSU-Billings. The legislature has provided \$50,000 for the RSCC per year for the next two years. Montana Department of Transportation has proposed the following budget:
 - October 2007 meetings and contracted support: \$680
 - Meeting costs (travel, meals, refreshments, etc): \$1,200 x 4 = \$4,800
 - Long term contracted support: \$10,000 - \$15,000
 - Non-Federal-aid eligible MDT expenses: \$20,000
 - Additional contracted services: \$10,000
 Director Lynch noted that federal dollars cannot be used to support the work of the RSCC.
- **Working Group Reports**
 - * **Forest/Paper/Industrial:** Terry Whiteside reported on activities of the Forest/Paper/Industrial RSCC Subcommittee. Chair Russ Hobbs and Terry compiled a survey and sent it to industrial, lumber and timber shippers. The purpose of the survey was to identify problems with rail competition in this arena. Terry noted there is no consolidated data of rail shippers in the state which made the survey process a challenge. To obtain more survey data, outreach calls will be made.
 - * **Ports/Intermodal:** Chairman Bill Fogarty reported on highlights from two meetings held by the Ports/Intermodal Subcommittee:
 - Received an update from Dick Turner on the intermodal study with MDT
 - Requested Terry Whiteside compile a letter on behalf of the RSCC to Montana's congressional delegation regarding concerns of the rail tax infrastructure bill.
 - Invited Wayne Budt of the PSC to explain the PSC's current authority as it relates to rail
 - Next meeting will coincide with Libby Ogard's report and/or the next RSCC meeting
 - * **Agriculture:** Subcommittee Chair Carla Allen reported on several meetings of this working group. The subcommittee is in the process of conducting a survey within the subcommittee itself to identify problems and issues with rail within the ag arena. Once the problems have been identified, the subcommittee will rank the issues and begin crafting solutions.
 - * **Coal:** Evan Barrett reported the Coal Subcommittee has not yet met but will in the near future. A focus of this subcommittee will be to work with the Federal Regulatory Energy Commission to share data. Once the data is shared and aggregated, conclusions can be drawn that will be based on fact. Once formal data is available, problems and issues can be presented as fact and addressed. Mike Scanlan noted entities are bypassing the STB and taking issues to Federal court instead. Small shippers cannot afford the new small rate case rules so will not have a voice. The STB must address this problem in the future.

January 9, 2008 MT Dept. of Transportation, Commission Room, Helena, MT

- **Working Group Updates:**
 - * **Forest/Paper/Industrial**—Chair Russ Hobbs and Terry Whiteside compiled a survey and sent it to industrial, lumber and timber shippers. The purpose of the survey was to identify problems with rail competition in this arena. Terry noted there is no consolidated data of rail shippers in the state which made the survey process a challenge. Surveys were sent to about 300 people with 15 responses received: 10 with forest products and 5 from mining/refining. There were no responses from classic industrial shippers. To obtain more survey data, outreach calls will be made.

ACTIVITIES AND PROGRESS TO DATE

- * To obtain additional information from respondents, Russ held a conference call with nine of the 15 survey respondents. Russ went through the Summary of the Industrial Shipper Survey with the conference members, identifying the following major trends:
 - ◇ Respondents have pretty good coverage of rail use and substantial annual volume
 - ◇ Few have access to alternate carriers—they are captive
 - ◇ Availability of equipment varied from great to terrible
 - ◇ Value perception differed between forest products and other shippers
 - ◇ Service was a bigger issue than rates for non-forest product shippers.

It became obvious that different solutions are needed for different industries. A second call will be held January 17th to discuss what constitutes adequate service and apply solutions.

- * **Ports/Intermodal:** This group will be able to move forward once the intermodal study has been completed. The study will clarify action items for this group.

- * **Coal**—Action items for the Coal Working Group include:
 - ◇ Confer with Scott Rickard and Terry Whiteside to determine the feasibility of:
 - ◇ Comparing trends, freight rates and coal severance taxes in Montana, Wyoming and other relevant locations.
 - ◇ Analyzing multiple components of cost of production and transportation to the delivery of coal to final destinations (hopefully over a five to ten year period)
 - ◇ Evaluating the differentials in other costs related to coal production.

- * **Agriculture**—The Ag subcommittee conducted a survey within the subcommittee itself to identify problems and issues with rail within the ag arena. Once the problems have been identified, the subcommittee will rank the issues and begin crafting solutions.

- **BNSF Railway**—Barbara Ranf reported on a study recently completed for the Association of American Railroads titled “National Rail Freight Infrastructure Capacity and Investment Study.” The U.S. DOT estimates that the demand for rail freight transportation—measured in tonnage—will increase 88 percent by 2035. This study estimates that an investment of \$148 billion (in 2007 dollars) for infrastructure expansion over the next 28 years is required to keep pace with and meet the U.S. DOT’s forecast demand. Of this amount, the Class I freight railroads’ share is projected to be \$135 billion and the short line and regional freight railroads’ share is projected to be \$13 billion.

These investment projections assume that the market will support rail freight prices sufficient to sustain long-term capital investments. If regulatory changes or unfunded legislative mandates reduce railroad earnings and productivity, investment and capacity expansion will be slower and the freight railroads will be less able to meet the U.S. DOT’s forecast demand.

ACTIVITIES AND PROGRESS TO DATE

April 2, 2008 MT Dept. of Transportation, Commission Room, Helena, MT

Jim Lynch, State Director, Montana Department of Transportation, reviewed the statutory requirements that describe what the RSCC is to accomplish. Requirements were discussed and action items set forth.

Statutory Requirement	RSCC Progress and Action Items
(a) promote rail service competition in the state that results in reliable and adequate service at reasonable rates;	This is the overall purpose of the RSCC and is ongoing.
(b) develop a comprehensive and coordinated plan to increase rail service competition in the state;	The four subcommittees (Ag, Coal/Mining, Forest/Paper and Intermodal) have been meeting to gather information and identify problem areas. <u>To move to the next step of developing a comprehensive plan, each subcommittee will complete a report prior to the next RSCC meeting. The report will be a template provided by Montana Dept. of Transportation.</u>
(c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates;	Montana's rail taxation practices were addressed in September 2006 by the RSCC Taxation Subcommittee. Minutes of the meeting are available on the RSCC website.
(d) develop various means to assist Montanans impacted by high rates and poor rail service;	This will be addressed within the RSCC comprehensive plan.
(e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;	This will be addressed within the RSCC comprehensive plan and through information provided by the Port/Intermodal Subcommittee.
(f) provide advice and recommendations to the department of transportation on the department's activities under 60-11-113 through 60-11-116;	Dick Turner, Montana Department of Transportation Chief, Multimodal Planning Bureau will provide updates to the RSCC on this item.
(g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition;	Dick Turner will provide this information to the RSCC at every meeting.
(h) act as the state's liaison in working with Class I railroads to promote rail service competition; and	Above previous items must be accomplished prior to acting on this item.
(i) promote the expansion of existing rail lines and the construction of new rail lines in the state.	Above previous items must be accomplished prior to acting on this item.
The Council shall report to the 2009 Legislature on its activities and its progress in performing the duties listed above.	Ongoing

ACTIVITIES AND PROGRESS TO DATE

- * **Agriculture-** Carla Allen reported the Ag Subcommittee has held two calls to identify problems and issues in the agriculture shipping arena. Terry Whiteside has agreed to write up potential solutions to address the problems. Carla expects to hold two or three conference calls prior to the next RSCC meeting.
- * **Coal—**Evan Barrett provided a summary of the most recent Coal Subcommittee conference call. Evan explained that as Mike Scanlan is not a resident of Montana, he cannot officially serve on the RSCC; however Mike can serve as a member of the sub-committee. Evan mentioned he had recently received a call from a company interested in mine expansion in Montana which would involve reaching markets in the Midwest. The company representative said the cost of utilizing BNSF for transportation was so high that Montana coal was not competitive. If coal cannot be transported competitively expansion cannot occur. Barbara Ranf, BNSF, contacted the appropriate person within BNSF and talks are in progress.

Evan Barrett reminded everyone the RSCC had contracted with Scott Rickard, Center for Applied Economic Research, MSU- Billings, to conduct research projects for the RSCC. The RSCC previously approved a study of the relationship of coal severance taxes on the delivered cost of Montana coal as compared to Wyoming. Rickard defined the study as follows:

An estimate of the percentage of total delivered cost of Montana and Wyoming coal that state coal severance taxes represent. This would involve quantifying total delivery costs, which includes both rail transport costs and severance taxes, for a set of comparable standardized size/distance hauls. Data would come primarily from MT DOR, the STB Weigh Bill sample, a subcontract to develop some additional data and past research that has been conducted on comparing the tax impacts of locating a coal-fired power plant in either state. **This study would clarify if coal severance rates make coal non competitive or if it is due to other costs.**

The study will proceed immediately and be completed before the end of June. The cost for the study is estimated at \$27,475 which will leave a balance of about \$13,000 in the contract.

The \$13,000 is fiscal year 2007 money and has been obligated for studies through MSU-Billings, but needs to be expended. A conference call will be set up for the discussion and decision.

June 18, 2008 MT Dept. of Transportation, Commission Room, Helena, MT

- **The purpose of this meeting was to begin the RSCC Comprehensive Plan.** As the Subcommittees reported, the “plan” took the formation of a report. A strategic plan will be formed from the basis of the report. (See Attachment H)
- **NEXT STEPS**
It will be important for the RSCC to demonstrate to legislators costs incurred due to the lack of competition as well as business that is not taking place due to non-competition and high cost.

Rep. Milburn said it will be important to provide legislators with data identifying the barriers to competition. He also said that compelling evidence would be needed to obtain support from legislators for creating a rail authority.

Evan Barrett moved for the facilitator and staff to compile a draft report integrating the subcommittee reports and comments brought forward in today’s meeting and submit the document to the RSCC for review. Once comment has been received from RSCC members, a second draft will be posted on the RSCC website and made available for public comment prior to the next RSCC meeting. Carla Allen seconded the motion. All voted in favor to approve the motion.

Conclusions:

- ◇ The RSCC will need technical assistance to accomplish the work that needs to be done.
- ◇ Funding is required to conduct needed studies.
- ◇ The information compiled today is a report. From this report, a comprehensive plan will be developed.

ACTIVITIES AND PROGRESS TO DATE

September , 2008 MT Dept. of Transportation, Commission Room, Helena, MT

- ◇ The strategic plan draft was compiled from information gathered and discussed at the June 18th meeting. The RSCC members present reviewed the document and made changes as described in the Minutes in Attachment F. Each subcommittee will meet to fill information gaps and report at the next RSCC meeting. Montana Department of Transportation representatives will also review the document and fill in areas of work that pertain to them.

- ◇ A State Rail Authority Working Group was formed to present a specific concept of a Montana State Rail Authority for review by the RSCC at the next meeting. This group will study state rail authorities and make recommendations to the RSCC with possible recommendations to the 2009 Legislature. Working Group members include Chairs and/or representation from each of the Subcommittees: Larry Bonderud, Carla Allen, Evan Barrett, Russ Hobbs and Jim Lynch. It was agreed by the RSCC members present that the statewide rail authority issue would affect all four subcommittees and may need to be a fifth segment of the Strategic Plan.

Next Meeting Date: November 18, 2008

ATTACHMENT A
SB 315
2003 LEGISLATURE

2003 Montana Legislature



SENATE BILL NO. 315

INTRODUCED BY SCHMIDT, BLACK, CALLAHAN, DICKENSON, FRANKLIN, GALVIN-HALCRO,
GOLIE, HANSEN, HARRINGTON, HEDGES, LASLOVICH, MCKENNEY, NELSON, PARKER,
ROUSH, D. RYAN, TASH, TESTER, TROPILA, WITT

AN ACT PROVIDING FOR A FEASIBILITY STUDY TO ASSESS CONDITIONS AFFECTING RAIL FREIGHT COMPETITION IN MONTANA AND TO ANALYZE POSSIBILITIES TO IMPROVE RAIL FREIGHT COMPETITION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, 63 Class I freight railroads competed in the United States in 1976 and today only 8 Class I railroads traverse this country with limited competition and the control of more than 91% of all U.S. rail freight revenue; and

WHEREAS, in 2001 one railroad posted more than 97% of revenue earned in Montana from rail freight movement in and out of the state, as reported to the Public Service Commission; and

WHEREAS, railroads have seen an overall dwindling of their customer base in part because of business decisions linked to competition from other freight transporters; and

WHEREAS, three of Montana's major industries ship bulk quantities of mining, timber, and agricultural products out of state to compete in regional, national, and world markets against products on which pricing may benefit from lower variable costs in part because of competition in freight rates; and

WHEREAS, the Legislature considers greater understanding of the economic benefits of rail freight competition and the barriers to rail freight competition to be a key step forward in finding ways to promote economic development of Montana.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Feasibility study on rail freight competition. (1) The office of economic development, established in 2-15-218, shall, subject to subsection (3), present a report to the 59th legislature, as provided in 5-11-210, concerning the status of rail freight competition and its impacts on economic development in Montana. The feasibility study must address:

(a) impacts in Montana from rail freight competition or lack of competition, including if possible a list of businesses that decided for or against locating in the state as a result of the existence of or lack of rail freight competition;

(b) benchmarks as provided through a comparison of rail freight rates and competition in the region;

(c) an analysis of the benefits of rail freight competition on economic development in Montana;

(d) an analysis of the potential for public or private investment in improved rail freight competition;

(e) proposals for various methods to improve rail freight competition in areas where competition is nonexistent or minimal and an analysis of each method's feasibility; and

(f) analysis of the costs and the benefits of state-owned infrastructure compared with privately owned infrastructure associated with additional rail lines intended to promote greater rail freight competition.

(2) The office of economic development may convene a task force of economists, members of the transportation industry, members of natural resource industries that use various forms of freight transportation to ship products to market, and experts in related fields to provide guidelines for the feasibility study.

(3) The office of economic development shall secure funding from federal and private sources to cover the costs of the feasibility study. If funding is insufficient, the requirements for the study are void.

Section 2. Effective date. [This act] is effective on passage and approval.

END -

ATTACHMENT B
HB 769
2005 LEGISLATURE

2005 Montana Legislature



HOUSE BILL NO. 769
INTRODUCED BY GOLIE, HANSEN, SCHMIDT, SMITH, TESTER, WITT

AN ACT CREATING THE RAIL SERVICE COMPETITION COUNCIL; ESTABLISHING THE MEMBERSHIP AND DUTIES OF THE COUNCIL; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

- Section 1. Rail service competition council.** (1) There is a rail service competition council consisting of the following members:
- (a) the director of the department of agriculture provided for in 2-15-3001;
 - (b) the director of the department of transportation provided for in 2-15-2501;
 - (c) the director of the department of revenue provided for in 2-15-1301;
 - (d) the chief business development officer of the office of economic development provided for in 2-15-218;
 - (e) six people appointed by the governor with the following qualifications:
 - (i) one person with substantial knowledge and experience related to Class I railroads;
 - (ii) one person with substantial knowledge and experience related to Class II railroads;
 - (iii) one person who is a farm commodity producer in the state of Montana and who has substantial knowledge and experience related to transportation of farm commodities;
 - (iv) one person with substantial knowledge and experience in the trucking industry in the state of Montana;
 - (v) one person with substantial knowledge and experience related to transportation for the mineral industry in the state of Montana; and
 - (vi) one person with substantial knowledge and experience related to transportation for the wood products industry in the state of Montana; and
 - (f) two members, one from each political party and one from each house of the legislature, from the economic affairs interim committee established in 5-5-223, selected by the presiding officer of the economic affairs interim committee with the concurrence of the vice presiding officer.
- (2) The rail service competition council shall perform the following duties:
- (a) promote rail service competition in the state of Montana that results in reliable and adequate service at reasonable rates;
 - (b) develop a comprehensive and coordinated plan to increase rail service competition in the state of Montana;
 - (c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates.
 - (d) develop various means to assist Montanans impacted by high rates and poor rail service;
 - (e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;
 - (f) provide advice and recommendations to the department of transportation for the department's rail planning activities pursuant to Title 60, chapter 11, part 1;
 - (g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition; and
 - (h) act as the state's liaison in working with Class I railroads to promote rail service competition.
- (3) The council shall cooperate with and report to any standing or interim legislative committee that is assigned to study or has oversight duties for rail service competition issues.

(4) The council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The council is attached for administrative purposes only to the governor's office, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the council only from state and nonstate resources donated to the council and from direct appropriations by each legislature.

Section 2. Appropriation. There is appropriated up to \$50,000 from the department of transportation's highway revenue account in the state special revenue fund to the rail service competition council for each of fiscal years 2006 and 2007 in order to carry out the duties required in [section 1].

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 2, and the provisions of Title 2, chapter 15, part 2, apply to [section 1].

Section 4. Coordination instruction. If House Bill No. 757 and [this act] are both passed and approved, then [section 1(2)(f) of this act] must read as follows:

"(f) provide advice and recommendations to the department of transportation on the department's activities under [sections 1 through 4 of House Bill No. 757];"

Section 5. Effective date. [This act] is effective July 1, 2005.

- END -

ATTACHMENT C
HB 757
2005 LEGISLATURE

2005 Montana Legislature
HOUSE BILL NO. 757

INTRODUCED BY L. JONES, BLACK, TESTER, BERGREN, PETERSON, BUTCHER, KITZENBERG, WITT, BALES

AN ACT ESTABLISHING THE MONTANA ESSENTIAL FREIGHT RAIL ACT; CREATING A REVOLVING LOAN ACCOUNT; PROVIDING FUNDING FOR THE MONTANA ESSENTIAL FREIGHT RAIL ACT REVOLVING LOAN ACCOUNT; PROVIDING GUIDELINES FOR APPLICATIONS AND ELIGIBILITY FOR A LOAN FROM THE REVOLVING LOAN ACCOUNT; PROVIDING FOR MANAGEMENT OF THE ACCOUNT; AUTHORIZING THE ISSUANCE OF REVENUE BONDS FOR FUNDING THE ACCOUNT; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 60-11-120, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 4] may be cited as the "Montana Essential Freight Rail Act".

Section 2. Purpose. (1) Montana's railroad branch lines provide critical transportation to Montana businesses and communities. These lines are especially important to Montana's agricultural and wood products industries that rely on railroads to transport Montana products to national and international markets. The branch lines are also critical to efforts to increase or expand businesses that process Montana commodities into more valuable products.

(2) A state rail funding program will provide Montana with an important tool to help preserve and enhance Montana's branch lines.

(3) The purpose of [sections 1 through 4] is to provide low-interest loans to railroads, cities, counties, companies, or regional rail authorities for the purposes provided in 60-11-120 to preserve or enhance cost-effective rail service to Montana communities and businesses.

Section 3. Revolving loan account -- statutory appropriation -- rulemaking. (1) There is a revolving loan account to be administered by the department. Any interest or income that is earned by the account and loan repayments must be deposited into the revolving loan account unless revenue bonds are issued to fund a loan, in which case the loan repayments must be deposited in the debt service account. The department may request the board of investments to issue revenue bonds, as provided in [sections 7 through 9], for the purpose of providing funds for a loan.

(2) The department may make loans from the account pursuant to 60-11-120.

(3) Funds in the account that are deposited pursuant to former 49 U.S.C. 1654 must continue to be managed as local rail freight assistance program funds. Any additional federal funds received for local rail freight assistance programs or for railroad projects must be deposited in the account.

(4) There is statutorily appropriated, as provided in 17-7-502, to the department up to \$2 million annually for the purposes of making loans pursuant to 60-11-120.

(5) Loans may not be made if the loan would cause the balance in the account to be less than \$500,000.

(6) The department may adopt rules to implement [sections 1 through 4].

Section 4. Funding for account. Federal funds received for local freight assistance programs under former 49 U.S.C. 1654 in an amount up to \$1.1 million must be deposited in the account established in [section 3].

Section 5. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; [section 3]; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 6. Section 60-11-120, MCA, is amended to read:

"60-11-120. Railroad and intermodal transportation facility loans and grants -- authorization -- eligibility. (1) Money appropriated by the legislature may for the purposes provided for in this section and pursuant to [section 3] must be used by the department of transportation, after deducting the necessary costs and expenses for administering this section, to provide loans and grants for:

- (a) the preservation and continued operation of railroad branch lines identified in 60-11-111; and
 (b) for the development, and improvement, construction, purchase, maintenance, or rehabilitation of:

- (i) intermodal transportation facilities;
 (ii) branch lines or short lines;
 (iii) sidings;
 (iv) light density railroad lines; and
 (v) rolling stock, including rail cars.

Proceeds of all repayments of loans, including interest, made under this section must be deposited in the state general fund.

(2) An owner or operator of a railroad identified in 60-11-111(2) is eligible for a loan or grant under this section if the owner or operator:

(a) undertakes to repair, improve, or replace rail facilities to allow the continued operation of the railroad for local rail transportation service; and

(b) derives revenue from the continued operation of the railroad.

(3) A port authority created under Title 7, chapter 14, part 11, is eligible for a loan or grant under this section for the development or improvement of an intermodal transportation facility under this section if:

(a) the port authority is included in the state transportation planning process as described in 23 U.S.C. 135; and

(b) the intermodal transportation facility purpose for which a loan or grant is sought is integrally related to the railroad transportation system of the state.

(4) Applications for a loan must include:

(a) a financial statement;

(b) evidence of matching funds required pursuant to subsection (5);

(c) an operating or business plan that demonstrates the applicant's ability to repay the funds; and

(d) upon request of the department, an independent feasibility study.

(5) Pursuant to requirements of former 49 U.S.C. 1654, which is providing a portion of the funds under [section 3], rehabilitation projects must be matched with 30% in other funds and new construction projects must be matched with 50% in other funds. The transportation commission, provided for in 2-15-2502, shall establish matching fund requirements for other project categories.

(6) The transportation commission is responsible for determining funding recipients. Recipients must be determined using the guidelines provided in 60-2-110.

(7) The department shall administer the Montana Essential Freight Rail Act with input from the department of commerce, the department of agriculture, and the governor's office.

(8) Funding recipients shall pay the standard prevailing wage on any construction projects or subcontracted construction projects conducted with funds received under this section."

Section 7. Definitions. As used in [sections 7 through 9], the following definitions apply:

(1) "Board" means the board of investments established in 2-15-1808.

(2) "Bonds" means bonds, notes, or other evidences of indebtedness issued pursuant to [sections 7 through 9] as essential freight rail revenue bonds.

(3) "Cost", as applied to any project, means any cost of any part of the project pursuant to 60-11-120.

(4) "Projects" means the acquisition, construction, reconstruction, maintenance, and repair of rail lines.

(5) "Revenue" means the revenue from the operation of a rail line loan repayments and any delinquency charges on loan repayments.

Section 8. Revenue bond debt service account -- deposit of bond proceeds. (1) There is in the debt service fund an essential freight rail revenue bond debt service account. The state treasurer shall deposit revenue as may be pledged to the payment of particular bonds to the credit of the essential freight rail revenue bond debt service account as required by resolution or indenture.

(2) All proceeds of an issue of bonds must be deposited in a separate account in the state special revenue fund, except that any premiums and accrued interest received may be deposited in a separate account in the debt service fund established for that bond issue by resolution or indenture. No more than the principal and interest on the bonds due in any year may be retained in the essential freight rail revenue bond debt service account for the payment of bonds. The remainder of pledged revenue is available for authorized purposes of the department. Money deposited in the separate accounts in the state special revenue fund until spent for project purposes may be pledged and appropriated for the payment of bonds, which are a first lien and prior charge upon the funds, and the funds may be used for payment of bonds to the extent that revenue deposited in the essential freight rail revenue bond debt service account are not sufficient for those purposes.

(3) Interest and investment earnings on the separate accounts in subsections (1) and (2) must be retained in the separate accounts referred to in subsection (2).

Section 9. Authority to issue revenue bonds. The board may issue and sell essential freight rail revenue bonds to make loans to finance the cost of projects, to pay the costs of issuing the bonds, and to provide for reserves, upon recommendation of the department. The bonds must be issued under Title 17, chapter 5, part 15.

Section 10. Codification instruction. [Sections 1 through 4 and 7 through 9] are intended to be codified as an integral part of Title 60, chapter 11, part 1, and the provisions of Title 60, chapter 11, part 1, apply to [sections 1 through 4 and 7 through 9]. -

ATTACHMENT D

HB 26

2007 LEGISLATURE

MONTANA RAIL SERVICE COMPETITION COUNCIL (RSCC) REPORT

HB 26
INTRODUCED BY T. MCGILLVRAY
BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

AN ACT TRANSFERRING THE RAIL SERVICE COMPETITION COUNCIL FROM THE OFFICE OF THE GOVERNOR TO THE DEPARTMENT OF TRANSPORTATION FOR ADMINISTRATIVE PURPOSES; DECREASING, MODIFYING, AND STAGGERING THE MEMBERSHIP OF THE COUNCIL; EXPANDING THE DUTIES OF THE COUNCIL TO INCLUDE PROMOTING THE EXPANSION OF EXISTING RAIL LINES AND THE CONSTRUCTION OF NEW RAIL LINES IN MONTANA; PROVIDING AN APPROPRIATION; AND AMENDING SECTION 2-15-246, MCA.

AN ACT TRANSFERRING THE RAIL SERVICE COMPETITION COUNCIL FROM THE OFFICE OF THE GOVERNOR TO THE DEPARTMENT OF TRANSPORTATION FOR ADMINISTRATIVE PURPOSES; DECREASING, MODIFYING, AND STAGGERING THE MEMBERSHIP OF THE COUNCIL; EXPANDING THE DUTIES OF THE COUNCIL TO INCLUDE PROMOTING THE EXPANSION OF EXISTING RAIL LINES AND THE CONSTRUCTION OF NEW RAIL LINES IN MONTANA; PROVIDING AN APPROPRIATION; AND AMENDING SECTION 2-15-246, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-246, MCA, is amended to read:

"2-15-246. Rail service competition council. (1) There is a rail service competition council consisting of the following members:

- (a) the director of the department of agriculture provided for in 2-15-3001;
(b) the director of the department of transportation provided for in 2-15-2501;
(c) the director of the department of revenue provided for in 2-15-1301;
(d) the chief business development officer of the office of economic development provided for in 2-15-218;
(e) the director of the department of revenue provided for in 2-15-1301;
(d) the chief business development officer of the office of economic development provided for in 2-15-218;
(e) six seven people, appointed by the governor, who shall serve staggered 4-year terms commencing January 1 following their appointment, with the following qualifications:
(i) one person with substantial knowledge and experience related to Class I railroads;
(ii) one person with substantial knowledge and experience related to Class II railroads;
(iii) one person who is a farm commodity producer in the state of Montana and who has substantial knowledge and experience related to transportation of farm commodities;
(iv) one person with substantial knowledge and experience in the trucking industry in the state of Montana;
(v) one person with substantial knowledge and experience related to transportation for the mineral industry in the state of Montana; and
(vi) one person with substantial knowledge and experience related to transportation for the coal industry in the state; and
(vi) one person with substantial knowledge and experience related to transportation for the wood products industry in the state of Montana; and
(f) two members, one from each political party and one from each house of the legislature, from the economic affairs interim committee established in 5-5-223, selected by the presiding officer of the economic affairs interim committee with the concurrence of the vice presiding officer at the first interim committee meeting at the beginning of each interim.
(2) The rail service competition council shall perform the following duties:
(a) promote rail service competition in the state of Montana that results in reliable and adequate service at reasonable rates;
(b) develop a comprehensive and coordinated plan to increase rail service competition in the state of Montana;
(c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates.
(d) develop various means to assist Montanans impacted by high rates and poor rail service;
(e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;
(f) provide advice and recommendations to the department of transportation on the department's activities under 60-11-113 through 60-11-116;
(g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition; and
(h) act as the state's liaison in working with Class I railroads to promote rail service competition; and
(i) promote the expansion of existing rail lines and the construction of new rail lines in the state.
(3) (a) The council shall cooperate with and report to any standing or interim legislative committee that is assigned to study or has oversight duties for rail service competition issues.
(b) The council shall report to the 2009 legislature on its activities and its progress in performing the duties required in subsection (2).
(4) The council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.
(5) The council is attached for administrative purposes only to the governor's office department of transportation, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.
(6) Staffing and other resources may be provided to the council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."

Section 2. Appropriation. There is appropriated from the general fund to the department of transportation the following amounts to support the rail service competition council and its work:

Table with 2 rows: Fiscal Year 2008 and Fiscal Year 2009. Columns show amounts for various categories, with a total of \$50,000 for 2008 and 50,000 for 2009.

Section 3. Directions to code commissioner. Section 2-15-246, MCA, is intended to be renumbered and codified as an integral part of Title 2, chapter 15, part 25.

- END -

ATTACHMENT E
RAIL SERVICE
COMPETITION COUNCIL
MEETING AGENDAS

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
AGENDA

Wednesday
September 27, 2006
9:00am – 4:00pm

Small Business Development Center
305 W. Mercury St.; 2nd Floor
Butte, Montana

9:00am – 10:00am RSCC Transportation Subcommittee Meeting (Education Room)

10:00am – 11:00am RSCC Taxation Subcommittee Meeting (Education Room)

11:00am RSCC Convenes (Board Room)

- 1.0 Call Meeting to Order (Chairman Mike O’Hara)**
- 2.0 Roll Call and Introduction of Audience**
- 3.0 Approval of Council Meeting Minutes August 14, 2006**
- 4.0 Update on Economic Affairs Interim Committee Report (Rep. Tom McGillvray, Sen. Ken Hansen)**
- 5.0 Taxation Subcommittee Update (Rep. Tom McGillvray, Chair)**
- 6.0 Transportation Subcommittee Update (Mike O’Hara, Chair)**
- 7.0 Technical Assistance Update – including Survey (Terry Whiteside)**
- 8.0 RSCC Serving as Facilitator to Foster Cooperative Relationships between Railroads**
- 9.0 Budget Discussion for RSCC**
- 10.0 Letter from Dr. Daniel Fiehrer regarding abandoned line between Great Falls and Helena**
- 11.0 Rail Updates**
 - 11.1 Union Pacific (Evan Barrett)**
 - 11.2 Canadian Pacific (Larry Bonderud)**
 - 11.3 Montana Rail Link (Evan Barrett)**
 - 11.4 BNSF Railway (Barbara Ranf)**
 - 11.5 Central Montana Railroad (Carla Allen)**
 - 11.6 Watco, Yellowstone, Mission Valley, others**
- 12.0 Next Council Meeting**
 - 12.1 Meeting Date and Location**
 - 12.2 Agenda**
- 13.0 Comments or Issues from Council Members**
- 14.0 Formal Public Comment Period**
- 15.0 Adjournment**
- ** Tour of Port of Montana Butte – George Paul**

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
AGENDA

Wednesday
December 6, 2006
9:00am – 4:00pm

Great Falls International Airport
2800 Terminal Drive, Prairie Room
Great Falls, Montana

- 1.0 Call Meeting to Order (Chairman Mike O’Hara)**
 - 2.0 Roll Call and Introduction of Audience**
 - 3.0 Approval of Minutes**
 - 3.1 Transportation Subcommittee Minutes September 27th**
 - 3.2 Taxation Subcommittee Minutes September 27th**
 - 3.3 RSCC Minutes September 27th**
 - 4.0 Budget Subcommittee Update (Mike O’Hara, Chair)**
 - 5.0 Taxation Subcommittee Update (Rep. Tom McGillvray, Chair)**
 - 6.0 Transportation Subcommittee Update (Mike O’Hara, Chair)**
 - 7.0 Technical Assistance Update –(Terry Whiteside)**
 - 8.0 RSCC Serving as Facilitator to Foster Cooperative Relationships between Railroads**
 - 9.0 Rarus Rail Issue (Paul McCarthy)**
 - 10.0 Background information on Great Falls to Helena Line (Dick Turner)**
 - 11.0 Dr. Daniel Fiehrer regarding Great Falls to Helena Line**
 - 12.0 Review of STB Filings Great Falls to Helena Line (Terry Whiteside)**
 - 13.0 Rail Updates**
 - 13.1 Union Pacific (Evan Barrett)**
 - 13.2 Canadian Pacific (Larry Bonderud)**
 - 13.3 Montana Rail Link (Evan Barrett)**
 - 13.4 BNSF Railway (Barbara Ranf)**
 - 13.5 Central Montana Railroad (Carla Allen)**
 - 13.6 Watco, Yellowstone, Mission Valley, others**
 - 14.0 Next Council Meeting**
 - 14.1 Meeting Date and Location**
 - 14.2 Agenda**
 - 15.0 Comments or Issues from Council Members**
 - 16.0 Formal Public Comment Period**
 - 17.0 Adjournment**
- ** Tour of Great Falls Airport Authority – Cynthia Schultz, Airport Director**

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
AGENDA

Monday
February 26, 2007
11:00am – 3:00pm

MT Dept. of Transportation
Commission Room
Helena, Montana

- 1.0 Call Meeting to Order (Chairman Mike O’Hara)**
- 2.0 Roll Call and Introduction of Audience**
- 3.0 Approval of Minutes from December 6, 2006**
- 4.0 Budget and FTE Update (Mike O’Hara, Chair)**
- 5.0 Taxation Subcommittee Update (Rep. Tom McGillvray, Chair)**
- 6.0 Transportation Subcommittee Update (Mike O’Hara, Chair)**
- 7.0 Technical Assistance Update –(Terry Whiteside)**
 - 7.1 Farm Producer Survey Results**
- 8.0 RSCC Serving as Facilitator to Foster Cooperative Relationships between Railroads**
 - 8.1 RARUS Rail Issue**
- 9.0 Dr. Daniel Fiehrer regarding Great Falls to Helena Line (tentative)**
- 10.0 Rail Updates**
 - 10.1 Union Pacific (Evan Barrett)**
 - 10.2 Canadian Pacific (Larry Bonderud)**
 - 10.3 Montana Rail Link (Evan Barrett)**
 - 10.4 BNSF Railway (Barbara Ranf)**
 - 10.5 Central Montana Railroad (Carla Allen)**
 - 10.6 Watco, Yellowstone, Mission Valley, others**
- 11.0 Next Council Meeting**
 - 11.1 Meeting Date and Location**
 - 11.2 Agenda**
- 12.0 Comments or Issues from Council Members**
- 13.0 Formal Public Comment Period**
- 14.0 Adjournment**

**RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
AGENDA**

**Thursday
May 17, 2007
11:00am – 3:00pm**

**Park Plaza/Kumamoto Plaza Rm 500
22 N. Last Chance Gulch/34 N. Last Chance Gulch
Helena, Montana**

- 1.0 Call Meeting to Order (Chairman Mike O’Hara)**
- 2.0 Roll Call and Introduction of Audience**
- 3.0 Approval of Minutes from February 26th Meeting**
- 4.0 RSCC Budget and Legislative Outcome of HB26 (Rep. McGillvray)**
- 5.0 Shipper’s Day Update (Chairman O’Hara)**
- 6.0 Technical Assistance Update –(Terry Whiteside)**
 - 6.1 Final of the Montana 2006 Farm Producer Survey**
- 7.0 MDT Intermodal Study (Dick Turner)**
- 8.0 Rail Updates**
 - 8.1 Union Pacific (Evan Barrett)**
 - 8.2 Canadian Pacific (Larry Bonderud)**
 - 8.3 Montana Rail Link (Evan Barrett)**
 - 8.4 BNSF Railway (Barbara Ranf)**
 - 8.5 Central Montana Railroad (Carla Allen)**
 - 8.6 Watco, Yellowstone, Mission Valley, others**
- 9.0 Next Council Meeting**
 - 9.1 Meeting Date and Location**
 - 9.2 Agenda**
- 10.0 Comments or Issues from Council Members**
- 11.0 Formal Public Comment Period**
- 12.0 Adjournment**

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
AGENDA

Thursday
October 11, 2007
11:00am – 3:00pm

Commission Room
2701 Prospect Drive
Helena, Montana

- 1.0 Call Meeting to Order (Chairman Mike O’Hara)**
- 2.0 Introduction of New Council Members and Roll Call**
- 3.0 Introduction of Audience**
- 4.0 Approval of Minutes from May 17th Meeting**
- 5.0 Review of RSCC Status**
- 6.0 Proposed SFY '08 budget**
- 7.0 Results of Plentywood to Scobey MDT/DOA shipper survey**
- 8.0 Technical Assistance Update –(Terry Whiteside)**
- 9.0 Working Group Updates**
 - 9.1 Forest/Paper (Russ Hobbs, Chair)**
 - 9.2 Ports/Intermodal (Bill Fogarty, Chair)**
 - 9.3 Agriculture (Carla Allen, Chair)**
 - 9.4 Coal (Evan Barrett, Chair)**
- 10.0 Rail Updates**
 - 10.1 Union Pacific (Evan Barrett)**
 - 10.2 Canadian Pacific (Larry Bonderud)**
 - 10.3 Montana Rail Link (Evan Barrett)**
 - 10.4 BNSF Railway (Barbara Ranf)**
 - 10.5 Central Montana Railroad (Carla Allen)**
 - 10.6 Watco, Yellowstone, Mission Valley, others**
- 11.0 Next Council Meeting**
 - 11.1 Meeting Date and Location**
 - 11.2 Agenda**
- 12.0 Comments or Issues from Council Members**
- 13.0 Formal Public Comment Period**
- 14.0 Adjournment**

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
AGENDA

Wednesday
January 9, 2008
11:00am – 3:00pm

Transportation Commission Room
2701 Prospect Ave.
Helena, Montana

- 1.0 Call Meeting to Order (Chairman Mike O’Hara)**
- 2.0 Roll Call**
- 3.0 Introduction of Audience**
- 4.0 Approval of Minutes from October 11th, 2007 Meeting**
- 5.0 Technical Assistance Update –(Terry Whiteside)**
- 6.0 Intermodal Study Update (Jim Lynch)**
- 7.0 Working Group Updates**
 - 7.1 Forest/Paper (Russ Hobbs, Chair)**
 - 7.2 Ports/Intermodal (Bill Fogarty, Chair)**
 - 7.3 Agriculture (Carla Allen, Chair)**
 - 7.4 Coal (Evan Barrett, Chair)**
- 8.0 Rail Updates**
 - 8.1 Union Pacific (Evan Barrett)**
 - 8.2 Canadian Pacific (Larry Bonderud)**
 - 8.3 Montana Rail Link (Evan Barrett)**
 - 8.4 BNSF Railway (Barbara Ranf)**
 - 8.5 Central Montana Railroad (Carla Allen)**
 - 8.6 Watco, Yellowstone, Mission Valley, others**
- 9.0 Next Council Meeting**
 - 9.1 Meeting Date and Location**
 - 9.2 Agenda**
- 10.0 Comments or Issues from Council Members**
- 11.0 Formal Public Comment Period**
- 12.0 Adjournment**

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
AGENDA

Wednesday
April 2, 2008
11:00am – 3:00pm

Transportation Commission Room
2701 Prospect Ave.
Helena, Montana

- 1.0 Call Meeting to Order (Chairman Mike O’Hara)**
- 2.0 Roll Call**
- 3.0 Introduction of Audience**
- 4.0 Approval of Minutes from January 9th Meeting**
- 5.0 Technical Assistance Update –(Terry Whiteside)**
- 6.0 Intermodal Study Presentation (Libby Ogard)**
- 7.0 Working Group Updates**
 - 7.1 Forest/Paper (Russ Hobbs, Chair)**
 - 7.2 Ports/Intermodal (Bill Fogarty, Chair)**
 - 7.3 Agriculture (Carla Allen, Chair)**
 - 7.4 Coal (Evan Barrett, Chair)**
- 8.0 Rail Updates**
 - 8.1 Union Pacific (Evan Barrett)**
 - 8.2 Canadian Pacific (Larry Bonderud)**
 - 8.3 Montana Rail Link (Evan Barrett)**
 - 8.4 BNSF Railway (Barbara Ranf)**
 - 8.5 Central Montana Railroad (Carla Allen)**
 - 8.6 Watco, Yellowstone, Mission Valley, others**
- 9.0 Next Council Meeting**
 - 9.1 Meeting Date and Location**
 - 9.2 Agenda**
- 10.0 Comments or Issues from Council Members**
- 11.0 Formal Public Comment Period**
- 12.0 Adjournment**

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
AGENDA

Wednesday
June 18, 2008
10:00am – 3:00pm

Transportation Commission Room
2701 Prospect Ave.
Helena, Montana

- 1.0 Call Meeting to Order (Chairman Mike O’Hara)**
- 2.0 Roll Call**
- 3.0 Introduction of Audience**
- 4.0 Approval of Minutes from April 2, 2008 Meeting**
- 5.0 Technical Assistance Update –(Terry Whiteside)**
- 6.0 Report on Activities of Other States-MDT**
- 7.0 Comprehensive Plan Work (facilitator)**
- 8.0 Formal Public Comment Period on the Comprehensive Plan**
- 9.0 Working Group Updates**
 - 9.1 Forest/Paper (Russ Hobbs, Chair)**
 - 9.2 Ports/Intermodal (Bill Fogarty, Chair)**
 - 9.3 Agriculture (Carla Allen, Chair)**
 - 9.4 Coal (Evan Barrett, Chair)**
- 10.0 Rail Updates**
 - 10.1 Union Pacific (Evan Barrett)**
 - 10.2 Canadian Pacific (Larry Bonderud)**
 - 10.3 Montana Rail Link (Evan Barrett)**
 - 10.4 BNSF Railway (Barbara Ranf)**
 - 10.5 Central Montana Railroad (Carla Allen)**
 - 10.6 Watco, Yellowstone, Mission Valley, others**
- 11.0 Next Council Meeting**
 - 11.1 Meeting Date and Location**
 - 11.2 Agenda**
- 12.0 Comments or Issues from Council Members**
- 13.0 Formal Public Comment Period**
- 14.0 Adjournment**

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
DRAFT AGENDA

Wednesday
September 17, 2008
10:00am – 3:00pm

Transportation Commission Room
2701 Prospect Ave.
Helena, Montana

- 1.0 Call Meeting to Order (Chairman Mike O’Hara)
- 2.0 Roll Call
- 3.0 Introduction of Audience
- 4.0 Approval of Minutes from June 18, 2008 Meeting
- 5.0 Technical Assistance Update –(Terry Whiteside)
- 6.0 MDT Reports/Update
 - 6.1 Paper barriers and their effect on competition
 - 6.2 Comparison of what other states have done regarding paper barriers (ND, SD, Wisconsin)
 - 6.3 Clarification of what MDT can do as far as filling information needs in the RSCC report.
 - 6.4 MDT research report on state and county (SEDA-COG) rail authorities: who has them, what is working, what is not working.
- 7.0 Review of Report for Economic Affairs Committee
- 8.0 Review of RSCC Report (includes public comment)
- 9.0 Review and Refine RSCC Strategic Plan
- 10.0 2009 Legislative Request(s)
- 11.0 Working Group Updates
 - 11.1 Forest/Paper (Russ Hobbs, Chair)
 - 11.2 Ports/Intermodal (Bill Fogarty, Chair)
 - 11.3 Agriculture (Carla Allen, Chair)
 - 11.4 Coal (Evan Barrett, Chair)
- 12.0 Rail Updates
 - 12.1 Union Pacific (Evan Barrett)
 - 12.2 Canadian Pacific (Larry Bonderud)
 - 12.3 Montana Rail Link (Evan Barrett)
 - 12.4 BNSF Railway (Barbara Ranf)
 - 12.5 Central Montana Railroad (Carla Allen)
 - 12.6 Watco, Yellowstone, Mission Valley, others
- 13.0 Next Council Meeting
 - 13.1 Meeting Date and Location
 - 13.2 Agenda
- 14.0 Comments or Issues from Council Members
- 15.0 Formal Public Comment Period
- 16.0 Adjournment

ATTACHMENT F
RAIL SERVICE
COMPETITION COUNCIL
MEETING MINUTES

September 27, 2006–September 17, 2008

**RAIL SERVICE COMPETITION COUNCIL
MINUTES OF THE MEETING**

**Wednesday
September 27, 2006
11:00am – 4:00pm**

**Small Business Development Center
305 W. Mercury St.; 2nd Floor
Butte, Montana**

RSCC MEMBERS PRESENT: Doug Miller, Evan Barrett, Russell Hobbs, Carla Allen, Larry Bonderud, Mike O’Hara, Joel Clairmont for Nancy K. Peterson, Dick Turner for Jim Lynch, Rep. Tom McGillvray, Dan Bucks and Bill Fogarty

RSCC MEMBERS ABSENT: Sen. Ken Hansen

CONTRACT STAFF PRESENT: Terry Whiteside and Gloria O’Rourke

GUESTS: Jim Smitham, Charlie Clark, Barbara Ranf, Larry Finch, Lola Raska, Patty Schlaeger, Gary Schlaeger, Mike Opar, Spook Stang, George Paul, Mike Kerns, Russ Connolle, and Sheryl Ralph

1.0 Roll Call and Introductions

RSCC Chairman Mike O’Hara welcomed everyone to Butte and called the meeting to order. Following roll call, the audience was introduced.

2.0 Approval of Council Meeting Minutes August 14, 2006

Larry Bonderud moved the minutes of the August 14th, 2006 RSCC be approved. Carla Allan provided the second. All voted in favor to approve the minutes.

3.0 Update on Economic Affairs Interim Committee Report

Representative Tom McGillvray provided a report on September 11th to the Legislative Economic Affairs Interim Committee (EAIC) regarding the activities and progress of the RSCC. Rep. McGillvray said the EAIC agreed to forward legislation to the 60th legislative session to:

- address terms of RSCC council members
- move oversight of the RSCC to Montana Department of Transportation
- address funding for the council
- add a member to the council to represent the coal industry

Rep. McGillvray will carry the legislation in the House; Senator Ken Hansen to the Senate. Rep. McGillvray noted the EAIC would like to have had more progress reported but understands the RSCC is dealing with complicated issues.

4.0 Taxation Subcommittee Update

The Taxation Subcommittee met via conference call on September 20th and at 10:00am today, September 27th. Based on these two meetings, Subcommittee Chairman Rep. McGillvray summarized:

- Due to language in the 4R Act, tax incentives to preserve branch lines and/or to encourage new development in active areas would be viewed as discriminatory and not survive legal argument.
- However, the state could possibly make a case for rate discrimination based on the assumption it is cheaper for grain to be shipped from the Midwest to the west coast than from Montana to the

west coast. This situation involves interstate commerce and could be defensible under the 4R Act.

- An official finding is needed to determine actual rate discrimination. There has been no official documentation since 1980 and this needs to be brought current through a state body. Once such a finding is established, a means to address the issue via tax resolve, either incentives or disincentives would be proposed.
- A second finding would need to establish that the federal government has failed to regulate interstate commerce to not discriminate against Montana's citizens and businesses.
- Take this request to the legislature along with a plan of action should discrimination be found.
- The RSCC Taxation Subcommittee will further explore these items and report back to the RSCC.

5.0 Transportation Subcommittee Update

The RSCC Transportation Subcommittee met via conference call on September 19th and this morning, September 27th, at 9:00am. Chairman Mike O'Hara provided the following summary and action items:

- Communicate with railroads to ascertain from the railroad perspective what incentives the RSCC could provide to them that would encourage rail infrastructure development in Montana.
- In a similar fashion, communicate with motor carriers to determine if there are any incentives for development of the trucking industry.
- Request railroad plans from the railroads for the RSCC to ascertain the rail company's investment targets.
- Communicate with port authorities to determine impediments and identify ways to facilitate development.
- Work with Montana Department of Transportation to identify and support a "core" system for the state's rail branch lines. The identification of a core system would encourage investors, guide local officials with rail decisions and preserve Montana's remaining branch lines.
- Define recommendations for the legislature.

6.0 Technical Assistance Update

Terry Whiteside provided a fifth draft of the 2006 Harvest Rail Survey that will identify logistical issues Montana farm producers and elevators encountered during the 2006 harvest. Mr. Whiteside also shared a survey conducted by the Montana Grain Growers Association in May of 2004 that reflected change in grain hauling distances for producers.

Following a discussion of the 2006 Harvest Rail Survey, a column will be added for producers to indicate if they had to haul grain farther than 100 miles to market. Terry Whiteside will implement the survey using membership partners such as the Montana Wheat & Barley Committee, Montana Grain Growers Association, Montana Farm Bureau, Montana Farmers Union, and WIFE to fill out the survey.

7.0 RSCC Serving as Facilitator to Foster Cooperative Relationships between Railroads

The RSCC members spent some time discussing its role as facilitator to encourage cooperative relationships between railroads operating in Montana and the region. Evan Barrett said the idea is to encourage companies to work with each other to build partnerships and relationships and that the role of an economic developer is often that of a match-maker. Mr. Barrett mentioned the partnership of Canadian Pacific and BNSF in Shelby as one example and the joint BNSF and Union Pacific venture in the coal fields in Wyoming as another. Evan Barrett encouraged the RSCC to be looking for these opportunities in Montana.

8.0 Budget Discussion for RSCC

Evan Barrett reported the RSCC budget is in good shape for this fiscal year. There is some funding available for additional technical assistance once planning work begins.

A budget figure needs to be established and submitted for appropriation in House Bill 2. Before setting the amount a subcommittee consisting of Evan Barrett, Larry Bonderud, Rep. Tom McGillvray, Sen. Ken Hansen and Director Jim Lynch will meet to discuss staffing options, etc. Mr. Barrett noted the figure is needed in the Budget Office prior to November 15th.

Dick Turner stated that as Montana Department of Transportation (MDT) is partially funded by federal dollars, MDT staff is limited on some activities.

9.0 Letter from Dr. Daniel Fierher regarding abandoned line between Great Falls and Helena

A letter from Dr. Daniel Fierher of Helena stated “We are in the process of applying to the U.S. Surface Transportation Board for approval to acquire and restore service to BNSF’s *defacto* abandoned rail line from Great Falls to Helena.”

Barbara Ranf said that the rail line is out of service and not for sale. BNSF is watching the development of Canadian traffic for the line but is not prepared to invest in the washout near Ulm as capital is being used for working lines. The line has not had traffic for six years. Great Falls and Laurel average five trains per day; BNSF is uncertain if the Great Falls to Helena line would provide the necessary volume for use. The letter from Dr. Fierher concerns BNSF because it involves BNSF assets and private property. The letter also requests BNSF to provide names of shippers that used the line. BNSF protects the confidentiality of its customers.

Director Jim Lynch will be asked to speak with Dr. Fierher to obtain additional information then confer with Chairman O’Hara so that Chairman O’Hara can determine whether or not to place Dr. Fierher on the next RSCC agenda.

10.0 Rail Updates

10.1 Union Pacific (Evan Barrett and Charlie Clark)

Evan Barrett reported the status of the Union Pacific (UP) operating in Montana continues to be positive. Several issues have been discussed with UP near the end of the 2005 legislative session and since then. UP President James Young and Governor Schweitzer have spoken several times, including a face-to-face meeting recently in Helena. Discussions also continue between the Governor’s Office of Economic Development, Butte local officials and the Butte delegation. The Union Pacific is the largest private user of diesel in the U.S. and represents a market for coal to liquids usage in Montana.

Charlie Clark said the venue issue is very important to UP, regarding the court system and where claims are heard. Evan Barrett said that the state administration will work closely with the Butte delegation to address the issue through legislation and report back to the RSCC.

10.2 Canadian Pacific (Larry Bonderud)

Larry Bonderud shared two articles with the RSCC members and encouraged everyone to be aware of transportation issues and changes nation wide as these long distance decisions affect what happens in Montana. Mr. Bonderud said Canadian Pacific (CP) expansion programs are complete with a 12% increase in capacity. Two additional daily trains are running on this route as a result of events in China.

Larry Bonderud pointed out that Montana needs to build partnerships regarding ethanol, bio diesel and coal gasification energy programs because railroads will be the vehicle for moving the products. Montana may want to consider purchasing rail equipment as others have done. The RSCC needs to understand the issues and be aware of all of the options to foster cooperation between railroads.

Charlie Clark noted that railroads do not own the containers, thus the decisions as to where they will be loaded or unloaded are made off shore by the container companies, most of which are foreign. Steam ship companies also own the containers and have the volume to dictate where trains run and when. Montana does not have the volume required.

10.3 Montana Rail Link (Evan Barrett)

Nothing new to report.

10.4 BNSF Railway (Barbara Ranf)

Barbara Ranf reported BNSF will be holding more listening forums with producers around the state October 16, 17, 18th.

BNSF is in the feasibility study phase to test diesel from the coal to liquids process to determine performance levels in BNSF engines.

10.5 Central Montana Railroad (Carla Allen)

Nothing new to report.

10.6 Watco, Yellowstone, Mission Valley, others

No representative available

11.0 Next Council Meeting

11.1 Meeting Date and Location

Larry Bonderud made the motion for the next RSCC meeting to be held Wednesday, December 6th, in Great Falls. Russell Hobbs provided the second; all present voted in favor of the motion. Barbara Ranf was asked to possibly arrange a tour for the RSCC to view some of the Great Falls to Helena line and perhaps the washout near Ulm. Evan Barrett suggested a possible high-rail ride from BNSF over portions of the line.

At this time, Dan Bucks motioned to authorize the budget subcommittee to recommend a figure to the Budget Office for the RSCC budget. If Chairman O'Hara is not on the call, he is to review the figure prior to submittal to the Budget Office. Larry Bonderud provided the second to the motion; all present voted in favor of the motion.

Regarding the meeting location, Patty Schlaeger will talk with Cynthia Schulz, Airport Director for the Great Falls International Airport Authority for available space at the airport.

11.2 Agenda

Items for the December 6th meeting:

- Transportation Subcommittee Report
- Taxation Subcommittee Report
- Dr. Daniel Fiehrer (Great Falls/Helena line)
- 2006 Rail Harvest Survey Update
- Budget Report
- View of Great Falls to Helena line

12.0 Comments or Issues

Terry Whiteside was encouraged to talk not only with producers for the 2006 Rail Harvest Survey but also with elevator headquarters as they play a part in the process .

13.0 Formal Public Comment Period

No comments were received.

14.0 Adjournment

George Paul and Sheryl Ralph were thanked for serving as RSCC hosts. The meeting was adjourned to begin a tour of Port of Montana Butte, guided by George Paul and Mike Kerns.

RSCC MINUTES (continued)

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING

Wednesday
December 6, 2006
9:00am – 4:00pm

Great Falls International Airport
2800 Terminal Drive, Prairie Room
Great Falls, Montana

COUNCIL MEMBERS PRESENT: Mike O’Hara, Jim Lynch, Russ Hobbs, Doug Miller, Bill Fogarty, Evan Barrett and Larry Bonderud.

COUNCIL MEMBERS ABSENT: Dan Bucks, Carla Allen, Nancy K. Peterson, Sen. Hansen, Rep. McGillvray,

REPRESENTING COUNCIL MEMBERS: Larry Finch for MT. Dept. of Revenue and Chris Aageson for Montana Department of Agriculture.

GUESTS: Dick Turner, Barbara Ranf, Mark Cole, George Paul, Lola Raska, Ray Young, Doug Monger and Paul McCarthy.

RSCC Staff: Terry Whiteside, Gloria O’Rourke

1.0 Call Meeting to Order

RSCC Chairman Mike O’Hara called the meeting to order. Roll call was taken and guests were introduced.

2.0 Approval of Minutes

- Evan Barrett moved to approve the Transportation Subcommittee Minutes from September 27th, 2006. Russ Hobbs moved to second the motion. All voted in favor of approval.
- Bill Fogarty moved to approve the Taxation Subcommittee Minutes from September 27th, 2006. Evan Barrett provided the second to the motion. All voted in favor of approval.
- Evan Barrett moved to approve the RSCC Minutes of September 27th, 2006. Doug Miller moved to second the motion. All voted in favor of approval.

3.0 Budget Subcommittee Update (Mike O’Hara, Chair)

A conference call was held on November 8th with Chairman Mike O’Hara, Evan Barrett, Jim Lynch and Dick Turner to discuss the transfer of the RSCC from the Governor’s Office to Montana Department of Transportation and the budget for the RSCC. HB26 is the bill in place to provide for the transfer of the RSCC. Rep. McGillvray will carry it in the house; Sen. Hansen in the Senate. (See additional comments on HB26 below.)

Regarding the budget, the RSCC had previously recommended \$250,000 as a starting point. Jim Lynch and Dick Turner feel that based on the workload described for the RSCC, a full time position is required. This position would need to be filled by someone with knowledge and expertise in rail, freight and transportation issues and would also serve as a liaison between Montana Department of Agriculture, Montana Department of Commerce and Montana Department of Revenue. Additional funding would be needed for travel, meeting costs, etc., and perhaps for technical assistance such as Terry Whiteside currently provides.

Based on these qualifications and expenses, it was suggested the RSCC request \$360,000 for the biennium.

When including the cost of the pending core line analysis, more funding may be needed.

Russ Hobbs moved to submit \$400,000 for the RSCC budget for the next biennium. Doug Miller seconded the motion. All voted to approve the budget amount. Evan Barrett said he would submit the numbers today but noted as the funding will come from HB2, the budget will not be finally determined until the last day of the session.

Montana Department of Transportation will compile a justification for the position, write a Job Description and bring it back to the council for input and suggestions.

4.0 HB26 Discussion

The following changes were requested after reviewing the language of HB26, “An Act transferring the Rail Service Competition Council from the Office of the Governor to the Department of Transportation for administrative purposes; increasing the membership of the council; expanding the duties of the council to include promoting the expansion of existing rail lines and the construction of new rail lines in Montana; and amending Section 2-15-246, MCA.”

- Change Section 1. 2-15-246 (e) to read seven people and delete (iii) which would add a railroad employee of a railroad engaged in interstate commerce to the RSCC.
- Add staggered term language to Section 1. 2-15-246 (e)

Larry Bonderud moved to modify HB26 to reflect a seven member board, include staggered term language and eliminate the reference of a railroad employee. Evan Barrett seconded the motion. All voted in favor of requesting these changes to HB26.

5.0 Taxation Subcommittee Update (Rep. Tom McGillvray, Chair)

As Rep. Tom McGillvray was out-of-state for legislative training, a Taxation Subcommittee Update was not available.

6.0 Transportation Subcommittee Update (Mike O’Hara, Chair)

Chairman Mike O’Hara reported good progress with the Farm Producer’s Survey; it should be completed by the end of December. In addition, letters have been sent to each rail carrier in the state requesting information about their plans for expansion, investment, etc. Each carrier was also asked if, should tax credits for rail infrastructure improvement be passed by Congress, they would plan for infrastructure improvement in Montana. All carriers have responded with the exception of WATCo. Russ Hobbs offered to contact WATCo.

7.0 Technical Assistance Update from Terry Whiteside

Terry Whiteside provided an update on several issues including:

1. Sponsorship of federal Captive Rail Customer legislation reaches record levels
2. STB holds a hearing on Grain Transportation and the recent GAO report
3. STB is conducting a proceeding designed to develop small rate case standards
4. Railroads are pushing a tax infrastructure bill in the new Congress
5. RE: Dr. Fiehrer’s application for ‘Forced’ sale of Helena-GF line – analysis of legal procedure for forced sale
6. Review of Farm Producer Survey progress

To review the details of this presentation, visit http://rscclt.gov/docs/Report_to_RSCC_December_2006.pdf

Discussion:

The RSCC will invite Dr. Fiehrer to attend the next meeting to learn more about his plans for the Great Falls to Helena line. The RSCC needs more information before it can make an educated decision or take action on the line.

8.0 Background Information on Great Falls to Helena Line

Dick Turner of Montana Department of Transportation provided a report on the history of the Great Falls to Helena line. In addition to its history, Dick included statistics of the track and the amount of traffic it has sustained. Dick provided several photos of the washout near Ulm as well as photos of a slide area near Cascade. View Dick's report in its entirety at http://rscclt.gov/docs/Helena_GreatFalls_Line_2006.pdf

9.0 Rarus Rail Issue

President of RARUS Railroad, Paul McCarthy, gave a presentation to the RSCC regarding the Copper King Express Excursion Train and access to 2,500 feet of BNSF yard track. The excursion train is extremely popular with over 10,000 riders to date and incorporates the area's history into a scenic train ride between Butte and Anaconda. View portions of the presentation at the Copper King Express website at <http://www.copperkingexpress.com>.

The track under discussion has a wye for turning around locomotives which RARUS has been using with its freight operation as part of a "hand shake deal" for years. This track is located at the Berkely Pit and is a practical place to terminate the excursion train and include the Berkely Pit as part of the train tour. BNSF is preventing access to the track due to concerns of liability for the excursion train passengers. Insurance companies, however, will not provide liability for a limited amount of track, only for the entire rail line. RARUS has offered the following solutions:

- Deed the track to the Butte Chamber of Commerce
- BNSF continues its use of track, but incurs no maintenance costs
- Release BNSF from all liability

Discussion:

As one role of the RSCC is to facilitate communication between rail lines, the RSCC is interested in assisting with this issue. Letters of support for the Copper King Express Excursion Train are to be obtained from Montana Department of Transportation, Montana Tourism office, Montana Department of Commerce and the Governor's Office of Economic Development. Evan Barrett requested copies of letters of support already in circulation from the Butte Chamber of Commerce as well as any other letters. The Governor will most likely assist with this effort.

10.0 RSCC Serving as Facilitator to Foster Cooperative Relationships between Railroads

It was noted in the STB report regarding the sale of the Great Falls to Helena line that one reason to open the line would be to improve transportation for shippers by attracting overhead shipments moving between Canada, the southern United States and Mexico by providing a more direct route than is currently used.

Larry Bonderud suggested the RSCC open a discussion between the three railroads to improve access in the north south corridor. It was noted that the Great Falls to Helena line has not been designated an abandoned line so a forum with the three railroads may be premature at this time.

The RSCC members present discussed the need for the RSCC to be prepared to engage in this and similar issues as they arise in the future. Terry Whiteside and Dick Turner will develop guidelines for a plan of action and how the RSCC could proceed when track is designated as abandoned or potential for a merger exists. In this way, the RSCC will have tools in hand to make recommendations to the executive branch regarding the situation.

The question was raised as to whether or not the state has ever developed a policy for buying rail lines. This issue has come up in the past, but the problem has been funding. Evan Barrett said that the council has a charter to build a plan, and the plan could include this issue.

11.0 Rail Updates

11.1 Union Pacific

Evan Barrett reported Rep. Art Noonan of Butte may submit a bill to deal with venue issues regarding Union Pacific. The bill would address residency and benefits issues of railroad employees.

11.2 Canadian Pacific

Larry Bonderud said the Canadian Pacific is alive and well with income the first nine months of the year an improvement of 60% over 2005. Canadian Pacific expects to invest \$895 million back into the system in 2007. Mr. Bonderud said Alberta and Edmonton are booming and experiencing work shortages.

11.3 Montana Rail Link

Evan Barrett said efforts are ongoing to resolve issues for a coal rail line from the Bull Mountain Mine to market.

11.4 BNSF Railway

Barbara Ranf provided an update on BNSF activities:

- BNSF requested the STB to move the Glendive to Circle line out of abandonment status to discontinuance. BNSF wants to use the track for car storage. There has not been action from the STB to date.
- BNSF and Columbia Grain are upgrading the 110 grain facility at Carter to prepare for next harvest season.
- BNSF does not oppose the Copper King Express excursion train but feels the issue of passenger liability must be addressed.
- Offered copies of the filing with the STB to reject Dr. Fiehrer's application regarding the Helena to Great Falls line.

11.5 Watco, Yellowstone, Mission Valley, et al

Jim Lynch met with Watco officials yesterday to discuss the line between Bainville and Plentywood and providing service to Scobey. Watco is working with Columbia Grain for a 110 car shuttle facility in Plentywood. Watco representatives said the line would need to maintain a load of 1800 cars to be profitable which may prove difficult.

As the lessee to BNSF, Watco will need to utilize the line or abandon it according to its agreement with BNSF.

Given the charter of the RSCC, Evan Barrett moved for Terry Whiteside to contact Watco for statistics on this matter and determine if Watco's data validates their assertions. Russ Hobbs seconded the motion with all members voting in favor of the motion.

It was noted the Department of Transportation and Department of Agriculture conducted a study of the Glendive to Circle line when BNSF announced plans to abandon that line. Although the information is dated, it may be a starting point for Terry.

12.0 Next Council Meeting

12.1 Meeting Date and Location

The next RSCC meeting will be held in Helena so that legislative members may attend. Jim Lynch offered the Montana Department of Transportation Commission Room and will check for availability in late February. Mr. Lynch noted the room is wired for videoconferencing so producers around the state could join the meeting.

12.2 Agenda for Next Meeting

Farm Producer Survey Results
Budget and FTE Update
Dr. Fiehrer Presentation
Taxation Subcommittee Update
Transportation Subcommittee Update
Rarus Railroad Issue Update
RFP for the RSCC Plan
Watco Data Review

13.0 Comments or Issues from Council Members

- RSCC member's packets contain a copy of a BNSF letter to the STB to request an exemption of the Glendive to Circle line for car storage purposes.
Note: a brief discussion was held regarding the apparently high number of rail cars in storage. Russ Hobbs said that cars were over purchased for lumber and now the lumber supply is down. Others reasons for car storage may involve the age of the cars, tax issues on in-use vs. off-line cars, and supply vs. demand.
- The RSCC may want to support a one-time-only \$3 million item in the Montana Department of Transportation budget to pay for STB litigation. It would be important to have the capacity to be able to act if and when a law suit would be worth pursuing.
- Gloria was asked to share the minutes of the RSCC meetings with Matt Jones of Senator Baucus's office.
- RSCC members requested a letter to present when checking in to hotels for lodging so they may obtain the state rate.

14.0 Formal Public Comment Period

No comments.

15.0 Adjournment

**** Tour of Great Falls Airport Authority – Cynthia Schultz, Airport Director**

RSCC Minutes December 6 2006.doc

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
MINUTES

Monday
February 26, 2007
11:00am – 3:00pm

MT Dept. of Transportation
Commission Room
Helena, Montana

COUNCIL MEMBERS PRESENT: Mike O'Hara, Carla Allen, Larry Bonderud, Doug Miller, Bill Fogarty, Dan Bucks, Jim Lynch, Evan Barrett,

COUNCIL MEMBERS ABSENT: Russ Hobbs, Sen. Ken Hansen, Rep. Tom McGillvray

REPRESENTING COUNCIL MEMBERS: Larry Finch, Dick Turner, Joel Clairmont

GUESTS: Mike Opar, Mark Cole, George Paul, Barbara Ranf, Zia Kazimi

RSCC STAFF: Terry Whiteside, Gloria O'Rourke

1.0 Chairman Mike O'Hara called the meeting to order.

Roll call was taken and the audience was introduced.

2.0 Chairman O'Hara requested approval of the RSCC December 6, 2006 minutes. Doug Miller moved to approve, Larry Bonderud seconded. All voted in favor to approve the minutes.

3.0 HB26, Budget and FTE Update

3.1 HB 26 is being carried by Rep. Tom McGillvray. The bill contains the RSCC request to include staggered term language but was reduced from \$400,000 to \$100,000 for the biennium. This reduction will allow for no consulting funds and no FTE. The bill also removes the Director of Revenue and a representative from the Governor's Office of Economic Development from the council. Once the bill reaches the Senate Finance and Claims Committee, funding can hopefully be adjusted, sent to the Senate floor and eventually back to the House for compromise. Evan Barrett noted there is a \$3 million request in HB2 for the Department of Justice for litigation for rail competition issues that could be used for preparation and litigation involving the STB. Evan also explained that HB2 is being divided into six new bills by the House. The six new bills contain funding cuts not included in HB2. For example, the budget or Marketing and Recruitment was cut from \$300,000 in HB2 to \$15,000 in the new bill.

As the RSCC can justify the request for \$200,000 per year, Bill Fogarty moved to reiterate the council's support for \$400,000 for the biennium. The motion was seconded by Larry Bonderud. All voted in favor of the motion. It was noted the RSCC must report to the 2009 Legislature on the council's activities and progress.

4.0 Taxation Subcommittee Update (Rep. Tom McGillvray, Chair) This subcommittee has not met recently.

- 5.0 Technical Assistance Update –(Terry Whiteside)** Terry Whiteside presented an update of current activity on the rail customer front which included:
- Rail captive legislation to be finalized
 - Rail Shipper Day scheduled for March 15th – RSCC may want to have a representative there.
 - Continuing to push a tax infrastructure bill in the new Congress
 - Completion of Montana 2006 Farm Producer Survey and results – 13 findings
 1. Grain is being hauled further and further over the state and county highway systems.
 2. The majority of farm producers have experienced increasing hauling distances over the past 10 and 20 years.
 3. Those farm producers experiencing increased haulage are hauling over 3 times as far as those farm producers who have not experienced any increased hauling distances.
 4. The non-wheat crops are experiencing significantly greater hauling distances that wheat crops further burdening alternative and rotational crop practices.
 5. Some counties show average hauling distances upwards of 80+ miles.
 6. The 2006 harvest in Montana could be best described as a tale of two cities – with Winter wheat showing average to above average yields and Spring wheat, durum, barley, pulse, peas and lentils showing average to below average yields.
 7. The vast majority of farm producers have the capabilities of storing most if not all of their grain production.
 8. Even with the diversity of yields, most Montana farm producers experienced elevator pluggings multiple times during harvest – due to lack of rail cars.
 9. With the multiple elevator pluggings, most farm producers held onto to their crops and waited for the rail car shortages to abate rather than take their grain to more distant elevators.
 10. Farm producers generally thought these delays and elevator pluggings were ‘about average’ and par for the course.
 11. Farm producers are finding unloading delays at ever more distant elevators each year.
 12. As the elevator system is being forced to larger, more rail efficient shuttles coupled with the loss of thousands of miles of rail branchlines in the state, the costs of transportation for gathering grain seem to be shifting from the railroads to the farm producers and to the State and local highway system.
 13. Service levels seeing little improvement with the transition to larger grain handling facilities
 - Terry Whiteside provided bound copies of the report which was compiled for the RSCC by Montana Department of Transportation and Whiteside Associates. The report provides valuable information and hard data that quantifies the already known problems and issues. There is an Executive Summary in the report as well as a discussion regarding ramifications of what the data indicates.
 - Terry asked everyone to provide feedback and comments on the draft report as soon as possible so that final finished copies can be produced.

Discussion and comments:

- Regarding elevator operations, it would be worthwhile to know how many elevator companies exist and the distribution of ownership. This may be another factor in the competition issue.
- Do longer hauls result because of the search for a better price or because of fewer elevators?
- As a result of changed weather patterns and the shortened harvest window, more and more grain is being stored on the farm. Producers are also storing fertilizer as well, as it is cheaper during the fall.
- As the survey showed drastic increase in the distance to haul products, the cost of increased traffic and maintenance to the highway can now be calculated. There is now a definite connection between a profitable railroad and a shift to state government road maintenance.
- There is a tremendous risk to the producer that did not exist 20 years ago – in liability, trucking, equipment, traffic safety, etc.

6.0 Transportation Subcommittee Update (Mike O’Hara, Chair) This subcommittee has not met recently.

7.0 RSCC Serving as Facilitator to Foster Cooperative Relationships between Railroads

7.1 RARUS Rail Issue – The RSCC received a letter from representatives of Butte Local Development, Butte Chamber of Commerce and Paul Babb, Chief Executive of Butte Silver Bow requesting assistance in forming an agreement between BNSF and Rarus. As discussed at the last RSCC meeting, BNSF is not allowing access to track for a tourist passenger train, the Copper King Express, to turn around as BNSF feels Rarus is not carrying enough liability insurance.

Barbara Ranf, a representative from BNSF, explained that BNSF has lowered its trackage fees and the liability fee but is insisting that the Copper King Express provide adequate liability insurance for its passengers. Rarus feels that as the track request is only 2000 feet and the train travels 5mph or less, their liability insurance is adequate.

As this is not a rail freight issue but a rail service issue, the motion was made by Larry Bonderud to refer the letter to Governor Schweitzer to bring the matter to his attention. Dan Bucks provided the second. All members voted in favor. Gloria O’Rourke will write a cover letter to the Governor explaining that the RSCC recognizes the beneficial impact of the Rarus operation but as this is not a strictly rail competition issue, it is being referred to the Governor.

8.0 Dr. Daniel Fiehrer regarding Great Falls to Helena Line. Dr. Fiehrer was not available to make a presentation to the RSCC regarding his vision of the Great Falls to Helena line. Evan moved to place Dr. Fiehrer’s letter on file unless Dr. Fiehrer requests future assistance from the RSCC. Jim Lynch provided the second; all voted in favor of the motion.

9.0 Rail Updates

9.1 Union Pacific – Evan Barrett reported there are no bills at this time in the legislature related to venue issues. With the passage of a bill in the 2005 legislative session there have not been any anticipated abuses. Regarding the port update, focus is on finding more opportunities for customers.

9.2 Canadian Pacific – Larry Bonderud reported Canadian Pacific has hit a plateau and experienced a bit of a downturn in its stock value, but is alive and well.

9.3 Montana Rail Link – nothing new to report.

9.4 BNSF Railway – Barbara Ranf reported BNSF is planning some summer track upgrades. Barbara also handed out copies of the “BNSF Reply to Supplemental Comments of Montana Wheat and Barley Committee, et al”.

9.5 Central Montana Railroad – Carla Allen reported the Central Montana Railroad is doing well and planning some track upgrades as well as bridge renewals.

9.6 Watco, Yellowstone, Mission Valley, others – no report available.

10.0 Next Council Meeting

10.1 Meeting Date and Location. The next RSCC meeting will be Thursday, May 17th, in Helena, at the Montana Department of Transportation Commission Room from 11:00am to 3:00pm.

10.2 Agenda Items. Agenda items for the May 17th RSCC meeting will include a review of the final 2006 Farm Producer Survey, results of legislative action on HB26, and other issues that may come before the RSCC.

11.0 Comments or Issues from Council Members

- Evan Barrett reported progress is being made regarding a rail spur for the mine near Roundup. Montana Department of Environmental Quality granted an underground expansion permit which proves the need for the rail spur. The spur would lead to expansion of sales as well. The spur is east of Broadview to twelve miles south of Roundup in the Bull Mountains.
- BNSF has announced that they will not proceed with the abandonment of the line out of Circle (to the east) to potentially serve the needs of a future powerplant or industry.
- March 15th is the Third Annual Rail Shipper’s Day. As Montana is “the” place for captive shippers, Evan Barrett moved for a representative of the RSCC to attend this event. Carla Allen seconded the motion. All voted in favor to send a representative to Rail Shipper’s Day. The purpose of the event is to demonstrate a strong level of support and commitment for rail customer legislation through arranging multi-industry meetings with key Members of Congress and their staff. Since the BNSF representative brought up the BNSF reply to Montana comments in an STB proceeding in Washington DC, Terry Whiteside will send a packet of information to Gloria for forwarding onto the RSCC on the Comments and Supplemental Comments filed by the Montana Wheat & Barley Committee and Montana Grain Growers, Montana Governor Brian Schweitzer, et al in Surface Transportation Board’s Ex Parte No. 661, Rail Grain Transportation which called for an investigation of Montana rail transportation by the STB. This will give the RSCC the background to the BNSF Reply statement handed out by BNSF at this meeting..
- Larry Bonderud reported Montana Department of Transportation is conducting an intermodal study and wants to involve the RSCC. Larry will send a copy of the RFP to Gloria and she will forward a copy to the group.

12.0 Formal Public Comment Period – none received.

13.0 Adjournment. With no further business pending, Mike O’Hara thanked Montana Department of Transportation representatives for their hospitality and adjourned the meeting.

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
MINUTES

Thursday
May 17, 2007
11:00am – 3:00pm

Park Plaza
Helena, MT

COUNCIL MEMBERS PRESENT: Doug Miller, Larry Bonderud, Bill Fogarty, Dan Bucks, Mike O’Hara, Carla Allen, Evan Barrett and Nancy K. Peterson

COUNCIL MEMBERS ABSENT: Rep. Tom McGillvray, Jim Lynch, Sen. Ken Hansen

REPRESENTING COUNCIL MEMBERS: Dick Turner for Jim Lynch

GUESTS: Larry Finch, Mike Opar, George Paul, Howard Nash, Lola Raska, Barbara Ranf, Zia Kazimi, Paul McCarthy, Patty Schlaeger and Lesa Evers.

RSCC STAFF: Terry Whiteside, Gloria O’Rourke

1.0 Meeting Called to Order

Chairman Mike O’Hara called the meeting to order. Chairman O’Hara requested roll call and asked for introductions from the audience.

2.0 Approval of Minutes from February 26th Meeting

Larry Bonderud moved to approve the February 26th RSCC meeting minutes; Evan Barrett seconded the motion. All voted in favor to approve the minutes.

3.0 RSCC Budget and Legislative Outcome of HB26

Evan Barrett reported HB26, a bill sponsored by Representative Tom McGillvray to revise the Rail Service Competition Council passed both houses. The bill was originally submitted with a recommendation by the RSCC for \$200,000 per year for operations and to provide staff on a permanent basis, plus funds for services as needed. Representative McGillvray felt uncomfortable introducing the bill at that amount and reduced the bill to \$75,000 per year; the RSCC again requested \$200,000. When the bill came before the House Appropriations Committee, the bill was reduced to \$50,000 and removed the Director of Revenue from the Council as well as the Chief Business Officer from the Governor’s Office of Economic Development.

The bill passed the House and was taken up by the Senate Transportation Committee. This committee returned Director Dan Bucks and Chief Business Officer Evan Barrett to the Council. It was hoped that when the bill would appear before the Senate Finance and Claims committee, funding could be restored. The bill, however, was sent directly to the floor and passed

as written.

As per the bill language, an individual with coal shipping experience will be added to the Council and the operations of the council will be transferred to Montana Department of Transportation. It was noted a report of progress needs to be submitted to the next session of the legislature. It will be up to Montana Department of Transportation to work with the RSCC to determine how the \$50,000 per year will be allocated.

Evan Barrett explained that the individual to be added to the RSCC will be appointed by the Governor. The default effective date is October 1st. The individual could attend the RSCC meetings prior to this date but could not be reimbursed for expenses until October 1st.

The RSCC's future \$50,000 annual budget could not be addressed during this meeting as Jim Lynch was unable to attend. Evan Barrett estimated after removing meeting fund expenses, the RSCC's current remaining funds will be \$42,000. Mr. Barrett said these funds need to be obligated by June 30th of this year so that the funds are available through the next year.

In a different bill, the Legislature passed a \$3 million appropriation for litigation and preparation for litigation if needed relating to rail rates in Montana. Should a law suit happen, it would involve the Surface Transportation Board, Montana Department of Transportation and Montana Department of Justice. As this litigation relates to the RSCC mission, the RSCC will be kept informed and involved in the information flow.

4.0 Shipper's Day Update

Chairman Mike O'Hara reported on his attendance in Washington, D.C., regarding March 15th Shipper's Day events. Chairman O'Hara spent time in face-to-face meetings with Montana and Idaho's Congressional delegations as well as staff of Representative Rehberg. Senator Baucus, Senator Tester and Representative Rehberg signed on as co-sponsors for Senate Bill 953, the Railroad Competition and Service Improvement Act 2007. Chairman O'Hara said the face-to-face visits were essential and very productive. Chairman O'Hara also met with representatives from grain growers organizations and members of the Wheat and Barley Commission to let them know the RSCC is behind these issues and supportive. Chairman O'Hara recommended another individual from the Council attends this event next year.

5.0 Technical Assistance Update

Terry Whiteside, of Whiteside and Associates, updated the RSCC on the following issues; the report is available online at http://rscclt.gov/docs/Whiteside_RSCC_Report_05_17_2007.pdf

1. Rail Shipper Day – a resounding success
2. S.953 Rail Competition and Service Improvement Act introduced March 21, 2007 with eleven co-sponsors including Senator Max Baucus and Senator John Tester
3. HR 2125 Rail Competition and Service Improvement Act introduced May 3, 2007 – 29 co-sponsors including Rep. Dennis Rehberg. Note: S.953 and H 2125 are identical to enable the bills to pass in both the Senate and the House. These are not re-regulation

bills.

4. Massive coalition formed including Agriculture, ARC, CURE, American Chemistry Council, Edison Electric Institute, National Rural Electric Coop, United Transportation Union and many more. So many are coming on board because they are all captive shippers at some point in some way.
5. Look for co-sponsorship to go up very quickly now
6. Railroads are pushing a tax infrastructure bill (S. 1125) in the new Congress.
7. Montana Rail Grain Transportation Survey & Report 2006 is released
8. Two new shuttle facilities announced in Montana (Moore, Westby)
9. Outline of plan for development of transportation competitive alternatives by RSCC
10. Governor's approved budget includes \$3MM to address STB/Rail Issues

Regarding number nine above, Terry Whiteside suggested the RSCC, with its vast knowledge base in its membership, needs to initiate development of focus plans to address growing industry/port needs that are being curtailed by lack of transportation competition. Mr. Whiteside suggested forming three or four working groups to address industry specific issues relating to transportation competition or lack of it.

After some discussion by the Council, the four working group categories are:

1. Coal
2. Ports/Intermodal
3. Industrial/Forest Products/Minerals
4. Agriculture

Problems these industry specific working groups could identify and address may include build outs/build ins, value added issues, methodologies for financial support for identifying a CORE system, developing a CORE system, etc., and ultimately reporting all findings to the legislature.

Evan Barrett moved for Chairman O'Hara to put together a structure that reflects the four working group recommendations and obtain requests from board members which group they want to serve under. The motion was seconded by Russ Hobbs; all voted in favor of the motion.

After much discussion, the first task of each working group is to identify the challenges that need to be overcome in each industry sector. Strengths and opportunities should be identified as well, then proceed to solutions.

Regarding identification of CORE rail in Montana, Dick Turner suggested the RSCC hold off on this project as Montana Department of Transportation needs to update its state rail plan. A logical starting point for the CORE system would be to collect data. As this is what Montana Department of Transportation will be doing as part of the state rail plan update, the RSCC will have data in hand by the end of the year.

Working groups will meet via phone and/or email discussion between RSCC meetings, with a

designated RSCC team leader, to formulate a report covering, at a minimum, the following items:

- a. Effects on the industry coming from lack of rail competition
- b. What impediments are there to develop of transportation alternatives?
- c. Development of workarounds and transportation alternatives to counter the effects including working outside the state boundaries
- d. What ingredients/assets/legislation would have to come together to be able to develop suggested or required transportation alternatives? Development of action items to accomplish workarounds/development of transportation alternatives
- e. Suggested timetable to put action items in place
- f. Additional items considered important to group

In conclusion of his report, Terry Whiteside presented each Council member with a final copy of the Montana 2006 Farm Producer Survey. The survey information will assist the RSCC in moving forward.

6.0 MDT Intermodal Study

Dick Turner, Bureau Chief, Montana Department of Transportation (MDT) Multimodal Planning, described a project being funded by MDT's research program. Every year the department solicits proposals for research projects. Larry Bonderud submitted a project to address the declining container and trailer flat car service facing Montana. When the facility closed in Shelby, the reason given was lack of volume to provide service. Mr. Bonderud requested research that would lead to a solution to provide enough business to attract interest of Class One railroads.

Dick Turner reported a technical panel was formed made of experts in this area to investigate the matter. The panel developed a scope of work for a consultant project. It is to be a phased project as the data collected in Phase One will determine if the research/project should go on to Phase Two. It is suspected that many of the containers and trailers are leaving Montana empty. If this is indeed true, a way needs to be found to utilize this resource. A kickoff meeting will be held in late June with a six month timeline for completion of Phase One.

7.0 Rail Updates

7.1 Union Pacific (Evan Barrett and George Paul) Evan Barrett gave an update on UP's venue issue related to injuries; no bill was introduced throughout the legislative session. UP was to show, if after passage of the law two years ago, there were abuses to the law. As nothing has been forthcoming, it is assumed the law passed last session is functioning well enough.

George Paul reported traffic at the Port of Montana is steady. Lumber traffic is down a bit but all else is off to a good season.

7.2 Canadian Pacific (Larry Bonderud) Larry Bonderud reported CP, as a Class One railroad is doing well. As traffic has leveled recently, CP has furloughed 300 people. Larry Bonderud noted it is interesting to follow the Alberta economy to see what links exist between Alberta and Montana. Mr. Bonderud said the products moving north through Montana are phenomenal. There are currently 14 major skyscrapers under construction in downtown Calgary; the economy is booming with labor shortages. Mr. Bonderud suggested the RSCC members visit the CP website at <http://www.cpr.ca> to review its approach to non-rail served communities.

Both Nancy K. Peterson and Evan Barrett noted the effect on Montana's economy as a result of other area's boom. Montana now has the lowest unemployment rate in the nation of 2%. But this low rate is reflective of out migration and increased activity. People are leaving Montana for better wages as Montana ranks 49th in wages. The anomaly is in Indian Country where there are high birthrates and low out migration.

7.3 Montana Rail Link (Evan Barrett) Evan Barrett had nothing new at this time to report on MRL. Howard Nash reported traffic is steady but has seen a huge drop in out bound forest products. There is no reduction for in bound forest products. With the closing of Stimpson Lumber, out bound products will decrease even more.

7.4 BNSF Railway (Barbara Ranf) Barbara Ranf had a conflicting meeting and was not able to provide information at this time.

7.5 Central Montana Railroad (Carla Allen) Carla Allen reported CMR is at the end of shipping last year's crop. Construction projects are underway with several new projects in the works. CMR is gearing up for its 14th year with the dinner train.

7.6 Watco, Yellowstone, Mission Valley, Rarus, others Paul McCarthy, of Rarus Railway, reported the access issues he brought to the council in December of 2006 have not been resolved. Paul reported to the council, now as a representative of Patriot Rail, a company which recently purchased Rarus. Paul McCarthy explained Patriot Rail is a new startup with Rarus Railway being its second excursion train purchase; six more purchases are planned by the end of the year. Patriot Rail and its assets will enable Rarus to grow and bring new industry to the area; Patriot expects to double its workforce in the next few years.

Paul McCarthy invited the RSCC members to ride a dinner train as the guest of Patriot Rail on the evening of May 25th. Paul was thanked for this kind invitation.

Evan Barrett congratulated Paul McCarthy and thanked him again for the invitation. Mr. Barrett noted that under state law, council members may not be able to accept the invitation. Evan will contact state legal counsel and send out any guidelines relative to the invitation.

8.0 Consideration of Contracting for Service

Evan Barrett asked the RSCC to consider using some of the \$42,000 available from FY2007 to fund the exploration of taxation and its effect on coal and rail service issues. Taxation and the evaluation of taxation surrounding transportation in Montana is part of the charge of this council. There are many opinions on the matter, but little factual documented information. For ex-

ample, if the coal severance tax were to be reduced, would that make a difference in freight rates? Does the severance tax have a detrimental effect on coal production in the state because the tax increases freight rates? What is the role of Montana's tax on Montana's coal development?

It would be beneficial for the RSCC, through an independent economic analysis unit, to provide the state information on tax issues and other issues that apply to our mission. It would be extremely beneficial to go into the next legislative session knowing the role of the severance tax and other tax issues related to coal.

Toward that end, Mr. Barrett spoke with Scott Rickard, Center for Applied Economic Research, at MSU, Bozeman. Mr. Rickard has experience with these issues and would be willing to conduct the research. As there is not time to conduct a full Request For Proposal, there is a procurement challenge. The RSCC could, however, contract through what is called an interagency transfer with another government agency, such as the Center for Applied Economic Research. Mr. Barrett suggested working with the Center because of the procurement issue, the resources and credibility the center has to offer, the need to obtain clarification on taxation issues and for the flexibility of a phased structure in conducting the research.

After some discussion, Evan Barrett moved for the RSCC to authorize the Chair to execute on behalf of the Council a contract to focus on railroad and the Coal Severance Tax vs. rate competition issues with flexibility to adapt the mission as progress and research develop. Larry Bonderud seconded the motion. All voted in favor of the motion with the exception of Russ Hobbs who voted against.

9.0 Agenda Items for Next RSCC Meeting

9.1 Working Group updates

9.2 Budget decisions from MDT

9.3 Technical Assistance Update

9.3.1 Terry Whiteside

9.3.2 Center for Applied Economic Research

9.4 MDT Intermodal Study Update

9.5 Rail Updates

10.0 Next Council Meeting

As Helena appears to be a good location for most of the Council, the next meeting will be held in Helena. The next suggested date is August 22nd, with the meeting beginning at 10:00am and concluding by 2:00pm. Dick Turner will check to on availability of the Commission Room

11.0 Comments or Issues from Council Members None at this time.

12.0 Formal Public Comment Period

Terry Whiteside informed the RSCC on a novel class action law suit filed last Monday by Dustpro out of Phoenix. Dustpro is filing an antitrust lawsuit for non regulated rates on fuel surcharges. As fuel surcharges since 1993 have been in lock step together, non regulated rates will be investigated. As the STB addresses regulated rates, this case is going after the rates the STB does not set and wants fuel charges back.

Patty Schlaeger, Executive Director of the Transload Distribution Association, Azle, Texas, shared with the RSCC that the items she heard discussed today are the same in other areas and even in other countries. Patty recently attended a meeting involving trade groups from Canada and Mexico where problems with the lack of rail equipment and lack of rail competition were the main focus. The decrease in corn exports to Mexico is causing a rise in the tortilla costs; as the trend increases to grow corn for fuel, the effect on food costs will continue to magnify.

Patty Schlaeger also reported ports in Mexico are now specifying commodities for each port and Mexico is opening new ports to help alleviate congestion.

Due to the lack of rail equipment, a third party approach is becoming the solution. As flat cars are no longer available, companies that own private rail equipment, including containers and locomotives, are increasing.

13.0 Adjournment

With no further business, Chairman O'Hara adjourned the meeting.

RSCC_Minutes_May_17_2007.pdf

RAIL SERVICE COMPETITION COUNCIL
MEETING MINUTES

Thursday
October 11, 2007
11:00am – 3:00pm

Commission Room
Helena, MT

COUNCIL MEMBERS PRESENT: Mike O’Hara (Chair), Carla Allen, Evan Barrett, Dan Bucks, Jim Lynch, Larry Bonderud, Bill Fogarty, Sen. Ken Hansen, Mike Scanlan.

COUNCIL MEMBERS ABSENT: Russ Hobbs, Doug Miller, Rep. Mike Milburn, Ron de Yong

REPRESENTING COUNCIL MEMBERS: Ron Zellar (MT Dept. of Ag)

AGENCY REPRESENTATIVES AND GUESTS: Dick Turner (MDT), Zia Kazimi (MDT), Gary Schlaeger (Tamarack Group), Patty Schlaeger (TDA), Mike Opar (TPS), Larry Finch (DOR) Steve Sheldon (WATCO), Barry Stang (MMCA), Michelle Radosevich (BNSF), Jim Currie (MDT)

RSCC ASSISTANCE: Terry Whiteside, Gloria O’Rourke

1.0 Meeting Called to Order; Introductions

Chairman Mike O’Hara called the meeting to order and requested introductions of council members and those in the audience. New RSCC member, Mike Scanlon (PPL), will represent the coal industry for the council. Rep. Mike Milburn has taken the place of Rep. Tom McGillvray.

2.0 Approval of Minutes

Chairman O’Hara requested the minutes from the May 17th meeting be approved. Dan Bucks moved the minutes be approved and Bill Fogarty seconded the motion. All voted in favor to approve the minutes as presented.

3.0 Review of RSCC Status

Chairman O’Hara provided an update on the status of the RSCC. As funding was not available until October 1st, the RSCC could not hold a meeting until today. The RSCC was transferred from the Governor’s Office of Economic Development to Montana Department of Transportation. Director Lynch said that when the meetings are held in the Commission Room, video conferencing would be available at 15 locations across the state for anyone that cannot travel to Helena.

Regarding the RSCC budget, Evan Barrett explained that remaining funds from last year were used for the research being conducted by MSU-Billings. The legislature has provided \$50,000 for the RSCC per year for the next two years. Montana Department of Transportation has proposed the following budget:

- October 2007 meetings and contracted support: \$680
- Meeting costs (travel, meals, refreshments, etc): \$1,200 x 4 = \$4,800

- Long term contracted support: \$10,000 - \$15,000
- Non-Federal-aid eligible MDT expenses: \$20,000
- Additional contracted services: \$10,000

Director Lynch noted that federal dollars cannot be used to support the work of the RSCC.

4.0 Results of Plentywood to Scobey MDT/DOA shipper survey

Dick Turner provided a report to the RSCC on the results of the Plentywood to Scobey shipper survey. Questions were specific to a segment of line between Plentywood and Scobey, owned by BNSF. The survey concluded that:

- Low survey response rate makes it difficult to draw conclusions.
- Most respondents would like to see service returned.
- Average 60 mile haul distance is consistent with outside limits of shuttle facility service area based on UGPTI research.
- Shuttle facilities major factor but Whitetail still offers significant option.
- New shuttle facility at Westby should offer additional option for area shippers (70 miles from Scobey)
- Track upgrades would be necessary to ensure reliable service using larger cars

Discussion Points:

- The branch line study found evidence that CHS was offering incentives to bypass Scobey.
- This is an important corner for Montana and for the RSCC to understand. There is not only rail competition but also elevator competition.
- MDT is concerned that big truck traffic will increase on MT 5 which is an old stretch of highway and in very bad shape.
- Steve Sheldon said that as a shortline, WATCO does not participate in the freight rate. Two years ago, WATCO's direction was and still is to do due diligence and discover long term viability of the line between Plentywood and Scobey.

5.0 Technical Assistance Update –(Terry Whiteside)

Terry Whiteside provided the RSCC with an update on the Captive Rail Customer Front:

1. **Rail Shipper Day** – planning underway for 2008
2. **S.953 Rail Competition and Service Improvement Act** introduced March 21, 2007 – 12 co-sponsors including Senator Max Baucus and Senator John Tester – hearing October 23rd

3. **HR 2125 Rail Competition and Service Improvement Act** introduced May 3, 2007 – 50 co-sponsors including Rep. Dennis Rehberg
4. **Massive coalition gets bigger** including Agriculture, ARC, CURE, American Chemistry Council, Edison Electric Institute, National Rural Electric Coop, United Transportation Union, National Association of Wheat Growers, National Barley Growers Association, Sugar, Soybeans, National Farmers Union, Dry Beans, Peas and Lentils, Potatoes, etc.
5. **Railroads are continuing to push tax infrastructure bill** in the new Congress
6. Sponsorship of federal Captive Rail Customer legislation reaches record levels again
7. **STB issues small rate case rules - Ex Parte 646-** shippers not happy –Governor Schweitzer, Montana Wheat & Barley Committee, and MGGA continue to participate
8. **STB opens Ex Parte No. 664 – Cost of Capital determinations** – Governor Schweitzer and 16 Grain interests participate in calls for new standards
9. **Captive rail shippers push through 7 amendments in 7 different committees** to further the cause for increasing rail competition and infrastructure issues
10. **RR's overcharged rail customers by \$6.4 Billion** through the collections of now unlawful fuel surcharges – study by ACC
11. **Senate Judiciary Committee passed the Railroad Antitrust Enforcement Act of 2007 (S. 772)** repealing the exemptions of antitrust on railroads – hearing on October 10th
12. **House T&I Committee holds hearing on Rail Competition** on October 9th – lasting 8 hours
13. **RR's accused of 'SPIN' by National Council of State Legislatures**

Terry also provided information on the status of rail captive shipper legislative support, the alliance for rail competition and agriculture working together for passage of HR 2125, the investment tax credit legislation and preparations for a 2007 rail grain transportation survey.

Terry concluded his report with the information that the STB has given final alignment approval on the Tongue River Railroad/Otter Creek. There are several issues and unknowns regarding the building of this line and its impact on Montana's future.

6.0 Working Group Updates

6.1 Forest/Paper/Industrial (Russ Hobbs, Chair)

Terry Whiteside reported on activities of the Forest/Paper/Industrial RSCC Subcommittee. Chair Russ Hobbs and Terry compiled a survey and sent it to industrial, lumber and timber shippers. The purpose of the survey was to identify problems with rail competition in this arena. Terry noted there is no consolidated data of rail shippers in the state which made the survey process a challenge. To obtain more survey data, outreach calls will be made.

6.2 Ports/Intermodal (Bill Fogarty, Chair)

Chairman Bill Fogarty reported on highlights from two meetings held by the Ports/Intermodal Subcommittee:

- Received an update from Dick Turner on the intermodal study with MDT
- Requested Terry Whiteside compile a letter on behalf of the RSCC to Montana's congressional delegation regarding concerns of the rail tax infrastructure bill.
- Invited Wayne Budt of the PSC to explain the PSC's current authority as it relates to rail
- Next meeting will coincide with Libby Ogard's report and/or the next RSCC meeting

6.3 Agriculture (Carla Allen, Chair)

Agriculture Subcommittee Chair Carla Allen reported on several meetings of this working group. The subcommittee is in the process of conducting a survey within the subcommittee itself to identify problems and issues with rail within the ag arena. Once the problems have been identified, the subcommittee will rank the issues and begin crafting solutions.

6.4 Coal (Evan Barrett, Chair)

Evan Barrett reported the Coal Subcommittee has not yet met but will in the near future.

A focus of this subcommittee will be to work with the Federal Regulatory Energy Commission to share data. Once the data is shared and aggregated, conclusions can be drawn that will be based on fact. Once formal data is available, problems and issues can be presented as fact and addressed.

Mike Scanlan noted entities are bypassing the STB and taking issues to Federal court instead. Small shippers cannot afford the new small rate case rules so will not have a voice. The STB must address this problem in the future.

Chairman Mike O'Hara encouraged the subcommittees to continue to work as the RSCC needs to identify specific problems and identify solutions to present to the legislature.

7.0 Rail Updates

7.1 Union Pacific (Evan Barrett)

Evan Barrett provided an update on UP. Patriot Rail, who purchased Rarus Rail, is taking an aggressive stance in the Silver Bow area, Anaconda and Dillon as far as perspective business development. There may be increased demands on the use of UP if Patriot business development ideas pan out.

7.2 Canadian Pacific (Larry Bonderud)

Larry Bonderud said the big news with CP is that they acquired DME Railroad. Larry said this transaction should improve competition with BNSF in particular areas.

7.3 Central Montana Railroad (Carla Allen)

Carla Allen reported CMR is winding up maintenance for the winter and preparing for a busy grain hauling season next month. CMR also has several business opportunities it is investigating. Carla said CMR had a very successful dinner train business this summer with new volunteers that rejuvenated the project.

7.4 Watco, Yellowstone, Mission Valley, others

Steve Sheldon had no further comments.

8.0 Next Council Meeting

The next meeting of the RSCC will take place on Wednesday, January 9th, from 11:00am to 3:00pm, at this same location. Subcommittees will meet between now and January 9th. Director Lynch will let the RSCC know when Libby Ogard will make her presentation and if it would be in conjunction with the RSCC meeting.

9.0 Council Member and Public Comment Period

With no further comments from the council or the public, Evan Barrett moved for the meeting to be adjourned. Carla Allen seconded the motion; all voted in favor to adjourn.

RAIL SERVICE COMPETITION COUNCIL
MEETING MINUTES

January 9, 2008
11:00am – 3:00pm

Transportation Commission Room
Helena, MT

COUNCIL MEMBERS PRESENT: Mike O’Hara (Chair), Ron de Yong, Dan Bucks, Carla Allen, Evan Barrett, Larry Bonderud, Russell Hobbs and Doug Miller

COUNCIL MEMBERS ABSENT: Bill Fogarty, Sen. Hansen, Jim Lynch, Rep. Milburn and Mike Scanlan

REPRESENTING COUNCIL MEMBERS: Dick Turner for Jim Lynch

AGENCY REPRESENTATIVES AND GUESTS: George Paul, John Witt, Chris Aageson, Joel Clairmont, Bing Von Bergen, Will Roehm, Zia Kazimi, MaryAnn Fiehrer, Barbara Ranf, Gary Schlaeger, Patty Schlaeger, Larry Finch, Spook Stang, Mike McKay, Quintin Apedaile, Hal Fossum and Trudi Schmidt

RSCC ASSISTANCE: Terry Whiteside, Gloria O’Rourke

1.0 Call Meeting to Order (Chairman Mike O’Hara), Roll Call, Introduction of Audience

2.0 Approval of Minutes from October 11th, 2007 Meeting

Following roll call and introductions, Chairman Mike O’Hara requested a motion to approve the minutes of the October 11th RSCC meeting. Larry Bonderud moved to approve the minutes; Russ Hobbs seconded the motion. All voted in favor to approve the minutes.

3.0 Technical Assistance Update – (Terry Whiteside)

Highlights from Terry’s presentation:

- Captive Shipper Day postponed from February to March. Coalition groups jointly hold a Captive Shipper Day in DC each spring to bring together captive shippers from all major industry and educate leaders about the ‘lack of rail competition’ problem.
- Updates on several Shipper Legislation items noting that the Rail Competition Bills (HR 2125 and S 953) are not re-regulatory.
- Update on STB activity including a study on rail competitiveness and review of the CP/DM&E Merger
- Evidence to support the argument that government does have the right to regulate a private business. For example, from the Middle Ages, public callings and business occupations, or those affecting the public interest, have been subject to control and regulation. Previous legal cases also demonstrate railroads must service branch lines and mainline rail customers equally.

Discussion:

All RSCC subcommittees need to take a look at common carrier issues, gathering evidence of where common carrier requests are made and not met.

4.0 Intermodal Study Update (Dick Turner for Jim Lynch)

Dick Turner provided an update on a study being conducted by Montana Department of Transportation (MDT). MDT has a research program and solicits for research topics. Larry Bonderud proposed a study to investigate ways Montana could build the volume required to obtain service from Class 1 railroads. The topic was selected and Libby Ogard, of Prime Focus, out of Wisconsin, has been working on the study. MSU Bozeman is providing technical expertise as well. Dick said that MDT will inform RSCC when the study is ready for presentation, probably in March.

5.0 Working Group Updates

5.1 Forest/Paper (Russ Hobbs, Chair)

Chair Russ Hobbs and Terry Whiteside compiled a survey and sent it to industrial, lumber and timber shippers. The purpose of the survey was to identify problems with rail competition in this arena. Terry noted there is no consolidated data of rail shippers in the state which made the survey process a challenge. Surveys were sent to about 300 people with 15 responses received: 10 with forest products and 5 from mining/refining. There were no responses from classic industrial shippers. To obtain more survey data, outreach calls will be made.

To obtain additional information from respondents, Russ held a conference call with nine of the 15 survey respondents. Russ went through the Summary of the Industrial Shipper Survey with the conference members, identifying the following major trends:

- Respondents have pretty good coverage of rail use and substantial annual volume
- Few have access to alternate carriers—they are captive
- Availability of equipment varied from great to terrible
- Value perception differed between forest products and other shippers
- Service was a bigger issue than rates for non-forest product shippers.

It became obvious that different solutions are needed for different industries. A second call will be held January 17th to discuss what constitutes adequate service and apply solutions.

Russ was thanked for his efforts and for the progress being made.

5.2 Ports/Intermodal (Bill Fogarty, Chair)

As Bill Fogarty was unavailable today, Larry Bonderud reported for this working group. Larry said this group will be able to move forward once the intermodal study has been completed. The study will clarify action items for this group.

Gary Schlaeger said the use of one-way containers for export grain has the potential of providing “real” competition to relax the chokehold BNSF has over movement of grain which has been unchallenged outside the unsuccessful legislative, regulatory, courts or “jawboning” initiatives. It could be an “out-of-the-box” innovation of a 100-year-old handling system that dried up branch lines on which elevators were built at intervals to permit delivery of grain by wagons in one day. Trucking to mainline shuttle loaders is wearing out Montana’s highways as well as costing farmers more due to longer distances and higher fuel costs. They pay the railroads a dollar a bushel to ship grain to market regardless of origin, destination or volume contract from rates of grain companies owning elevators.

This one-way container strategy could ultimately lower destination level grain prices while providing higher profits for new smaller buyers who may want to contract for a longer period in greater volume of smaller sized shipments. This could better compete with Canada’s subsidized grain in the world market and divert more Montana grain to export from Eastern and Midwestern domestic grain markets which have more favorable grain rates for export to the Gulf and West Coast over greater distances than exist from Montana.

Once this one-way containerized grain starts moving in significant volumes initially by truck, rail carriers will be more inclined to establish “truck competitive” intermodal proportional rates which can be “bundled” by Third Parties in combination with ocean, barge or truck rates on a confidential contract basis because railroads won’t be as dependent on the ship lines exclusively for containers.

Dan Bucks added that with modern information systems farmers could register with a business or coop, include necessary data, and bundle together the appropriate mix from containers from different farms that would satisfy the buyer.

Both the Intermodal and Agriculture Working Groups will look at these options.

5.3 Agriculture (Carla Allen, Chair)

Carla Allen, Chair of the Agriculture Working Group, reported the Ag subcommittee conducted a survey within the subcommittee itself to identify problems and issues with rail within the ag arena. Once the problems have been identified, the subcommittee will rank the issues and begin crafting solutions.

5.4 Coal (Evan Barrett, Chair)

Evan Barrett referred everyone to a copy of the minutes from the Coal Working Group conference call held January 7th. The purpose of the call was to discuss how to move forward in determining the needs of the coal industry as they relate to rail service competition issues in Montana.

Evan shared with the RSCC discussion items not covered in the minutes:

- ❖ While the world is hearing about the need to de-emphasize the use of coal, the demand continues to increase especially in China and India.
- ❖ Moving coal is a challenge as there is little or no competition. Three challenging issues: rates, extra cost impact (accessorial) and service issues.
- ❖ The STB is not responsive when rate cases are brought to them. Mike Scanlan shared that PPL put \$5 million into a rate case and had it thrown out due to a technicality.
- ❖ If the STB remains unresponsive, legislation will have to be the solution.

Action items for the Coal Working Group include:

Confer with Scott Rickard and Terry Whiteside to determine the feasibility of:

- ☞ Comparing trends, freight rates and coal severance taxes in Montana, Wyoming and other relevant locations.
- ☞ Analyzing multiple components of cost of production and transportation to the delivery of coal to final destinations (hopefully over a five to ten year period)
- ☞ Evaluating the differentials in other costs related to coal production.

Discussion:

- ❖ Dust coming off rail cars is becoming an environmental issue. Rail cars may have to be sealed and covered with hoods. This could affect rates.
- ❖ One solution to growth in the coal industry is to not move the coal out of state but refine it and use it here.

6.0 Rail Updates

6.1 Union Pacific (Evan Barrett)

Evan Barrett reported Patriot Rail purchased Rarus which is now called Butte Anaconda and is headquartered in Anaconda in the old Rarus office. The new owners want to partner with UP and are having very productive meetings to bring warehouse activities to the area, working with Port of Montana, Butte. George Paul added that a replacement still has not been named for Charlie Clark who passed away several months ago.

6.2 Canadian Pacific (Larry Bonderud)

Larry Bonderud said Terry Whiteside's presentation contained a summary of updates regarding CP.

6.3 Montana Rail Link (Evan Barrett)

Mike McKay, representing Montana Rail Link, reported business has been steady with agriculture commodities although lumber and forest products have been down.

6.4 BNSF Railway (Barbara Ranf)

Barbara Ranf reported on a study recently completed for the Association of American Railroads titled "National Rail Freight Infrastructure Capacity and Investment Study." The U.S. DOT estimates that the demand for rail freight transportation—measured in tonnage—will increase 88 percent by 2035. This study estimates that an investment of \$148 billion (in 2007 dollars) for infrastructure expansion over the next 28 years is required to keep pace with and meet the U.S. DOT's forecast demand. Of this amount, the Class I freight railroads' share is projected to be \$135 billion and the short line and regional freight railroads' share is projected to be \$13 billion.

These investment projections assume that the market will support rail freight prices sufficient to sustain long-term capital investments. If regulatory changes or unfunded legislative mandates reduce railroad earnings and productivity, investment and capacity expansion will be slower and the freight railroads will be less able to meet the U.S. DOT's forecast demand.

6.5 Central Montana Railroad (Carla Allen)

Carla Allen reported ag commodities have kept the rail line busy. She also said December was busy with seven Polar runs with Santa Clause that hauled over 2,000 people in seven trains.

6.6 Watco, Yellowstone, Mission Valley, others

No report available.

7.0 Next Council Meeting**7.1 Meeting Date and Location**

April 2nd, once again in the Montana Department of Transportation Commission Room.

7.2 Agenda Items

Chairman Mike O'Hara commended the subcommittees for their work and encouraged everyone to be active between now and the meeting in April. Mike said that problems are coming into focus and the RSCC will next need to move on how to address the problems.

8.0 Comments or Issues from Council Members

Gloria O'Rourke offered assistance to any of the subcommittees needing to arrange calls, meetings, etc.

9.0 Formal Public Comment Period

No comments.

10.0 Adjournment

With no further business, Larry Bonderud motioned to adjourn the meeting; Russ Hobbs seconded the motion. All voted in favor to adjourn the meeting.

***RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
MINUTES***

**Wednesday
April 2, 2008
11:00am – 3:00pm**

**Transportation Commission Room
2701 Prospect Ave.
Helena, Montana**

COUNCIL MEMBERS PRESENT: Chairman Mike O’Hara, Mike Scanlan, Russ Hobbs, Larry Bonderud, Carla Allen, Doug Miller, Jim Lynch, Bill Fogarty, Evan Barrett and Dan Bucks

COUNCIL MEMBERS ABSENT: Rep. Mike Milburn, Sen. Ken Hansen, Ron de Yong

REPRESENTING COUNCIL MEMBERS: Cort Jensen for Ron de Yong

AGENCY REPRESENTATIVES AND GUESTS: Mike Opar, Will Roehm, Lola Raska, Zia Kazimi, Hal Fossum, Mary Ann Fiehrer, Larry Finch, Gary Schlaeger, Patty Schlaeger, Dick Turner, Barbara Ranf, Jim Curry, Chris Aageson, Spook Stang, Todd O’Hair and Tim Reardon.

RSCC ASSISTANCE: Terry Whiteside, Gloria O’Rourke

1.0 MEETING OPENING

Chairman Mike O’Hara called the meeting to order and requested roll call as well as introductions from the audience.

2.0 APPROVAL OF MINUTES

Chairman O’Hara requested approval of the January 9th, 2008 meeting minutes. Larry Bonderud motioned to approve; Russ Hobbs seconded the motion. All voted in favor of approval.

3.0 NEXT STEPS FOR THE RSCC

Jim Lynch, State Director, Montana Department of Transportation, reviewed the statutory requirements that describe what the RSCC is to accomplish. Requirements were discussed and action items set forth.

Statutory Requirement

RSCC Progress and Action Items

(a) promote rail service competition in the state that results in reliable and adequate service at reasonable rates;

This is the overall purpose of the RSCC and is ongoing.

(b) develop a comprehensive and coordinated plan to increase rail service competition in the state;

The four subcommittees (Ag, Coal/Mining, Forest/Paper and Intermodal) have been meeting to gather information and identify problem areas. To move to the next step of developing a comprehensive plan, each subcommittee will complete a report prior to the next RSCC meeting. The report will be a template provided by Montana Dept. of Transportation.

(c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates;

Montana's rail taxation practices were addressed in September 2006 by the RSCC Taxation Subcommittee. Minutes of the meeting are available on the RSCC website.

(d) develop various means to assist Montanans impacted by high rates and poor rail service;

This will be addressed within the RSCC comprehensive plan.

(e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;

This will be addressed within the RSCC comprehensive plan and through information provided by the Port/Intermodal Subcommittee.

(f) provide advice and recommendations to the department of transportation on the department's activities under 60-11-113 through 60-11-116;

Dick Turner, Montana Department of Transportation Chief, Multimodal Planning Bureau will provide updates to the RSCC on this item.

(g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition;

Dick Turner will provide this information to the RSCC at every meeting.

(h) act as the state's liaison in working with Class I railroads to promote rail service competition; and

Above previous items must be accomplished prior to acting on this item.

(i) promote the expansion of existing rail lines and the construction of new rail lines in the state.

Above previous items must be accomplished prior to acting on this item.

The Council shall report to the 2009 Legislature on its activities and its progress in performing the duties listed above.

Ongoing

The content of the form for the subcommittees to complete was reviewed:

- Title (of subcommittee)
- Brief Description: This space is for the subcommittee to describe the purpose of its committee and the problems and challenges that have been identified in its particular sector.
- Benefits to Increased Competition: What benefits does the subcommittee envision if competition is increased?
- Implementation Needs (analysis, legislation, etc): What would be needed to implement solutions to the problems, i.e., funding, coordination, legislation, etc.
- Estimated Cost: (if available)
- Additional Comments: Additional comments regarding the plan as the RSCC moves forward.
- Submitted by:
- Date:

Chairman O'Hara asked for each subcommittee to meet prior to the next RSCC meeting and fill out as much of this information as possible. Chairman O'Hara noted some solutions will be common to all four subcommittees and some will be unique to that particular area.

4.0 TECHNICAL ASSISTANCE UPDATE (Terry Whiteside)

Terry Whiteside provided an update to the RSCC on the following items. His report is available on the RSCC website.

- Monopoly Madness – In 1980 there were over 40 railroads. Today there are only four with each having its own regional monopoly.
- A study completed by Escalation Consultants revealing the average 2007 cost of captivity by commodity per ton. The captive shipper rate is much higher than the non-captive rate. Chemical, food and paper product shippers paid higher rates overall than farm and coal shippers.
- Updates on several fuel surcharge cases pending
- Successful Rail Shipper Day, March 12, 2008
- Rail captive shipper legislative support reaches record levels
- Talking points to refute the quote “Any change that helps shippers is bad for the railroads.”
- Summary of STB activities
- Rails storing cars all over Montana
- Churchill Project

5.0 INTERMODAL STUDY PRESENTATION (Libby Ogard)

This study has not yet been completed.

6.0 WORKING GROUP UPDATES

6.1 Forest/Paper (Russ Hobbs, Chair)

Russ Hobbs reported the Forest/Paper Subcommittee has held two calls and identified several issues of interest:

- Lumber producers are interested in obtaining access to UP.
- Consideration of forming a shipper's coop
- Mining/refining sector needs better service (not as concerned about rates.)
- Industrial shippers may have different issues – need more feedback.

Patty Schlaeger said she could provide international information from people who have been addressing similar needs in creative ways. This information would provide the subcommittee a broader base of information regarding minerals and other commodities as well.

6.2 Ports/Intermodal (Bill Fogarty, Chair)

Chair Bill Fogarty said his subcommittee is anxiously awaiting the results from the MDT study as it will no doubt contain information of value for the ports/intermodal sector. The study will be a key component when building the RSCC comprehensive plan.

6.2 Agriculture (Carla Allen, Chair)

Carla Allen reported the Ag Subcommittee has held two calls to identify problems and issues in the agriculture shipping arena. Terry Whiteside has agreed to write up potential solutions to address the problems. Carla expects to hold two or three conference calls prior to the next RSCC meeting.

6.3 Coal (Evan Barrett, Chair)

Evan Barrett provided a summary of the most recent Coal Subcommittee conference call. Evan explained that as Mike Scanlan is not a resident of Montana, he cannot officially serve on the RSCC; however Mike can serve as a member of the sub-committee. Evan said progress is being made in finding someone to represent coal shipping expertise on the RSCC.

Evan mentioned he had recently received a call from a company interested in mine expansion in Montana which would involve reaching markets in the Midwest. The company representative said the cost of utilizing BNSF for transportation was so high that Montana coal was not competitive. If coal cannot be transported competitively expansion cannot occur. Barbara Ranf, BNSF, contacted the appropriate person within BNSF and talks are in progress.

Evan Barrett reminded everyone the RSCC had contracted with Scott Rickard, Center for Applied Economic Research, MSU- Billings, to conduct research projects for the RSCC. The RSCC previously approved a study of the relationship of coal severance taxes on the delivered cost of Montana coal as compared to Wyoming. Rickard defined the study as follows:

An estimate of the percentage of total delivered cost of Montana and Wyoming coal that state coal severance taxes represent. This would involve quantifying total delivery costs, which includes both rail transport costs and severance taxes, for a set of comparable standardized size/distance hauls. Data would come primarily from MT DOR, the STB Weigh Bill sample, a sub-contract to develop some additional data and past research that has been conducted on comparing the tax impacts of locating a coal-fired power plant in either state. This study would clarify if coal severance rates make coal non competitive or if it is due to other costs.

The study will proceed immediately and be completed before the end of June. The cost for the study is estimated at \$27,475 which will leave a balance of about \$13,000 in the contract.

The \$13,000 is fiscal year 2007 money and has been obligated for studies through MSU-Billings, but needs to be expended. A motion was made by Larry Bonderud for the RSCC to delegate authority to a subcommittee to make the decision to select research that should be done with the remaining balance of funds. Carla Allen seconded the motion. All voted in favor. Subcommittee members are Larry Finch, Jim Lynch, Mike O'Hara, Evan Barrett and Russ Hobbs. A conference call will be set up for the discussion and decision.

7.0 RAIL UPDATES

7.1 Union Pacific (Evan Barrett)

Dan Harbeke, of Utah, will replace Charlie Clark.

7.2 Canadian Pacific (Larry Bonderud)

Larry Bonderud reported the acquisition of ME is continuing to progress. Larry suggested the RSCC meet with officials of the Canadian Pacific railroad in the future. Larry feels it is important for the Council to learn about various railroads and various issues each face.

7.3 Montana Rail Link (Evan Barrett)

Nothing to report at this time.

7.4 BNSF Railway (Barbara Ranf)

Barbara Ranf reported the idle rail cars in Montana are due from a national slow down in traffic. Barbara said BNSF does not make money when cars are parked and would prefer to have them in operation. Barbara also said BNSF still pays taxes on the cars, even though they are idle.

Barbara reported that in Montana during 2006/2007, BNSF had a 45% decline in accidents with 19 fewer derailments and collisions. BNSF is working with Montana Department of Transportation to update the state's rail plan. Barbara noted the most product shipped out of Montana is coal, while the largest incoming products are industrial.

7.5 Central Montana Railroad (Carla Allen)

Carla Allen said she had nothing to report on CMR other than "business as usual."

7.6 Watco, Yellowstone, Mission Valley, others

Evan Barrett said Patriot Rail, which recently purchased the Butte/Anaconda line announced a contract for using the roundhouse in Anaconda for rail car repair. The new Butte/Anaconda railroad is also planning to utilize the industrial yards near Mill Creek and may be considering a transloading facility. Plans are to aggressively market the Montana site for a business location for warehousing, distribution, etc.

8.0 NEXT COUNCIL MEETING

8.1 Meeting Date and Location

The next meeting date for the RSCC will be June 18th, 2008, in Helena, at the Montana Department of Transportation Commission Room. The meeting will begin at 10:00am instead of 11:00am.

8.2 Agenda

The following items are slated for the June 18th meeting agenda:

- Begin the Comprehensive Plan. As the main purpose of the meeting will to begin the comprehensive plan, a facilitator will be present to assist with the process.
- Dick Turner's report from MDT to inform the RSCC on various efforts and partnerships with other states and federal agencies to promote rail service competition.
- Update on studies either completed or near completion, i.e., Scott Rickard and Libby Ogard.

9.0 COMMENTS OR ISSUES FROM COUNCIL MEMBERS

Russ Hobbs attended Rail Shipper Day in Washington, DC, as a guest of Watco. Russ felt the experience was very educational and encouraged other members to attend in the future. Russ emphasized that while legislators were receptive to shippers, they were also aware of the railroad's concerns. Russ was told a compromise needs to be reached and solutions found as a result of the shippers and railroads coming together and resolving the issues themselves. Dan Bucks said the general public must be invited to the conversation so that they will not be bearing the cost burden.

10.0 FORMAL PUBLIC COMMENT PERIOD

Director Jim Lynch invited an attorney for Montana Department of Transportation, Tim Reardon to review the legal ramifications of public comment during a Council meeting.

Mr. Reardon explained that when the agenda is published, it needs to include clearly both items that the council will discuss but not act on and issues upon which the council could take action. Opportunities for public comment may be provided at any point during a meeting. It is however, important that public comments and those who make them be recorded. The agenda should reflect specific opportunities for public comment. RSCC members were encouraged to be more active in placing discussion and/or action items on the agenda.

Gloria will make the recommended adjustments to the agenda and Tim Reardon will review it prior to the next meeting.

11.0 ADJOURNMENT

With no further business, Chairman O'Hara requested a motion to adjourn. Evan Barrett moved to adjourn, Larry Bonderud seconded; all voted in favor to adjourn.

***RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
MINUTES***

**Wednesday
June 18, 2008
10:00am – 3:00pm**

**Transportation Commission Room
2701 Prospect Ave.
Helena, Montana**

COUNCIL MEMBERS PRESENT: Chairman Mike O’Hara, Mike Scanlan, Russ Hobbs, Larry Bonderud, Carla Allen, Doug Miller, Jim Lynch, Bill Fogarty, Evan Barrett, Rep. Mike Milburn and Sen. Ken Hansen.

COUNCIL MEMBERS ABSENT: Ron de Yong, John DeMichiei

REPRESENTING COUNCIL MEMBERS:
Larry Finch for Dan Bucks

AGENCY REPRESENTATIVES AND GUESTS: Jim Currie, Zia Kazimi, Hal Fossum, Barbara Ranf, Will Roehm, Mark Cole, Renee McDaniel.

RSCC ASSISTANCE: Gloria O’Rourke, Terry Whiteside

1.0 WELCOME AND INTRODUCTIONS

Chairman Mike O’Hara called the meeting of the RSCC to order and requested roll call; members of the audience were introduced.

2.0 APPROVAL OF MINUTES

Bill Fogarty moved to approve the minutes of the April 2 meeting; Carla Allen seconded the motion. All voted in favor of approval.

3.0 TECHNICAL ASSISTANCE UPDATE – TERRY WHITESIDE

Terry Whiteside provided a brief overview on the following; the full report is available at <http://www.mdt.mt.gov/business/rsc/>

- Congressional Update Regarding Rail and Shipping Issues
 - HR 2125 and S953: Rail Competition and Service Improvement Act – awaiting hearing. Note: these are not “reregulatory” bills.
 - HR 1650 and S772: Railroad AntiTrust and Enforcement Act – ready for floor action.
 - Seven amendments in Energy, Appropriations, Judiciary, Agriculture, etc., committees to study the lack of rail competition problems – most have moved on in Committee bills.
 - S. 772 RR and HR 1650 AntiTrust Bills are poised for full Senate & House debate and vote.
 - Farm Bill Passes and Rail Study makes it into final Override Bill. This is a study of RR impacts on U.S. Agriculture.

- Surface Transportation Board Update
 - Board Member Frank Mulvey (D) was reconfirmed by the Senate for the next 4 years.
 - STB conducting a study on rail competitiveness and consultant is taking input from shippers – Christensen Study, due Fall 2008.
 - Dairyland files fuel surcharge challenge – awaiting STB ruling on UP motion to dismiss.
 - ADM files fuel surcharge challenge in court.
 - STB expected to rule on first ‘small rate’ filings (DuPont) under new rules – on or about July 3rd.
 - Rail Shippers have filed appeal to Special Appellate on small rate case rules in DC.
 - President of STB Board pending: President Bush announced May 20 his intention to nominate Republican Husein A. Cumber, a former lobbyist for Florida East Coast Industries -- when it owned Florida East Coast Railway - and who currently is the U.S. Department of Transportation's Deputy Chief of Staff.
- CP/DM&E Merger
 - Classified as a ‘Significant’ merger – thus it is on an extended time table
 - CP wants to acquire DM&E in South Dakota and would provide capital for DM&E’s proposed extension (approved) into the Powder River Basin
- STB Holds Hearing on Common Carrier Obligations of RR
 - Shippers cited example after example of RR’s not living up to CC Obligation
- Examples of How RR’s Influence Congress
- This Year’s Harvest
 - UP has raised its rates on wheat to Gulf and PNW by an additional \$400/car to catch this year’s wheat harvest.
 - These rates are on top of precipitous UP rate increases in the last 15 months (up in some places by over 38%) not including fuel which is up over 30% in the last twelve months.
- Louisiana Moves RR Price Fixing Prohibition
 - Louisiana Chemical Association (LCA)-sponsored legislation, SB 628, by Sen. Nick Gautreaux, D-Abbeville. This legislation allows the State Attorney General to investigate price fixing by railroad companies in the state. And, the legislation says “prohibits a corporation owning or operating a railway in this state from fixing a price for moving goods within this state at a rate higher on a portion of a line than the price charged for a comparable distance on another part of a line.”

4.0 RAIL DEVELOPMENTS IN NEIGHBORING STATES – JIM LYNCH

Montana Department of Transportation Director Jim Lynch provided the following report on activity in neighboring states:

North Dakota:

- Due to a surplus of regional production over pipeline capacity in the Williston area, Burlington Northern Santa Fe Railway (BNSF) is considering tanker train service for crude oil transport.
- Producers of organic, specialty, and identity-preserved agricultural crops in the state believe they can support expansion of full intermodal rail services in Dilworth and Minot by initially "co-loading" container trains at these two locations. Discussions with BNSF are continuing.
- In order to supply energy to sugar beet producers, coal distribution facilities (rail-to-truck) have been developed in Ardoch. Currently, there are efforts to develop another such facility in the southeastern part of the state.

South Dakota and Wyoming:

- The Dakota Minnesota and Eastern Railroad (DM&E) has approval to expand its lines into the Powder River Basin in Wyoming. The DM&E is pursuing a 280 mile extension of its current line as well as reconstruction of 600 miles of existing track.
- A purchase offer of DM&E by Canadian Pacific is pending before the STB. The STB decision is expected in October 2008.

Idaho:

- Due to relatively close access to barge shipping in Lewiston and container ports in Salt Lake City and Seattle, container rail has been less prominent in this state.
- No significant growth or change in rail service was noted.

5.0 COMPREHENSIVE PLAN PROCESS

Facilitator Renee McDaniel, Montana Department of Transportation, reviewed ground rules and then assisted the RSCC in beginning a comprehensive plan. Each subcommittee reported their findings; results were charted and placed into the framework below. This information will be placed into a draft comprehensive plan format.

RSCC REPORT June 2008 Draft

PURPOSE: Based on the information below, a comprehensive and coordinated plan will be developed to increase rail competition in Montana.

Forest, Paper, and Industrial Products Shipping:

A. Title: Improving access for forest, paper and industrial products to Southern markets via UP, CP and/or other rail service access.

Description: Work to address issues and obstacles to expanded rail access to Southern markets for Montana's forest, paper, and industrial products particularly in the Intermountain West making these products more competitive.

Barriers: Identified barriers: "paper barriers" including contractual and regulatory issues and the problems being created by changing Federal regulation.

- **"Paper Barriers":** While physical linkages between lines to provide for improved market access already largely exist contractual and regulatory issues between carriers and between carriers and industrial consumers continues to create major obstacles to expanding market access.
- **Federal Regulation Changes:** The possibility of major changes in Federal regulation presently under consideration may significantly alter the nature of this problem.

Benefits of increased competition:

- **Improved Competitiveness:** Overcoming these barriers and creating improved rail access for Montana's forest, paper, and industrial products will make those products more competitive and foster improved growth in these industries.
- **Reduced reliance on truck carriers:** Creating expanded rail access to southern markets will reduce truck traffic on Montana's highways and possibly reduce product costs related to rising fuel costs for the trucking industry.

Implementation Needs: Improved understanding of the "paper barriers", acquiring expertise to address these issues, and improving communication between the state, industrial consumers and the rail service providers are seen as key needs.

- **Understanding "paper barriers":** Understanding the nature of contractual agreements between rail service providers and industrial consumers needs to happen. Issues to be considered should address what role, if any, the state can play in negotiating contracts, creating incentives and addressing regulatory issues to overcome these "paper barriers".

- **Acquiring expertise:** The commission needs to access expertise from successful models from surrounding states facing similar concerns. Particularly North and South Dakota and Wisconsin have addressed similar obstacles successfully.
- **Improving communication:** The commission needs to determine what role, if any, state government can play in expediting communication between rail service providers and industrial consumers beginning with improved communication with the UPRR.

Estimated Costs: Unknown at this time.

Ports/Intermodal Shipping:

B. Title: Enhance access to intermodal rail service available to Montana consumers.

Description: Work to address issues and obstacles to expand intermodal rail service in Montana. Intermodal refers to the transportation of freight in the same container between modes (ship-rail-road) reloading freight at each juncture.

Barriers: Identified barriers include the limited amount of current intermodal volume, the access of Montana industries to sufficient containers, and the limited incentives in place encouraging rail providers to extend intermodal services to the state.

- **Limited volumes:** BNSF prefers a minimum of 220 containers or 110 railcars per week and also prefers that all containers go to the same port or destination. So far in-state shippers have not been able to create the volume necessary to meet this level of demand.
- **Access to containers:** Containers for intermodal transport are not readily available in the state in sufficient numbers to attract industries and businesses.
- **Limited incentives:** There are few if any incentives for rail providers to consider expanding intermodal access to the state's shippers.

Benefits: Renewing and expanding intermodal service for Montana businesses and industry would provide access to new markets and increase the volume of both inbound and outbound commodities.

Implementation Needs:

- **Identify market thresholds:** The commission needs to identify the market thresholds necessary to renew and expand intermodal services from both the rail service providers and the container providers.
- **Seek creative solutions to the container shortage:** Investigate the possibility of using salvaged containers, trailer-on-flatcar configurations, encouraging short line carriers to create intermodal loading centers, and/or acquiring a state fleet of containers.
- **Create incentives:** Encourage entities involved such as carriers, container providers, and/or the Montana Board of Investments to invest in solutions.

Estimated Costs: Unknown at this time.

Agricultural Products Shipping:

C. Title: Enhance access for agriculture commodities shippers to rail service.

Description: Montana's agricultural producers need enhanced access to continental rail service providers for their commodity crops. In addition producers of specialized and identity-preserved crops need enhanced access to intermodal shipping for their products.

Barriers:

- **Limited access to shipping for agricultural commodity crops:** Class one railroads want a minimum of 110 cars per run. Limited and now almost non-existent loading facilities make it hard for producers to get crops to loading facilities without using long-haul trucking.
- **Limited access to intermodal shipping options:** Railroads need sufficient loads to justify intermodal service while growers need rail transportation options

Benefits:

- **Improved market access:** Improving access to rail service for Montana's agriculture producers will in turn improve the market access for these products both nationally and internationally.
- **Reduced truck traffic:** Improving access to rail service will also reduce truck traffic on Montana's highways which are presently being negatively impacted by high fuel costs.
- **Improved competitiveness:** Improving access to rail service for Montana's agriculture producers will help to make the state's products more competitive.

Implementation Needs:

- **Enhancing rail access to UP and CP:** Study ways to build and/or gain access to UP and CP loading facilities via alternative rail connections.
- **Motivate Class 1 Carriers to improve intermodal access:** Find incentives to influence Class 1 carriers to improve intermodal access for specialized agriculture products.
- **Explore successful models:** Explore successful models for expanding intermodal rail service in Canada and North Dakota.
- **Haulage rights:** Study successful models from other states in addressing haulage rights for Montana producers.
- **State Rail Authority:** Consider establishing a state rail authority to deal with rail service providers and producers.
- **Revisit "Common Carrier Obligations":** Congress is presently revisiting the definition of what constitutes a "reasonable" request for services which the RSCC should monitor closely.

Estimated Costs: Unknown at this time.

Coal Shipping:

D. Title: Keeping Montana's Coal competitive in the U.S. and Around the World.

Description: Montana's Coal producers, both existing and new, will need ready access to both local, short line rail service, and national rail service in order to remain competitive in booming national and international markets.

Barriers: Emerging coal producers including those in the Roundup area will need newly constructed rail links to get their coal to market while existing and re-opening mines will need more readily available and less costly rail service to keep their coal competitive.

- **New construction:** The present need for new rail services and the impending need for BNSF to address growing capacity demands for coal shipping are creating a prohibitive barrier to the expansion of Montana's growing coal industry.
- **The Surface Transportation Board:** So far the STB has apparently been unwilling to move toward addressing issues directly and indirectly affecting the cost of Montana's coal causing it to remain less competitive in global markets.
- **Challenges of growing markets on both coasts:** The rising national and international demand for coal makes it essential for Montana's coal producers to be able to meet market demand on both coasts. At the present time BNSF is the sole carrier for Montana's coal and nearly all of its coal shipments are eastbound.
- **Other factors:** Does the combination of coal production costs, fees and taxes, and the high cost of shipping coal via BNSF making Montana's coal non-competitive in current markets?

Benefits of increased competition:

- **Opportunities for expansion:** The present demand makes Montana's coal a premium resource for the state if ways can be created with both existing and new mines and rail service providers to control costs and to move the state's coal to markets on both coasts and abroad.
- **Opportunities to market high quality coal:** Coal production in the Roundup area can bring much needed and much sought-after high-quality coal to both national and international markets.

Implementation Needs: Addressing the need for expanding the present rail capacities and building new rail capacities to bring Montana's coal to markets as competitively as possible is essential.

- **Study needs and capacities:** Studies are indicating the capacity for coal shipments provided via BNSF will need considerable expansion in the next ten to fifteen years. The need for new spur construction connecting new mining operations to rail service is also a growing concern.
- **Addressing the apparent inaction of the STB:** It may become necessary for the RSCC to bring federal legislative pressure on the STB in order to begin addressing concerns about shipping rates, etc.
- **Accessing growing markets on both coasts:** Improved rail service will be essential in developing markets for Montana's coal in the east and through west coast ports to markets in China and India.
- **Identify the impact of Montana's Coal Severance Tax on the competitiveness of Montana's coal:** It will be essential to create quantifiable data on the total delivered cost of Montana's coal as compared with other states like Wyoming.

Estimated Costs:

- Legislation would probably cost over a million dollars.
- Analyzing multiple components of cost of production and transportation to the delivery of coal to final destination of coal: \$27,500
- Analyzing differentials in other costs related to coal production: \$13,000

6.0 FORMAL PUBLIC COMMENT PERIOD ON THE RSCC REPORT

The following comments were made from the public regarding the above information:

Mark Cole, Dick Irvin, Inc., Shelby:

- It would be expensive and a logistical nightmare to try to utilize nontraditional container shipments.
- Intermodal transport success is not evident in Canada.
- There is a difference between contract carriers and common carriers.
- Capacity issues exist from Seattle to Tacoma and other areas.

Barbara Ranf, BNSF:

- BNSF would be very interested in the capacity study from MDT and would be willing to work on capacity issues. The Billings to Glendive line is near capacity due to coal movement. Barbara looks forward to working with the follow-up of this report.

Will Rowe, MGGA:

- Sometimes the issue is not availability, but rate. There is a need to separate: is the service not available or is it cost prohibitive? Are we discussing rate or availability, i.e., with wheat – it is a rate issue.
- Regarding intermodal needs, it is more of a service issue for wheat. For lumber, coal and ag it is more of a rate issue. They are correlated but have a different priority for different industries.

7.0 NEXT STEPS

It will be important for the RSCC to demonstrate to legislators costs incurred due to the lack of competition as well as business that is not taking place due to non-competition and high cost.

Rep. Milburn said it will be important to provide legislators with data identifying the barriers to competition. He also said that compelling evidence would be needed to obtain support from legislators for creating a rail authority.

Evan Barrett moved for the facilitator and staff to compile a draft report integrating the subcommittee reports and comments brought forward in today's meeting and submit the document to the RSCC for review. Once comment has been received from RSCC members, a second draft will be posted on the RSCC website and made available for public comment prior to the next RSCC meeting. Carla Allen seconded the motion. All voted in favor to approve the motion.

Conclusions:

- The RSCC will need technical assistance to accomplish the work that needs to be done.
- Funding is required to conduct needed studies.
- The information compiled today is a report. From this report, a comprehensive plan will be developed.

8.0 SUBCOMMITTEE UPDATES

8.1 Forest/Paper (Russ Hobbs, Chair), Ports/Intermodal (Bill Fogarty, Chair), Agriculture (Carla Allen, Chair) Subcommittees had no additional information to share.

8.2 Evan Barrett, Chair of the Coal Subcommittee, said an appraisal of the coal in the Otter Creek Tracks is under way. Upon completion of appraisal, the land board will look into a lease offering subject to a co-development partner. On the Bull Mountain properties, a significant investor has put down earnest money; the transaction should close in mid July. In addition, the Carpenter Creek Project, adjacent to Bull Mountain, may come in for a permit by fall.

9.0 Rail Updates

There were no rail updates at this time from the UP, CP, MRL, BNSF, CMR or Watco.

10.0 Next Council Meeting Location, Date and Agenda

10.1 The next RSCC meeting will be held September 17th at 10:00am. Location: Montana Department of Transportation Commission Room.

10.2 Agenda items will include

Review of the RSCC Report

Paper barriers and their effect on competition

Comparison of what other states have done regarding paper barriers (ND, SD, Wisconsin)

Clarification of what MDT can do as far as filling information needs in the RSCC report.

MDT research report on state and county (SEDA-COG) rail authorities: who has them, what is working, what is not working.

11.0 Comments or Issues from Council Members

Renee McDaniel was thanked by the RSCC for her assistance in facilitating the RSCC report discussion.

12.0 Formal Public Comment Period – No comments.

13.0 Adjournment

Russ Hobbs moved to adjourn; Bill Fogarty seconded the motion. All voted in favor

**RAIL SERVICE COMPETITION COUNCIL
MINUTES OF THE MEETING**

Wednesday
September 17, 2008
10:00am – 3:00pm

Transportation Commission Room
2701 Prospect Ave.
Helena, Montana

COUNCIL MEMBERS PRESENT: Vice Chair Carla Allen, John DeMichie, Bill Fogarty, Doug Miller, Russ Hobbs, Larry Bonderud, Jim Lynch and Ron de Yong

COUNCIL MEMBERS ABSENT:
Sen. Ken Hansen, Rep. Mike Milburn, Evan Barrett, Dan Bucks and Chair Mike O’Hara

REPRESENTING COUNCIL MEMBERS:
Larry Finch for Dan Bucks; Chris Ageson for Evan Barrett

AGENCY REPRESENTATIVES AND GUESTS:
Zia Kazimi, Hal Fossum, Mike Opar, Barbara Ranf, George Paul, MaryAnn Fiehrer, Tom Coston, Mark Blazer, Gary and Patty Schlaeger, Sen. Jerry Black, Joel Clairmont and Court Jensen

RSCC ADMINISTRATIVE ASSISTANCE: Gloria O’Rourke

1.0 Approval of Minutes

Following roll call and introductions, Acting Chair Carla Allen requested a motion to approve the Minutes from the June 18th meeting. Larry Bonderud moved to approve the Minutes, Russ Hobbs seconded the motion. All voted in favor.

2.0 Review and Refine RSCC Strategic Plan

2.1 Review Information provided by the Subcommittees – includes Public Comment

The strategic plan draft was compiled from information gathered and discussed at the June 18th meeting. The RSCC members present reviewed the document and made changes as below. Each subcommittee will meet to fill information gaps and report at the next RSCC meeting. Montana Department of Transportation representatives will also review the document and fill in areas of work that pertain to them.

**Rail Service Competition Council Strategic Plan
As of September 17, 2008**

Forest, Paper, and Industrial Products Shipping

Goal 1: Improve access for forest, paper and industrial products to southern markets in U.S. via Union Pacific, Canadian Pacific, and/or other rail service providers.

Objectives:	Action Items:	Responsible Parties:	Estimated Costs:	Projected Deadlines:
1.1 Improve understanding of the "paper barriers" created by contractual and regulatory issues between carriers and between carriers and consumers.	1.1.1 Research and report to RSCC on the nature of "paper barriers" created by contractual and regulatory issues presently affecting rail service access for forest, paper, and industrial products shipping especially focusing successful models presently being used in other states.	Russ Hobbs, MDT, Terry Whiteside, Railroads, including shortlines		
1.2 Investigate possible roles for state government in negotiating contracts, in creating incentives and in addressing regulatory	1.2.1 Research on possible roles for state government in negotiating contracts, in creating incentives and in addressing regulatory issues to overcome these			

issues to overcome these "paper barriers".	"paper barriers" especially focusing on successful models presently being used in other states.			
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Ports/Intermodal Shipping

Goal 2: Enhance access to intermodal rail service available to Montana consumers.

Objectives:	Action Items:	Responsible Parties:	Estimated Costs:	Projected Deadlines:
2.1. Identify market thresholds necessary to renew and/or expand intermodal services from both rail service and/or container providers.	2.1.1 Work with rail service providers and container providers serving Montana to clarify market thresholds necessary to renew and/or initiate intermodal service for consumers within the state. 2.1.2 Work with container providers to clarify market thresholds for expanding intermodal container access to the more consumers with the state.	Bill Fogarty		
2.2 Investigate creative ways to the increase ready access to greater numbers of intermodal containers than is presently experienced by Montana's perspective consumers	2.2.1 Investigate the possibility of using salvaged intermodal containers to increase container access for Montana's consumers. 2.2.2 Investigate the possibility of creating a state-owned fleet of intermodal containers for use by Montana's consumers. 2.2.3 Investigate the development of intermodal loading centers in cooperation with the state's short line carriers.	2.2.2 – GOED and MDT		
2.3 Create a possible incentive program to encourage carriers, container providers, and/or the Montana Board of Investments to partner in funding various solutions.	2.3.1 Identify best practices solutions by researching and reporting on the successful efforts of other states in addressing similar issues. 2.3.2 Identify interested partners among short line carriers, container providers, and investors to begin development of one or more best-practices solutions identified.			

Agricultural Products Shipping

Goal 3: Enhance access for agricultural commodities shippers to rail service Montana's agricultural products competitive both nationally and internationally.

Objectives:	Action Items:	Responsible Parties:	Estimated Costs:	Projected Deadlines:
3.1 Improve access to affordable rail service for Montana's agriculture producers in turn improving market access for agricultural products both nationally and internationally.	3.1.1 Investigate new partnerships and ways to increase and improve access to UP and CP loading facilities through the use of alternative rail service providers. 3.1.2 Investigate ways to develop and/or redevelop loading facilities for agriculture products across Montana. 3.1.3 Investigate ways to develop	Will need to involve grain companies and railroads and MGGA.		

	new partnerships to bring together the necessary number of carloads to meet Class 1 Railroad requirements.			
3.2 Improve access to intermodal rail service for Montana's specialized agriculture producers in turn making agriculture products more competitive nationwide.	3.2.1 Develop incentives to influence Class 1 carriers to improve and expand intermodal access. 3.2.2 Explore successful models for expanding intermodal access in other states. 3.2.3 Explore the issue of haulage rights as it has been successful addressed in other state models. 3.2.4 Consider establishing a state rail authority to work with both rail service providers and consumers. 3.2.5 Revisit the issue of "Common Carrier Obligations" presently being reviewed by Congress.	3.2.2 – MDT 3.2.3 – MDT 3.2.4 – MDT 3.2.4 – Carla, Evan, Larry, Russ and Jim Lynch (MDT) 3.2.5 Terry Whiteside		

Coal Shipping

Goal 4: Enhance access to both local, short line rail service, and national rail service for Montana's coal keeping it competitive in both the booming national and international marketplace.

Objectives:	Action Items:	Responsible Parties:	Estimated Costs:	Projected Deadlines:
4.1 Explore ways to increase existing rail service capacities and to develop new rail service capacities for coal shipments to both growing national and international markets.	4.1.1 Develop an effective partnership with BNSF to address the need for expanding rail service capacities for Montana's growing coal industry. 4.1.2 Develop new partnerships to address the growing need for spur development from new and/or expanding mining sites to national rail service providers. 4.1.3 Provide information to the Governor's Office of Economic Development to bring pressure on the inactive STB to address issues concerning shipping rates, etc. 4.1.4 Provide information to the Governor's Office of Economic Development office to bring information to the legislature to quantify the impact of Montana's Coal Severance Tax on the competitiveness of the state's coal.			

Action Items:

- A subcommittee was formed to provide information and examples on item 3.2.4 "Consider establishing a state rail authority to work with both rail service providers and consumers" for the next RSCC meeting. Subcommittee members include Carla Allen, Evan Barrett, Larry Bonderud, Russ Hobbs and Jim Lynch.
- When subcommittees meet to address the four areas of the Strategic Plan they are to fill in as much information as possible, prioritize items and consider items that will be addressed across all four areas.

2.2 Public Comments Received

The only public comment received from the RSCC Draft Report was from BNSF. The information addressed issues in each of the four areas outlined in the Draft Strategic Plan. Copies of the BNSF response were provided to RSCC members for review.

3.0 Review of Montana Legislature Report

Several people associated with the RSCC received an email from Pat Murdo, Legislative Services, that a report was due on September 12th to the Interim Economic Affairs Committee (IEAC). Montana Department of Transportation compiled an abstract for the pending report and Sen. Ken Hansen distributed the four page RSCC Draft Report to the Committee. In addition, Gloria O'Rourke compiled a draft legislative report for the RSCC to review. The RSCC members will review the draft and make recommended changes or additions at the next RSCC meeting. Director Jim Lynch will find out when the final report is due.

4.0 Technical Assistance Update

As Terry Whiteside was unable to attend this meeting in person, the RSCC will review Terry's response to BNSF's public comments at the next RSCC meeting.

5.0 MDT Reports/Update

5.1 Paper Barriers and their Effect on Competition

Hal Fossum, MDT, presented the following information on Interchange Commitments also known as "Paper Barriers".

Interchange Commitments:

- Are "contractual provisions included with a sale or lease of a rail line that limit the incentive or the ability of the purchaser or tenant carrier to interchange traffic with rail carriers other than the seller or lessor railroad." (Ex Parte No. 575, STB)
- No single model. Such agreements appear to be diverse in form, duration, restriction, and procedures for waiver.

In defense of paper barriers:

- Growth and proliferation of short line railroads since Staggers is integral to the Act's success in fostering a healthier, more stable rail industry.
- Interchange commitments provide valuable consideration to smaller carriers, helping short lines acquire or lease rail facilities and so permit their entry.
- Preserve rail transportation to communities where it might otherwise deteriorate or be lost altogether.
- AAR: "... core requirements without which [spin-off] transactions would not and could not take place."

Arguments for reform:

- Interchange commitments tend to freeze in place the competitive status quo rather than allowing development of new competitive options not available before the transaction.
- Restrain trade by limiting market access of shippers and restricting rail-to-rail competition.
- Heightened railroad competition is needed to encourage competitive response by regional industries. Delivered prices are sensitive to transportation costs. If railroads can capture the value of competitive gains by major production industries, it discourages local investments in productivity, product, and market development.

Railroad Industry Agreement (1998):

- Established general principles regarding enforceability of paper barriers with respect to new traffic.
- Provides for arbitration. Large majority of cases are resolved.
- Implemented by the Rail Industry Working Group.
- Class I, II, III railroads work cooperatively to increase rail freight business vs. other transportation options.

STB Ex Parte No. 575 (amended May 2008)

- No general rule: case-by-case consideration of lawfulness of interchange commitments.
- Establishes procedures for disclosure of interchange commitments for future proposed sale or lease arrangements.
- Better equips shippers to challenge an agreement before it takes effect.
- Procedure for an affected party to obtain a copy of an existing agreement in connection with a challenge to it.
- Must show need for the information; standing.
- Must be preceded by a complaint or petition to STB

5.2 Comparison of What Other States Have Done Regarding Paper Barriers (ND, SD, WI)

Hal Fossum, MDT, provided the following information:

South Dakota

- o SD acquired the Milwaukee Road at the time of its closure, and had leased the core line to BN.
- o "Bridge" service negotiated prior to Nov. 2005 sale of the core line to BNSF.
- o Applies to shipments originating or terminating in the state.
- o Specific industries and branch lines are identified.

North Dakota

- o Issue of paper barriers has not been raised.
- o Public Service Commission has authority over regulatory issues.
- o Cases go to federal STB.
- o State is prohibited from owning or operating rail lines. Rail authorities allowed, but none have been established.

Wisconsin

- o State is not involved in contesting or resolving paper barriers.
- o A private attorney has actively represented grain shippers in this.

5.3 Clarification of MDT's role with the RSCC Logistics

Zia Kazimi, MDT, reviewed a list of support items that MDT provides to the RSCC including administrative contract oversight, budget items and reimbursements, meeting facilities and equipment, technical data support, ensuring reports comply with statutory requirements, website maintenance, and editing/review of RSCC publications.

5.3 MDT Research Report on State and County Rail Authorities: Who has them, What is Working, What is Not Working.

Hal Fossum, MDT, provided the following information:

Railroad Authorities in Montana Statute (MCA 7-14-16 et seq.)

- ❖ To preserve and improve abandoned rail service, or for preservation of abandoned railroad right of way for future transportation uses.
- ❖ Counties or groups of counties may establish Authorities. None established since the 1993 legislation.
- ❖ Fiscal sources: federal, state, or private ... local mill levy enabled, subject to public ballot.
- ❖ May bond or borrow against any revenue sources.
- ❖ Enabled to operate or use; lease as common carrier; grant privileges to supply goods along the railroad or other property; fix terms and charges; etc.

State of Washington

- ❖ Railroad Authorities enabled by statute, but none created.
 - ❖ In 2007, state bought Palouse River & Coulee City Railroad, 300 miles, \$19 mm.
 - ❖ Three lessees. Paper barriers handled through AAR "Rule 11," entailing split rates by ownership segments (i.e., short line charges separately from trunk carrier). Minimal state role in negotiation with major carriers.
- Successes: Too early to say.
Challenges:
- ❖ Paper barriers: State sunshine laws inhibited public offices from negotiating interchange commitments, due to private concerns about the confidentiality of contract negotiations.
 - ❖ Profit squeeze: Small operators; significant deferred maintenance; low density line.

State of Oregon

- ❖ Oregon has one authority, the Wallowa Union Railroad Authority, in NE Oregon, 63 miles, purchased for \$6.5 million in 2002.
 - ❖ Funds of \$2m state appropriation, \$4.5m state economic development loan. Federal support enabled payback of \$4m of the state loan funds and minimized debt.
 - ❖ Eagle Cap Excursion tourism train is now the major rail activity. Wood products shippers have since closed, and fuel imports are now the main commercial traffic. Average freight traffic is less than one freight car-mile per year.
- Successes:
- ❖ Line is active & operational. Debt is less than salvage value. Corridor is preserved. Tourism activity benefits local economic development. Wood products shippers could rebound.

Challenges:

- ❖ Maintenance and operating costs; sparse commercial activity.

State of Oklahoma

- ❖ Oklahoma's Legislature created the "Railroad Revitalization Act" in 1978. The act empowered the DOT to act like a Rail Authority in its ability to acquire, construct, operate and maintain railroad right-of-way and trackage projects. The state enters into agreements with owner/operators and carriers for use of rail right-of-way.
- ❖ State owns and leases 900 miles of track, a \$35 million investment. Seven Lessees, nine separate operations.
- ❖ Funds are generated from leases and the Oklahoma Freight Car Tax (4% of gross earnings).
- ❖ Paper barriers have not been an issue. State does not involve itself in negotiations between carriers.

Successes:

- ❖ State-owned rail infrastructure constitutes 24% of routes in service.
- ❖ Act prevented significant abandonment and downsizing of rail infrastructure.
- ❖ Economic growth for areas served.

Challenges: inflationary cost of rail materials reducing buying power.

State of Colorado

- ❖ State of Colorado legislated that a Railroad Authority be created to specifically conduct a feasibility study of high-speed passenger rail in the I-25 and I-70 corridors of Colorado and to connect with other states.
- ❖ CDOT Commission approved \$1,246,000 grant for study. Required 20% match from local communities.
- ❖ Rocky Mountain Rail Authority was formed through inter-governmental agreements with 46 local governments to work with CDOT on feasibility study and high-speed rail issues.
- ❖ \$1.5 million dedicated to the feasibility study which is expected to be completed Spring 2009.
- ❖ No paper barriers - only contractual agreements are intergovernmental and with consultants for study.

Successes:

- ❖ Early in process. Outcome of report will help determine if Colorado will apply for federal designation as a "high-speed rail corridor".
- ❖ Eligible for federal funds with designation.

Challenges:

- ❖ Relocating freight traffic from Front Range to eastern plains to make room for high-speed passenger trains, if feasible.

Specific Information on State Rail Authorities

Larry Bonderud provided handouts regarding research conducted by State Senator Jerry Black on other state's statute language for establishing statewide rail authorities. Larry feels that a state rail authority would be the best vehicle for addressing the needs the RSCC has uncovered and explored. Larry said that in looking back and observing the evolution of the competition issues in Montana, a state rail authority would have been ideal to avoid and or divert current problems. Larry feels a state rail authority would be the logical progression from the RSCC, an authority that would act on, initiate and facilitate rail transportation in the State.

Action Item:

- A State Rail Authority Working Group was formed to present a specific concept of a Montana State Rail Authority for review by the RSCC at the next meeting. This group will study state rail authorities and make recommendations to the RSCC with possible recommendations to the 2009 Legislature. Working Group members include Chairs and/or representation from each of the Subcommittees: Larry Bonderud, Carla Allen, Evan Barrett, Russ Hobbs and Jim Lynch. It was agreed by the RSCC members present that the statewide rail authority issue would affect all four subcommittees and may need to be a fifth segment of the Strategic Plan.

6.0 Rail Updates

6.1 Canadian Pacific (Larry Bonderud)

Larry Bonderud shared a fact sheet surrounding the proposed merger of the DM& E and IC & E. Larry said the merger is pending because of the role that state government played in past rail issues on behalf of the State of South Dakota.

Larry also reported cooperation between BNSF and CP will result in increased traffic largely due to the booming Alberta economy. There is currently \$9 billion dollars of commerce in this corridor.

6.2 Montana Rail Link

Tom Coston spoke on behalf of Montana Rail Link. Tom said the RSCC is going through an educational process and needs to involve the railroads to get the rail perspective. Tom said MRL is always available and would welcome the opportunity to provide input.

Russ Hobbs asked Tom his opinion on paper barriers. Tom said in his 18 years with MRL there has usually been an opportunity to discuss rates with BNSF, even with interchange agreements in place.

Russ said that his subcommittee concluded it will be through recognizing contractual agreements and finding incentives to re-work them to make progress on competitive freight options for Montana. Russ said there were opportunities to reach into Salt Lake City and Boise but paper barriers were prohibitive. Russ also said the RSCC needs to understand and evaluate paper barriers from not only the railroad's point of view but also the shipper's point of view to determine if they are a blockage to business and a blockage to improving competition in transportation.

6.3 BNSF Railway (Barbara Ranf)

Barbara Ranf reported that BNSF appreciates the ability to provide comment on RSCC activities and looks forward to an ongoing productive relationship. Barbara was pleased to acknowledge the new private shortline, First Energy. BNSF is providing the rail cars; First Energy will provide maintenance on the line.

6.4 Central Montana Railroad (Carla Allen)

Carla Allen had no news to report. The CMR is busy hauling grain.

6.5 Watco, Yellowstone, Mission Valley, others

Mark Blazer presented a slideshow on Watco Companies to the RSCC which included historical data as well as an update on current activities. Watco Companies is celebrating its 25th Anniversary and is the third largest shortline railroad in the United States. Mark concluded his presentation with the following summary:

- By creating shortlines in the State of Montana we have been able make marginal branchlines into a viable part of the rail network
- By working in conjunction with the BNSF we continue to provide competitive shipping alternatives to our Montana customers
- In conjunction with the BNSF we see the potential to develop our Montana Shortlines into strategically located industrial parks. This will increase BNSF's velocity by limiting the amount of train starts and stops on their mainline. It also creates opportunities for the smaller shippers whose volume would not justify the expense to locate on the BNSF mainline.

7.0 Next Council Meeting

7.1 Meeting Date and Location

The next meeting of the RSCC will be November 18th, 10:00am, in the MDT Commission Room.

7.2 Agenda

The agenda will contain the following items:

- Subcommittee reports regarding strategic plan: fill in costs, timelines, etc., and possibly prioritize items.
- RSCC will address combining issues on strategic plan and overall prioritization of issues
- Terry Whiteside: Report on paper barriers and update on competitive legislation (Rail Competition Act in committee for eight years)
- Review draft of 2009 Legislative Report
- State Rail Authority Working Group will provide fact finding report and make recommendations
- MDT: List items MDT can address in the Strategic Plan also investigate the Commerce Clause (see Public Comment below).

8.0 Misc. Comments or Issues from Council Members

- ☞ Carla Allen was thanked for chairing the meeting in Mike's absence.
- ☞ John DeMichiei said that a shortcut to understanding intermodal trade is to put the shipping community into the same room with the railroad representatives and ask shippers to demonstrate the business opportunity. John said if the business opportunity is present, the action will be taken. John said the intermodal business has been the real growth of railroads in the last two years and the RSCC has an opportunity to drill down to the facts that are impacting intermodal traffic in Montana.

9.0 Formal Public Comment Period

- ☞ Patty Schlaeger commended Larry Bonderud for investigating the State Rail Authority option. Gary Schlaeger commented that many of the Port Authorities have their own railroads and operate them successfully.
- ☞ Gary Schlaeger said it is a little known fact that when the Staggers Act first passed the Constitutional Commerce Clause was not changed to include commerce *within* the states.

10.0 Adjournment

With no further business, Jim Lynch moved to adjourn the meeting. Larry Bonderud seconded the motion. All voted in favor.

RSCC Minutes Sept 17 2008.doc

ATTACHMENT G
RAIL SERVICE
COMPETITION COUNCIL
SUBCOMMITTEE MEETING MINUTES
AND
PLANNING REPORT INFORMATION

TAXATION SUBCOMMITTEE

Taxation Subcommittee Minutes

**RSCC TAXATION SUBCOMMITTEE
MINUTES OF THE MEETING
SEPTEMBER 27, 2006
BUTTE, MT
10:00am – 11:00am**

SUBCOMMITTEE MEMBERS PRESENT: Rep. Tom McGillvray, Larry Bonderud, Carla Allen, Bill Fogarty and Dan Bucks

COUNCIL MEMBERS PRESENT: Dick Turner for Jim Lynch, Mike O’Hara, Doug Miller and Carla Allen

CONTRACT STAFF: Terry Whiteside, Gloria O’Rourke

GUESTS: Barbara Ranf, Spook Stang, Joel Clairmont (for Nancy K. Peterson), Charlie Clark, Mike Opar, Larry Finch and Sheryl Ralph

1.0 Roll Call and Minutes

Chairman Tom McGillvray requested roll call and the approval of the September 20th RSCC Taxation Subcommittee meeting minutes.

2.0 Incentives Discussion

Chairman McGillvray asked BNSF representative Barbara Ranf to comment on possible incentives that would motivate BNSF to improve freight competition in Montana. Barbara spoke of the Senate Bill 3742 Freight Rail Infrastructure Expansion Act as a good example.

Larry Finch provided handouts from a powerpoint addressing the 4R Act of 1976.

Dan Bucks shared his thoughts regarding options and alternatives for taxation polices that would mitigate or bring into alignment the lack of competition in Montana. Dan emphasized that these are his thoughts as a public administrator and not as a lawyer.

Dan said that due to language in the 4R Act, tax incentives to preserve branch lines and/or to encourage new development in active areas would be viewed as discriminatory and not survive legal argument.

However, the state could possibly make a case for rate discrimination based on the assumption it is cheaper for grain to be shipped from the Midwest to the west coast than from Montana to the west coast. This situation involves interstate commerce and could be defensible under the 4R Act.

There must be an official finding that rate discrimination is indeed occurring in Montana. Once such a finding was established, a means to address the issue via tax resolve, either incentives or disincentives would be proposed. A second finding would need to establish that the federal government has failed to regulate interstate commerce to not discriminate against Montana’s citizens and businesses.

The Interstate Commerce Commission did find excessive rates in Montana in the 1980’s. This information would need to be brought current through a state body.

3.0 Next steps:

1. The RSCC could recommend the state validate excessive rates in Montana.
2. Validate the federal government has not acted to address the rate discrimination in Montana.

Bill Fogarty motioned to conclude the meeting. All voted in favor of dismissal.

RSCC Taxation Subcommittee 09 27 06.doc

TRANSPORTATION SUBCOMMITTEE

Transportation Subcommittee Minutes

**RSCC Transportation Subcommittee
Minutes of the Conference Call
September 19, 2006
2:00pm**

Council Members on the Call: Mike O'Hara, Sen. Ken Hansen, Russ Hobbs
Absent: Evan Barrett

Contract Staff on the Call: Terry Whiteside, Gloria O'Rourke

Guests on the Call: Mary Whittinghill

The meeting opened with a request for Mike O'Hara to serve as Chair for the Subcommittee. Mike O'Hara agreed to serve as Chair.

Terry Whiteside requested feedback on the 2006 Harvest Rail Survey draft. Several suggestions were made such as putting a time limit on the survey, offering to send the individual a copy of the final report and including a confidentiality notice. Terry said he and Mike O'Hara will work with grower groups such as the Montana Grain Growers Association, WIFE, Farmers Union and Montana Farm Bureau to send out the survey to obtain harvest numbers and information. For the transportation cost side of the information the RSCC is seeking, Terry will work with Montana Department of Agriculture and Montana Department of Transportation.

Terry will receive input from the RSCC Taxation Subcommittee then get the survey out. It may be possible to utilize the Fall conferences and meetings of the grower groups to encourage participation which are all scheduled in the next 60 days.

According to HB769, parameters to focus on for future RSCC Transportation Subcommittee meetings include:

- Develop structures (government or private) that will facilitate growth in transportation investment
- Partner with other agencies to promote rail service competition

With these thoughts in mind, Terry Whiteside suggested the following:

Focus on what kind of legal structures or partnerships need to be developed in Montana in order to develop rail competition choices such as value added infrastructure, or build-in, build-outs, etc.

Focus on what kind of legal and partnership entities can be developed to increase investment in transportation infrastructure.

In summary, the RSCC needs to be the facilitator for bringing together all parties, identify problems and bridge the gap by developing the ground work for them.

Terry will build a white paper of three or four items for this subcommittee to focus on that will start the SubCommittee on a path that will provide mechanisms leading towards a seamless process for private industry and government to work together to address the problems. The committee agreed that identifying and listing core rail systems including branch lines is an essential task so that Montana's core rail system can be protected. Once branch lines are protected, people can make capital investments based on that knowledge. The committee also wants feedback from the port authorities in Butte and Shelby to learn what impediments they face.

The meeting concluded at 3:10pm.

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Transportation Efforts by RSCC – Transportation Subcommittee Whitepaper provided by Whiteside & Associates

Question: What is it Transportation Subcommittee wants to accomplish?

RSCC should take a leadership role

RSCC needs a vision for the Montana rail system and development of strategies and policies to achieve the vision.

Mechanisms need to be developed, where possible, leading towards a seamless process for private industry and government to work together to address the problems

Develop lines of communication with all major transportation providers that serve Montana

From the railroad perspective are there any incentives that the RSCC could work with them that would develop of rail infrastructure in Montana?

From the railroad perspective are there any incentives that the RSCC could work with them that would bring to Montana, freight rates in line with rates where the railroads have rail-to-rail competition?

More education is needed about the rail system for the legislature

RSCC needs more understanding about railroad plans for future Montana rail infrastructure

From a motor carrier perspective are there any incentives for development of the trucking industry? Are they needed?

The Sub-committee may want feedback from the port authorities in Billings, Butte and Shelby to learn what impediments they face to increase their development

Evaluate possible competitive projects

Explore and develop all rail or truck competitive options

Build or encourage development of rail-to-rail competition projects – build outs or build ins

CORE System development

Support establishment of CORE rail branchlines and develop methods of financial and shipper support that will serve to minimize public expenditures

How will such a CORE system be maintained?

How will investment on CORE system be encouraged?

Infrastructure development to ensure economic operation?

What economic development units should be developed to enhance investment on CORE system?

What legislative requirement is needed to get CORE system developed?

Economic Development efforts

Support all efforts at the local, state and federal level to increase choices in rail transportation

Development of public-private partnerships

Evaluation of roles of economic development entities

What is the interface with railroads in economic development projects?

Feasibility of legal structure to facilitate growth in producer transportation investment coop & rural transportation infrastructure and port authorities

Develop value added activities and projects which utilize product that traditionally moves over MT transportation system

Develop projects that provide for competitive uses of MT products off rail or on competitive railroad systems

Work with MT companies to enhance their ability to provide value added economic development

Partnerships with other states and federal agencies to promote rail service competition

Develop methodologies to lower transportation input costs in Montana

Increase competition for MT products that move over MT transportation system

Examine Tax rates on railroads and truck lines – Tax Subcommittee?

Tort reform for settlements of lawsuits?

Weight Limits?

Demonstration projects for trucks increased truck weights or lengths that will lower transportation input costs

Building transportation infrastructure that will lower transportation costs for MT producers and manufacturing

Bottom Line:

RSCC needs to be the facilitator for bringing together all parties, identify problems and bridge the gap by developing the methodologies to increase choices for Montana transportation users.

Transportation Subcommittee Minutes

RSCC TRANSPORTATION SUBCOMMITTEE
MINUTES OF THE MEETING
SEPTEMBER 27, 2006
BUTTE, MONTANA
9:00am – 10:00am

SUBCOMMITTEE MEMBERS PRESENT: Mike O'Hara, Doug Miller, Evan Barrett

COUNCIL MEMBERS PRESENT: Dick Turner, Larry Bonderud, Bill Fogarty, Tom McGillvray and Carla Allen

CONTRACT STAFF: Terry Whiteside, Gloria O'Rourke

GUESTS: Barbara Ranf, Spook Stang, Joel Clairmont (for Nancy K. Peterson), Charlie Clark, Mike Opar, Sheryl Ralph and Larry Finch

Following introductions, Chairman O'Hara opened the meeting with a discussion of a white paper provided by Terry Whiteside that suggested guidance for this subcommittee. Some of the items included:

Develop lines of communication with all major transportation providers that serve Montana.

- ◇ Ascertain from the railroad perspective what incentives the RSCC could provide to them that would encourage rail infrastructure development in Montana.
- ◇ From the railroad perspective are there any incentives that the RSCC could provide that would bring Montana freight rates in line with rates where the railroads have rail-to-rail competition.
Note: Incentives can be positive as well as negative. The subcommittee needs to look at both to create motivation to encourage competition.
- ◇ Request railroad plans from the railroads for the RSCC to ascertain the rail company's investment targets.
- ◇ From a motor carrier's perspective are there any incentives for development of the trucking industry. Are incentives even needed?

Discussion:

- ◇ Standardize size and weights of trucks. Carriers are not interested in an incentive that refunds the fuel tax as it will ultimately come out of the highway construction fund. As one of the biggest issues truckers face in other states is congestion this funding should not be reduced.
- ◇ Driver shortage is one of the biggest issues.
- ◇ Work with Canada on easing their size and weight restrictions to encourage grain shipments from Montana to Canada.
- ◇ Work with providers to explore opening restrictive routes.
- ◇ Examine the Canadian Department of Transportation RTAK study as it was used to determine the safest, most cost effective load; Super B was the answer.
- ◇ Obtain feedback from the port authorities in Billings, Butte and Shelby to learn of impediments to development.

Evaluate possible competitive projects.

Explore and develop all rail or truck competitive options.
Build or encourage development of rail-to-rail competition projects, build outs or build ins.

Transportation Subcommittee Minutes**CORE System development**

- Support establishment of CORE rail branchlines and develop methods of financial and shipper support that will serve to minimize public expenditures
 - How will such a CORE system be maintained?
 - How will investment on CORE system be encouraged?
 - Infrastructure development to ensure economic operation?
 - What economic development units should be developed to enhance investment on CORE system?
- What legislative requirement is needed to get CORE system developed?

Economic Development efforts

- Support all efforts at the local, state and federal level to increase choices in rail transportation
 - Development of public-private partnerships
 - Evaluation of roles of economic development entities
 - What is the interface with railroads in economic development projects?
 - Feasibility of legal structure to facilitate growth in producer transportation investment coop & rural transportation infrastructure and port authorities
 - Develop value added activities and projects which utilize product that traditionally moves over MT transportation system
 - Develop projects that provide for competitive uses of MT products off rail or on competitive railroad systems
 - Work with MT companies to enhance their ability to provide value added economic development
 - Partnerships with other states and federal agencies to promote rail service competition

Develop methodologies to lower transportation input costs in Montana

- Increase competition for MT products that move over MT transportation system
- Examine Tax rates on railroads and truck lines – Tax Subcommittee?
- Tort reform for settlements of lawsuits?
- Weight Limits?
- Demonstration projects for trucks increased truck weights or lengths that will lower transportation input costs
- Building transportation infrastructure that will lower transportation costs for MT producers and manufacturing

Terry Whiteside was asked by the RSCC Transportation Subcommittee to work with Montana Department of Transportation to explore the identification of a core system for Montana. The idea is to determine which branch lines will be protected so that investors are confident their investment will remain in place. As Montana has lost so many branch lines, the system we now have may be the core system. Criteria will need to be set and a directive received from the legislature before the core system can be identified.

Meeting Conclusions:

The RSCC Transportation Subcommittee will recommend to the full council for Terry Whiteside to work with Montana Department of Transportation on a core plan. Terry Whiteside will contact all providers (rail, port authorities and truckers) and obtain feedback on incentives.

AGRICULTURE SUBCOMMITTEE

**RSCC AGRICULTURE SUBCOMMITTEE
MINUTES OF THE CONFERENCE CALL
AUGUST 14, 2007
8:00 – 9:00am**

PRESENT ON THE CALL: Rep. Mike Milburn, Carla Allen, Terry Whiteside, Frank Schoonover, Mike O'Hara, Sen. Ken Hansen and Jim Lynch. Unavailable: Joel Clairmont, Rep. Mike Jopek.

Subcommittee Chair Carl Allen thanked everyone for joining the call and for giving of their time to the RSCC Agriculture Subcommittee.

POSTPONEMENT OF AUGUST 23RD MEETING

Chairman Mike O'Hara and Director Jim Lynch explained the August 23rd RSCC meeting will be postponed until the second week in October. When legislation was put into effect to transfer the committee from the Governor's Office of Economic Development to Montana Department of Transportation, the effective date of the legislation defaulted to October 1st. Therefore, funding for work of the committee cannot be accessed until October 1st. Conference calls for the subcommittees can continue as scheduled.

WORK OF THE AGRICULTURE SUBCOMMITTEE

During the May RSCC meeting, it was decided to create four working groups (Agriculture, Coal, Ports/Intermodal and Forest/Paper) to identify strengths, challenges and opportunities for each particular industry relating to rail service.

CHALLENGES IN THE AGRICULTURE ARENA

Freight Rates: Carla Allen made reference to a study completed by Terry Whiteside that documents rates and profitability rates for BNSF for shipments of wheat and barley. Carla requested the members of the subcommittee review this study so that everyone has a picture of the profitability BNSF is receiving from Montana producers. As this study is lengthy, it will be made available in electronic format to the subcommittee.

Increased Rail Capacity: A survey conducted by Montana Department of Transportation and Whiteside & Associates confirmed 80% of farm producers experienced elevator plugging due to lack of rail cars and/or are driving much longer distances to unload grain. View the report at http://rscclt.gov/docs/Rail_Grain_Transp_Survey_2006_Final_05_22_07.pdf

The Infrastructure Tax Credit proposal that has been introduced in Congress was discussed. Terry noted that this bill is being pushed by all of the major Class I railroads and the Senate version will be heard in Sen. Baucus' Finance Committee. There are a number of folks that find the railroads requests for Infrastructure Tax Credits a bit curious at a time when the railroads are making record profits and have been for the past 5 years. It is also troubling that at the same time the Class I railroads are asking for Infrastructure Tax Credit – they are simultaneously setting up billions of dollars of stock buy backs – money that could be utilized for infrastructure investment. The key issue that many of the western Ag states are looking at is whether the investment tax credit will be of any benefit to the captive shippers states. Also while the railroads do not want any government oversight of their infrastructure plans, a number of Congressional folks are looking at plans to require some kind of oversight to any investment tax structure. Lastly, it is important to note that with current Congressional rules, all lowering of tax bills must be offset somewhere else in the federal budget.

Trucking Distance and Roads: As verified in the Rail Grain Transportation Survey noted above, due to longer hauling distances the condition of state and county roads are deteriorating. With the development of the 100 car shuttle system, there is a transfer of cost to the public sector for road repair; funding is not available to repair these roads. There is also a safety issue as non experienced drivers are now operating large trucks.

Pulse Crops: As smaller car facilities diminish, it is difficult to find markets for pulse and rotational crops. A place needs to be found in the system for the marketing of these important crops.

Tax Rebate on Infrastructure: Large railroads are pushing Congress for a multi-billion dollar program for funding infrastructure improvements. The concern is that the investment will go to larger population areas and address intermodal traffic between cities such as New York and Chicago. Montanans have expressed concern that infrastructure investments in Montana – who pay some of the highest freight rates in the nation, are not being made as demand for intramodal freight continues to increase between LA and Chicago.

Timing: The issue is rail car availability and getting the cars in a timely manner. Some areas of the state have drought while other areas have bumper crops. The issue is timing and getting the rail cars where the grain is waiting to be moved.

Identity Preserved Wheat and Containers: When trade teams visit Montana, there is interest in purchasing the wheat in a particular field. Guaranteeing to a foreign buyer that they can get the MT wheat they are examining is not possible today with Identity Preserved movement and those are not available in large scale today. MT wheat is preferred at times because of its high quality and it is, in many cases utilized for blending purposes with other wheat to improve the overall quality. If trade teams could purchase particular wheat and order it, alternative transportation would be needed such as containers. At one time, BNSF was not interested in looking at containers but this may be changing. The RSCC could look into what kind of marketing could be done with containers which may involve working with shippers that could make more demand on the railroads. Container rates are usually less than bulk rates, plus the containers coming through Montana are usually empty and Terry is looking at that.

Competition: The RSCC needs to examine if railroad pricing of Montana grain is hurting Montana's competition in the world and domestic markets. We know, for example, the freight issue has displaced Montana barley out of traditional markets. Once this is verified, options for addressing the problem need to be implemented.

Discussion:

The railroads are doing the best job they can given they nationally have no reason to resolve these capacity issues completely and/or lower rates.

A recent article in the Billings Gazette stated grain in on the ground in both North and South Dakota. Now we are hearing reports of over 10 Million bushels on the ground in CO.

Producers/growers near a main line, such as in Harlem, are fortunate as cars are available, unlike in spur areas. At Central Montana Rail trains have been a little behind but not weeks behind as in the past.

A discussion took place suggesting that both elevator management as well as BNSF may be improving.

In the Choteau area, problems were experienced with the end of the spring wheat harvest with no place to put grain. Trains were early for the winter wheat harvest.

It is understood that 110 car shuttles increase efficiency yet there is the need to recognize who benefits from the efficiency and realize the hidden costs for the producers. Currently, producers and the state are paying for the efficiency.

SURVEY FOR THE SUBCOMMITTEE

Carla Allen and Terry Whiteside will develop a survey for each subcommittee member to review that will cover the issues discussed on this call. The survey results will be available to further the discussion for the next RSCC Agriculture Subcommittee call. Note: Sen. Ken Hansen requested a hard copy.

RAIL SERVICE COMPETITION COUNCIL
AGRICULTURE SUBCOMMITTEE MEETING
MINUTES

Thursday
October 11, 2007
8:45am - 9:30am

Commission Room
Helena, MT

RSCC AG SUBCOMMITTEE MEMBERS PRESENT: Carla Allen (Chair), Mike O'Hara (Chair of RSCC), and Sen. Ken Hansen

RSCC AG SUBCOMMITTEE MEMBERS ABSENT: Rep. Mike Milburn, Frank Schoonover, Joel Clairmont and Rep. Mike Jopek

RSCC Assistance: Terry Whiteside, Gloria O'Rourke

AG SUBCOMMITTEE UPDATE:

Ag Subcommittee Chair Carla Allen provided an overview as to work of the subcommittee. Carla said Terry Whiteside had compiled a survey which was sent to each subcommittee member. Not everyone has returned the survey.

Terry Whiteside explained the surveys will be used to identify and analyze problems in the agriculture industry relating to transportation competition or the lack thereof. Once the problems have been identified, they will be categorized according to severity. Next, the subcommittee will prioritize the problems and work on solutions in each category.

Terry noted the survey did not address container traffic and intermodal transport and may need to be expanded in the future.

Carla Allen requested each subcommittee member review a copy of Terry Whiteside's freight rate of wheat and barely study as it gives the picture of profitability BNSF is receiving from Montana producers.

NEXT STEPS:

As most of the subcommittee could not meet today, Carla will request a conference call soon. Carla would like to have the problems identified in the next month, and then begin crafting solutions. An email will be sent to the subcommittee for members to return the surveys to Terry. The subcommittee will work around Terry's schedule for the next conference call, which will probably be the end of October or first part of November.

RSCC Ag Subcommittee Oct 11 2007.doc

**RSCC AG SUBCOMMITTEE
CONFERENCE CALL
MARCH 27, 2008
10:00am**

ON THE CALL: Chair Carla Allen, Frank Schoonover, Mike Milburn, Terry Whiteside, Joel Clairmont, Sen. Ken Hansen and Gloria O'Rourke

RAIL ISSUES FACING AGRICULTURE IN MONTANA

Chair Carla Allen shared a draft list of rail issues facing agriculture in Montana. This subcommittee will fully define the issues and problems then decide which issues could be dealt with by the RSCC. Once this has been done, Terry Whiteside will write up potential solutions for review and input by the subcommittee.

Rail Issues facing Agriculture in Montana

1. **Captivity Issues:** lack of alternatives to move harvested crops
2. **Loss of marketing outlets:** more concentration forced by Railroads (movement to shuttles) may leave Montana producers with further limiting of marketing outlets for alternative crops such as barley, canola, pulse crops, etc. Also fertilizer facilities are generally handled by less than shuttle facilities.
3. **Intermodal** – railroad continues to limit service offerings for intermodal outlets in Montana thereby limiting MT ag producers ability to develop direct markets with foreign buyers.
4. **Service:**
 - a. Continuing car shortages during harvest – even during droughts – RR lays blame on order issues with the grain industry
 - b. Car allocation procedures are no longer based upon fairness (giving all classes of shippers equal shortages) but on railroad claims of efficiency
5. **Pricing**
 - c. **Differential pricing** – a practice developed by railroads where they charge higher prices for captive markets than markets where they have competition. Allowed by STB – Differential pricing theory is built upon a theory that railroads are:
 - i. Not at full capacity
 - ii. Not revenue adequate
 - iii. RR's are allowed to charge greater prices to captive shippers in order to make up for those areas where they have competition and thus they need more revenue to make revenue adequacy
 - d. Today, the railroads are making record profits (many if not all are now revenue adequate under even the old standards) and have a shortage of capacity
 - i. When differential pricing is applied to this characteristic market – revenue adequate with shortage of capacity – differential pricing based upon captivity moves from differential to monopoly pricing due to the inadequate capacity
 - ii. Thus legalized price gouging leave Montana producers in a less than ideal competitive position
 - e. National regulatory body, the STB, continues to be a revolving door for railroad employment with former Chairmen going to work for the industries they are formerly regulating and a host of decisions that are heavily skewed toward the rail industry.

- f. Differential pricing allows railroads to charge greater freight charges for commodities it considers can stand a great freight charge
- g. Bottom line – the railroads consider that it is their right to set the market price of the commodity they are moving and also to limit due to railroad costs and efficiencies which grain can be marketed and in which markets. Thus the railroads today are setting market price and controlling the development of markets – not their function under the franchise they were granted by the federal government.
- h. Some have suggested that railroads be required to publish mileage based rates – similar to FedEx, UPS and postal system
- i. Rate challenges: STB is revamping its small rate case rules – and it appears that a small rate case challenge may make some sense to test the new rules and the level of rates in Montana.

6. Fuel Surcharges

- j. Evidence continuing the railroads are over collecting from all shippers – a practice that the STB recently found to be an unreasonable practice.
- k. Montana may want to look at attempting to ascertain the extent of these overcharges and seek refunds
- l. May involve millions of dollars in Montana.

7. Concentration in Grain Industry

- m. Continuing concentration in the grain industry in Montana – further limiting farm producer's choice to grain companies' competition for farmers business.
- n. Smaller grain elevators have attempted to gather grain, but then have to haul it to a 110 car site which is cost prohibitive.

8. Intermodal

- o. Railroad continues to limit the farm access to intermodal equipment and service points in Montana
- p. This effectively limits the ability to develop smaller and specialty crop markets and Montana is losing market access when compared to Canadians and other states.

9. Railroad Infrastructure

- q. Class 1
- r. Class 2, 3, 4

Discussion/Questions:

- How much does it actually cost BNSF in fuel to move a bushel of freight? (Terry Whiteside will get back to the subcommittee with this information.) And how does Montana compare with other state's cost?
- How can it become possible for a buyer to purchase a specific field of grain?
- There is a shortline infrastructure bill in congress that may have more success with passage than the main infrastructure bill.

Another conference call will be held once Terry has drafted potential solutions.

Montana Rail Service Competition Council (RSCC) Proposed Initiative for Competition Plan

Title: Improve Agricultural Shipper Access to rail

Brief Description:

The predominance of agriculture in Montana and its reliance to reach out of state markets via rail are very important to Montana's economy. Montana is the most single rail dominated state in the U. S. Agriculture products must move beyond Montana borders to create value for Montana agriculture producers. BNSF dominates the movement of agricultural products from the State. Montana producers pay among the highest freight rates in the nation for movement of their agricultural products. Creating rail access to the CP in Canada and UP in Silverbow are strategies that should be explored. Creating additional access capabilities over Montana Rail Link (MRL) is also a strategy that should be explored.

Many buyers of Montana agricultural products are starting to demand 'identity preserved' buying characteristics. Namely, buyers are wanting a particular wheat, pea or lentil crop or pulse crop. The BNSF is at the same time curtailing access to intermodal rail transport by closing and denying service. In Canada, the railroads have heartily embraced intermodal movements of agricultural products and thus Montana's agricultural industry must gain greater access at economical prices or be forced to accept a less competitive position vis a vis the Canadian agricultural marketing. Creating additional intermodal opportunities whether they be with BNSF, UP or CP for Montana agricultural are strategies that should be explored.

Benefits to Increased Competition:

Improving access to the alternative rail will enhance the marketing of Montana agricultural products in both domestic and international markets. It will also serve to reduce truck traffic on Montana highways. Trucking companies are struggling with high fuel costs and rail service will become even more important to maintaining access to these key markets.

Implementation Needs (analysis, legislation, etc):

MTRSCC should identify and completely understand the various routings and relative costs of getting products to competitive rail whether it be by truck and/or rail. The goal should be to find ways to drive costs out of the movement of products and improve the competitiveness of Montana products in intermountain markets.

Considerations the sub-committee raised were:

- Establishing studies focusing on building or gaining access to competitive rail service to allow Montana agricultural producers to reach UP and CP via rail connections. This may include exploring development of alternative rail connections both north, west and south of Montana.
- Development of access of MRL to UP in Sandpoint, ID. This may require legislation to eliminate the artificial paper barrier BNSF has imposed on MRL. Many Class I (large railroads) impose these 'paper barriers' on shortlines around the country to keep the shortlines from creating rail-to-rail competition for the Class I carriers.
- Pushing for cost effective access from MRL line to Silverbow and Sandpoint, ID
- Development of rail connection options to CP north of Shelby and north of Plentywood.
- Development of rail access initiatives to facilitate Montana based rail shortlines to provide competitive rail service for Montana agricultural shippers
- Coordinating trucking co-op to reduce costs of transporting products to Silverbow.

Estimated Cost:

- Consulting study to analyze costs of various routing options for market access
- Legal research to understand and potentially challenge paper barriers limiting Montana rail shortlines' ability to act as a cost effective BNSF / UPRR or BNSF/CP link.
- Feasibility of development of state sponsored open access provisions mandating railroads to grant haulage rights to Montana based shortline railroads.
- Consulting study on feasibility of establishment of State Rail Authority with the power to own, to bond and to build rail lines in Montana that serve to increase rail competition within the State of Montana.

Submitted by: Carla Allen, Chair of Agriculture Subcommittee

Date: 6-11-08

COAL SUBCOMMITTEE

RSCC COAL SUBCOMMITTEE
MINUTES OF THE CONFERENCE CALL
 January 7, 2008 10:00 – 11:00am

PRESENT ON THE CALL

- ☞ Committee Members: Dan Buck, Evan Barrett, Mike Scanlan
- ☞ Public: Barbara Ranf (BNSF),
- ☞ Invitee: Scott Rickard (Center for Applied Economic Research MSU)
- ☞ Coordinator: Gloria O'Rourke

PURPOSE OF THE CALL

Subcommittee Chair Evan Barrett called the meeting of the Coal RSCC Subcommittee to discuss how to move forward in determining the needs of the coal industry as they relate to rail service competition issues in Montana.

SUMMARY OF THE DISCUSSION

After a lengthy discussion, it was suggested the subcommittee gather facts and data on the following:

- Conduct an analysis to determine what role Montana coal severance taxes may play in the competitiveness of Montana coal; include the relationship of those taxes to other competitive issues especially the cost of rail transport of coal given the captive rail shipping situation in Montana.
 - ☞ The comparison may also include extraction cost, reclamation costs, permitting costs, etc.
 - ☞ As possible in the study, identify multiple cost structure issues: Compare all accessorial charges (labor, fuel, etc.) in addition to freight rates over a period of time, looking to see whether or not freight rates have gone up at the same rate as other costs.
 - ☞ Once the cost structure has been identified, determine impact of reducing any of those components and effect of that reduction on movement of Montana coal to market.
 - ☞ Take a look at Montana transportation/freight rate costs compared to Wyoming and reasons for difference.
- Have the study done by Scott Rickard of the Center for Applied Economic Research at MSU Billings, who is under contract with the RSCC for this type of work; have him work out a subcontract relationship with Terry Whiteside to help obtain information necessary for the economic analysis; Federal Energy Regulatory Commission may have information as well.
- Contact mining companies to get their input regarding rail shipping difficulties and solutions.
- Bottom line: The subcommittee will gather accurate data and place it in a form easy for the RSCC, the public, policy makers and officials to understand.

ACTION ITEMS:

- Confer with Scott Rickard and Terry Whiteside to determine the feasibility of:
 - ☞ Comparing trends, freight rates and coal severance taxes in Montana, Wyoming and other relevant locations.
 - ☞ Analyzing multiple components of cost of production and transportation to the delivery of coal to final destinations (hopefully over a five to ten year period)
 - ☞ Evaluating the differentials in other costs related to coal production.
- Evan, Terry and Scott will try to meet via phone prior to the RSCC meeting on January 9th to provide a progress report to the RSCC. The Coal Subcommittee may meet at 10:45, just prior to the RSCC meeting.

MISC. Notes:

- ☞ The STB has hired a consultant to do a study on rail competition which is due the end of this year.
- ☞ Include Larry Finch in future conversations.
- ☞ Future discussion item: Tongue River Rail Road accessing Otter Creek Coal and the impact this would have on competition in the state.

PUBLIC COMMENT and CLOSING:

Subcommittee Chair Evan Barrett asked for comments from the public. None offered.

With no further discussion, Evan Barrett closed the meeting.

Coal Subcommittee Call January 7, 2008.doc

**RSCC COAL SUBCOMMITTEE
MINUTES OF THE CONFERENCE CALL
MARCH 28, 2008
1:30pm**

ON THE CALL: Evan Barrett (Chair), Larry Finch for member Dan Bucks, Mike Scanlan, Scott Rickard of Center for Applied Economic Research, Barbara Ranf of BN/SF and Gloria O'Rourke.

RSCC REPRESENTATION

Subcommittee Chair Evan Barrett welcomed everyone to the call. Evan explained that as Mike Scanlan is not a resident of Montana, he cannot officially serve on the RSCC, however he noted that Mike could serve as a member of the sub-committee and thanked him for doing so. Evan indicated that Patti Keebler, Appointments Coordinator for Governor Schweitzer, was still looking for someone to represent coal shipping expertise on the RSCC. He asked everyone to be thinking of an individual with coal freight/shipping experience to serve on the RSCC.

WORK OF THE RSCC COAL SUBCOMMITTEE

Evan noted that he had recently received a call from a company interested in mine expansion which would involve reaching markets in the Midwest. The company representative said the cost of utilizing BNSF for transportation was so high that the Montana coal was not competitive. If coal cannot be transported competitively expansion cannot occur. He wondered if that was an issue that could be addressed by the RSCC or its coal sub-committee since it was, essentially, a problem between two private companies, although it did point to the essential problem the RSCC was formed to address -- the impact on shippers as a result of a near monopoly situation in Montana when it comes to rail shipping. Note: Barbara Ranf said she would welcome a call from Evan to further discuss the issue. Evan suggested they talk early next week.

Evan Barrett noted that the RSCC had contracted with Scott Rickard, Center for Applied Economic Research, MSU- Billings, to conduct research projects for the RSCC. He said that Scott had outlined several projects for subcommittee consideration.

Evan mentioned that the RSCC had approved moving ahead with a study of the relationship of coal severance taxes on the delivered cost of Montana coal as compared to Wyoming. He said Scott had defined the project as follows:

An estimate of the percentage of total delivered cost of Montana and Wyoming coal that state coal severance taxes represent. This would involve quantifying total delivery costs, which includes both rail transport costs and severance taxes, for a set of comparable standardized size/distance hauls. Data would come primarily from MT DOR, the STB Weigh Bill sample, a subcontract to develop some additional data and past research that has been conducted on comparing the tax impacts of locating a coal-fired power plant in either state. This study would clarify if coal severance rates make coal non competitive or if it is due to other costs.

Evan noted that the cost of that study would be prepared by Scott before the RSCC meeting on April 2 and that would be presented to the RSCC.

Assuming that there would be funds still available after paying for the aforementioned study, Evan noted that Scott had outlined another possibility:

An estimate of the economic and fiscal impact of additional railroad infrastructure investment in Montana as it relates to the transportation of coal. This would examine questions such as: Should public funds be used to augment existing private rail infrastructure? If funds are invested in a private entity, how will the public benefit and receive a return on its investment? The study could give some specifics on the type of investment (a new spur, an upgrade to an existing facility), with an estimate of the economic and fiscal impacts of construction activities and additional business generated from the operations of the new or upgraded segment. The impact estimates would give the RSCC an idea of the return on investment for public dollars spent in this area. (A second benefit from the study would be the creation of transportation cost models that could be used in a future report to compare transportation costs on Montana captive shipping routes and if they are priced at competitive or noncompetitive rates.

There was discussion of the capacity issues in Montana. Specific mention was made of expansion in the coal-hauling areas of eastern Montana, Shelby to Canada (to open up non-BNSF lines to Canadian Pacific), and Garrison to Silverbow (to open up a non-BNSF connection to UP). Following that discussion, it was suggested that another research study that Scott could do for the RSCC would be to look at how other states approached the idea of building public rail infrastructure to increase both capacity and competition.

It was decided to present that idea to the full RSCC on April 2.

CONCLUSIONS:

Scott Rickard agreed to give a cost estimate for each of the studies. In addition to the coal severance tax study (which is already approved), the cost of other alternative studies will be shared with the full RSCC on Wednesday, April 2nd.

With no further discussion and no comment from the general public, the meeting was adjourned.

Montana Rail Service Competition Council (RSCC) Proposed Initiative for Competition Plan

Title: RSCC Coal Subcommittee

Brief Description:

Purpose: The purpose of this subcommittee is to determine the needs of the coal industry as they relate to rail service competition issues in Montana.

Identified Problems and Challenges in the Coal Sector

- ❖ Demand for coal continues to increase – especially in China and India.
- ❖ Cost of utilizing BNSF for transportation makes Montana coal uncompetitive in current and expanding markets.
- ❖ Extra cost impacts (accessorial) are prohibitive.
- ❖ Service issues
- ❖ Lack of response from STB when rate cases are brought to the STB
- ❖ Lack of quantifiable data of total delivered cost of Montana and Wyoming coal that state coal severance taxes represent.

Benefits to Increased Competition:

- ❖ Opportunities for expansion with existing coal markets
- ❖ Opportunities for new coal markets

Implementation Needs (analysis, legislation, etc):

- ❖ If the STB remains unresponsive, legislation will be needed to institute change.
- ❖ Conduct an analysis to determine what role Montana coal severance taxes play in the competitiveness of Montana coal; include the relationship of those taxes to other competitive issues especially the cost of rail transport of coal given the captive rail shipping situation in Montana.
 - The comparison may also include extraction cost, reclamation costs, permitting costs, etc.
 - As possible in the study, identify multiple cost structure issues: Compare all accessorial charges (labor, fuel, etc..) in addition to freight rates over a period of time, looking to see whether or not freight rates have gone up at the same rate as other costs.
 - Once the cost structure has been identified, determine impact of reducing any of those components and effect of that reduction on movement of Montana coal to market.
 - Take a look at Montana transportation/freight rate costs compared to Wyoming and reasons for difference.
- ❖ Severance taxes and transportation costs are but two of many different components that make up the total delivered cost of coal. Other components of the final delivered cost include:
 - Production costs, which can further be broken down into:
 - Direct production costs
 - Reclamation costs and other costs related to regulation of the industry, and
 - Preparation and loading costs
 - Taxes other than severance taxes
 - Price differentials related to the quality of the coal
 - Profit margins

Estimated Costs:

- ❖ Legislation would probably cost over a million dollars.
- ❖ Analyzing multiple components of cost of production and transportation to the delivery of coal to final destination of coal: \$27,500
- ❖ Analyzing differentials in other costs related to coal production: \$13,000

Additional Comments:

Two studies are in progress with the Center for Applied Economic Research at MSU Billings to quantify components that make up the total delivered cost of coal. Data from these studies will provide direction and guidance for the RSCC in moving forward to address rail service competition issues in Montana.

Submitted by: Evan Barrett Date: June 4, 2008

FOREST/PAPER/INDUSTRIAL SUBCOMMITTEE

**Montana Railroad Service Competition Council
Forest/Paper/Industrial Products Sub-committee**

Conference call notes – January 17, 2008

Agenda Topics

1. What constitutes "adequate service"? Try to build a consensus and develop examples. This will fit into the "common carrier obligation" issue that is a hot topic in Washington DC.
2. How can we improve equipment availability? Are there ideas we can develop that will address our concerns while recognizing the investment costs of maintaining a fleet of rail cars.

If we have time, I'd like to start discussions about a Shippers co-op. What are the issues and concerns? Can we find ways to reduce the costs of accessing the UP via the Port of Montana?

These people were on the call:

Russ Hobbs-Plum Creek, Terry Whiteside –Whiteside & Associates, Jennifer Godfrey— Whiteside & Associates, Brad Newcomb – Montana Refining Co, Great Falls, Craig Eaton - Gwynn Lumber & Reload, Eureka, Patty Hempstead & Sheryl Ralph – Port of Montana, Steven Lloyd - Genesis Troy Mine, Tom Fox – Fox Lumber, Quentin Apedaile

Terry Whiteside reviewed the concept of "common carrier obligation." Factored into almost all of our regulatory oversight is the concept that railroad carriers have a duty to serve the public. Every common carrier is required to provide and furnish transportation upon reasonable request. The railroads cannot properly withhold the central transportation services simply because they are unwilling on their part to do so.

Terry provided an example of a corn based ethanol processing plant attempting to set up operation at Broadview, Montana. The BN said they would not service the plant. Terry suggested this may be an example of the RR failing to meet its common carrier obligation.

Russ asked if there were other examples of this lack of willingness to serve.

One participant suggested that service is probably acceptable, while another indicated that they do have service issues. They call the train master for help (they service the facility twice a week) and he never calls back. Another problem is communication about bad ordered cars. They do not get notice and then find out the car's contents were transferred to another car without their knowledge or consent. A further problem is that their product is a concentrate and the entire volume may not get transferred to the new car, so they have a value loss as well as a delay in getting the product to their customer. A third person added that the RRs often delay notifying the shipper of the need to transfer stock from a bad ordered car, so there is no way to inspect or dispute what finally gets to the customer. The shipper has to bear the loss.

The group as a whole commented that communication and customer service from the short lines like MRL and Watco was much better than with BNSF. In most cases, this lack of service was frustrating, but not causing significant damage to the business.

The Port of Montana commented that they may be the exception, as they have very reliable service. Both railroads service them 5 days a week. This high level of service may be a reflection of the emphasis the class 1 RRs place on high volume shippers.

Terry Whiteside responded that one of the Issues STB is starting to get pressure from Congress to focus on will be talking about the have and the have nots. It is not that they want to force the railroads to service smaller shippers but they don't want them to be discriminated against. He then asked the group about availability of equipment.

The mining and refining participants felt cars were generally available because of the overall slowdown in the national economy. When business improves, we were all concerned that equipment will be scarce again. The lumber producers have been forced into the BNSF LOG (Lumber Origin Guarantee) program if they want an assured supply of cars. Craig Eaton @ Gwynn Lumber & Reload, Eureka did not participate in the LOGs program in 2007 and his business suffered from a lack of cars. We were concerned that other segments will be forced into similar programs.

Our conclusions were that we generally do not have an issue with common carrier obligation (an absolute lack of service), rather we have an issue with the quality of the service we receive. Unfortunately, we believe that the RR did not really care whether we shipped via rail or truck.

At the end of the call, we started a discussion on how to improve access to alternate RR, either the UP via Silver Bow or the CP via Shelby. If we can reduce the cost to shippers to access these alternate railroads, volume will follow.

Conference call ended at 3:06pm

**RSCC FOREST/PAPER SUBCOMMITTEE
MINUTES OF THE CONFERENCE CALL
APRIL 29, 2008**

ON THE CALL: Brad Newcomb, Montana Refining Co.; Craig Eaton, Gwynn Lumber & Reload; Sheryl Ralph, Port of Montana; Russ Hobbs, Plum Creek, Chair of Forest/Paper Subcommittee.

PURPOSE: The purpose of the call was to try to identify specific action items for the RSCC to address.

Questions: Are there markets you cannot cost effectively reach because of your captive shipper status? Are there markets that you could access better via the UP or CP? If your product is not practical to move through a transload, what would direct rail access to competing lines do for your business? How could the State help us to improve this situation?

- Intermountain markets such as Boise or Salt Lake City should be easily accessible from Montana, but BNSF routes are either far east and then south or far west and south, both of which are very expensive. The UP runs directly south from Silver Bow and should be more competitive with truck rates.
- Lumber shippers would truck to Silver Bow and reload onto UP cars if the total cost was competitive with trucks
- Bulk shippers typically cannot use transloads but would benefit from more direct routing to the UP.

ACTION ITEMS:

- The RSCC should identify and completely understand the various routings and relative costs of getting products to Silver Bow, both by truck and rail. The goal should be to find ways to drive costs out of the movement of products and improve the competitiveness of Montana products in intermountain markets. Considerations the sub-committee raised were:
 - Pushing for re-opening Great Falls to Helena line as a step to reduce rail costs to reach Silver Bow and other southern or intermountain markets.
 - Pushing for cost effective access from MRL line to Silver Bow.
 - Coordinating trucking co-op to reduce costs of transporting products to Silver Bow.

Questions: How would your business improve if the railroads gave you better service?? Can you identify a monetary cost from the poor service many people complained about? How can the RSCC encourage the railroads to get them to improve their overall service levels?

- The group concluded that there were no good examples of business being lost because of poor railroad service. In fact, lumber shippers were fairly happy with the overall service levels. Rather, the issue is one of the railroads trying to push incremental costs to the shippers. The best example is the bunching of cars at a shipper or receiver. The group felt that there was a growing tendency to deliver more cars at once than in the past. While this may be more efficient for the railroad, it typically increases handling costs for the shipper or receiver.
- While this was an area of frustration, the group was uncertain how the RSCC could improve the situation.

Montana Rail Service Competition Council (RSCC) Proposed Initiative for Competition Plan**Title: Improve Forest/Paper/Industrial Shipper Access to UPRR****Brief Description:**

Intermountain markets such as Boise or Salt Lake City are very important to Montana industrial shippers and should be easily accessible. BNSF routes run either far to the east and then south or far to the west and south, both of which are very expensive. The UP runs directly south from the Port of Montana at Silverbow and should be more competitive with truck rates into these markets. Another alternative access would be through Sweetgrass, connecting with the CPRS and then the UPRR. In both cases, direct rail access or truck shipment and transload are strategies to be explored.

Benefits to Increased Competition:

Improving access to the UPRR will make Montana industrial products more competitive in intermountain markets and will reduce truck traffic on Montana highways. Trucking companies are struggling with high fuel costs and rail service will become even more important to maintaining access to these key markets.

Implementation Needs (analysis, legislation, etc):

MTRSCC should identify and completely understand the various routings and relative costs of getting products to Silverbow or Shelby, both by truck and rail. The goal should be to find ways to drive costs out of the movement of products and improve the competitiveness of Montana products in intermountain markets. Considerations the sub-committee raised were:

- Pushing for re-opening Great Falls to Helena line as a step to reduce rail costs to reach Silverbow and other southern or intermountain markets.
- Pushing for cost effective access from MRL line to Silverbow.
- Coordinating trucking co-op to reduce costs of transporting products to Silverbow or Shelby.

Estimated Cost:

- Consulting fees to analyze costs of various routing options for key industries.
- Legal fees to understand and potentially challenge paper barriers limiting MRL ability to act as a cost effective BNSF / UPRR link.
- Consulting fees for feasibility study to develop trucking cooperative.

Additional Comments:

Submitted by: Russ Hobbs, Industrial Products Sub-committee Chair

Date: 5/29/08

RAIL SERVICE
COMPETITION COUNCIL

INDUSTRIAL SHIPPER SURVEY RECAP
August 2008

I. INTRODUCTION

The Montana Rail Service Competition Council (MT RSCC), chaired by Mike O'Hara, was created by the last Montana Legislature, and charged under House Bill No. 769 "to Promote Rail Service Competition in State" and "to develop a comprehensive and coordinated plan to increase rail service competition in Montana."

The MT RSCC commissioned Whiteside & Associates/MDT to conduct a survey of the rail grain harvest in the fall of 2006 to build factual predicate of the transportation conditions surrounding the 2006 Montana grain harvest. Simultaneously, the MT RSCC sought evaluation and development of factual data on the amount of over the road hauling that the farm producers of Montana were experiencing today, 10 years ago and 20 years ago. With advent of shuttle 110 car grain handling facilities in the state and the loss of many rail branchlines over the last 20 years, Montana continues to see a loss of elevators and marketing outlets for Montana grain producers. The degree to which farm producers are hauling ever increasing distances has never been surveyed or quantified.

This is a joint project with Montana Department of Transportation (MDT) providing logistical support and expertise for the survey and subsequent analysis.

This survey and analysis represents one of the most comprehensive examinations of shipping patterns by Montana farm producers in the conduct of marketing their grain.

This report summarizes the finding of the survey work conducted in October, 2006 through January, 2007. Whiteside & Associates/MDOT on behalf of the MT RSCC appreciates the help and assistance Montana's premiere farm groups for their assistance in gathering survey data. The *Montana Farmer Bureau*, the *Montana Farmers Union*, the *Montana Grain Growers Association* and the *Montana Wheat & Barley Committee* all contributed time, energy and effort to ensure the broadest cross section of respondents to the Survey. The farm groups provided access through their Conventions for survey data collection. Additionally, *Montana Grain Growers Association* at their statewide listening sessions and through electronic surveys provided additional responses. Over 190 farm producers from twenty-nine counties responded to the survey.

The survey results and study analysis show distinct patterns of increasing farm producer hauling to ever more distant elevators as the BNSF moves to consolidate shipments into larger, more efficient elevators called 'shuttle elevators' moving 110 car movements and moves to shed branchlines.

The survey, while documenting the increasing hauls, also documents the increasing shift in movement from the state's primary highway system to the state and county highway systems. Lastly, the study compiles data on the delays and plugging of elevators experienced by the Montana farm producers during the 2006 grain harvest.

These results will serve to assist the MT RSCC in its efforts to develop its comprehensive and coordinated plan to increase rail service competition in Montana.

MONTANA RAIL SERVICE COMPETITION COUNCIL (RSCC) REPORT

Montana Rail Service Competition Council Industrial Shipper Survey Recap		
Industries	Mining, Distribution, Refining	Forest Products
Responses	5	10
Carriers	BNSF, UP, MRL	BNSF, MMT, UP, MRL
Switches per week	2 @ 3, 2 @ 5	3 @ 3, 6 @ 5
Access to alternate carrier?	1 out of 5	1 out of 10
Economical access to alternate carrier	1 out of 5	2 out of 10
Combined # of Rail Shipments	4,575	16,128
Average % Rail Shipments	48%	42%
Range of Rail %	10% to 100%	2% to 95%
% of rail shipments		
Box car	6% to 13%	15% to 100%
Centerbeam	5% to 8%	10% to 100%
Tanker	23% to 100%	
TOFC		
Other	76%	
Bulkhead flatcar		
Gondola	5% to 100%	100%
Hopper	3% to 100%	
Ability to obtain the desired car types over the course of the year (1 = excellent availability, 3 = satisfactory availability, 5 = poor availability, potentially business damaging)		
Box car	1	3
Centerbeam	1	3
Tanker	1	
TOFC	5	
COFC	5	
Bulkhead flatcar		2
Gondola	3	5
Hopper	3	
Perception of the transportation value inherent in current rail rates compared to current trucking rates. 1 = excellent value, 3 = satisfactory value, 5 = poor value, potentially business damaging)		
	2.4	4.2
Which is a bigger issue for your shipping location?:		
Rail Service	4	1
Rail Rates	1	9
What were your three biggest transportation concerns or problems your shipping to/from plant or location incurred in 2006?		
High Rates	1	6
Equipment availability	2	6
service	3	2
Inconsistent transit times	2	3
Minimizing Demurrage	1	2
Compared to 15 years ago: Has Rail Service:		
Improved	1	3
Stayed about the Same	3	0
Gotten Worse	1	6
Has railroad service levels had an effect on your ability to compete in the market place?		
Yes	2	8
No	3	2
Has railroad rate levels (pricing) had an effect on your ability to compete in the market place?		
Yes	2	10
No	3	0

PORTS AND INTERMODAL SUBCOMMITTEE

**RSCC PORTS and INTERMODAL SUB COMMITTEE
MINUTES OF THE CONFERENCE CALL
August 15, 2007
9:00am – 10:30am.**

PRESENT ON THE CALL: Bill Fogarty, Sen. Trudi Schmidt, George Paul, Mike O'Hara, Larry Bonderud and Gloria O'Rourke. Unavailable: Andre Giles.

RSCC Ports and Intermodal Subcommittee Chair Bill Fogarty welcomed everyone to the meeting. Bill explained the purpose of this committee is to identify and address issues affecting the ports/intermodal industry due to the lack of rail competition. A series of questions was developed by Terry Whiteside for the subcommittee to discuss. Several were addressed by the subcommittee:

1. Effects on the industry coming from lack of rail competition?

- Basically, there is no service which takes the lack of competition to extreme. There are some signals from BNSF that they may be interested in providing some service again.
- Larry Bonderud and Bill Fogarty reported on a study currently being conducted by Montana Department of Transportation and MSU. Phase One of the study will research how many containers are coming through Montana, where they are located, if the containers leave Montana empty and who could benefit from these containers. The study will also examine consolidating volume to attract railroads to a specific location to get container service. It may be difficult as huge volumes could be necessary. The study should be finished by the end of the year.
- Terry Whiteside is investigating the actual freight rate on bulk shipments vs. the back haul of containers. It needs to be documented as to whether using containers would provide a competitive advantage or not.
- Union Pacific is talking about alternatives, but costs are still out of sight.
- Investors are looking into buying up short lines. The sellers are interested because of some economic advantage, but the line ends and then the short branch line is held captive by the main railroad.

Action Item: Assemble the data already gathered by the RSCC on future plans of the small Montana rail operators. The Association of Shortline Railroads could add to this data, as well as the Surface Transportation Board. When the RSCC hears of a potential sale, the council could become involved and influence the outcome. This was done successfully in Butte a few years ago with help from the Governor talking with officials from Union Pacific. Bill Fogarty will contact the Association.

- On the federal level, Class One Railroads are asking Congress for an investment tax credit for capital improvements. A concern is that the savings will be spent on high population areas, i.e., from Chicago to New York and never reach benefit Montana.

Action Item: Bill Fogarty will contact Terry Whiteside and ask him to draft a letter for the RSCC to Montana's Congressional Delegation as well as Jim Young of BNSF, requesting Montana's needs are met as part of the investment tax credit.

2. What impediments are there in developing transportation alternatives?

- Alternatives may involve working outside of the state boundaries.
- Shortline railroad sales as mentioned above – need to identify these lines and owners and address potential sales as they come up.
- It was noted the study mentioned above will identify in state and regional areas with potential for developing transportation alternatives. The RSCC needs to be ready to run with recommendations made by the study committee.

3. Build or encourage Rail-to-rail competition projects – build outs or build ins?

- It is important to retain current status: two class railroads meeting in Butte everyday and Canadian Pacific accessing BNSF.

4. Develop projects that provide for competitive uses of MT products off rail or on competitive railroad systems.

- It is essential to be connected with area economic development entities for this kind of project development.
- Learn of manufacturers utilizing containers being brought into Montana (as in the study mentioned above) and access the empty containers sitting at the back door. The Great Plains Commerce Center in Bismarck is a model for the RSCC to follow.

AGENDA ITEMS FOR THE NEXT CALL:

The next call of the RSCC Ports/Intermodal Subcommittee will be September 20th at 9:00am. . Items on the agenda will include:

- An update report from Dick Turner on the Intermodal Study
- Congressional letter update regarding Investment Tax Credits and benefits for MT
- Wayne Budt, PSC, provide discussion and identifying PSCC rail authority
- Discussion of survey items to be sent to subcommittee members from Terry Whiteside

Ports Working Group August 2007.doc

RAIL SERVICE COMPETITION COUNCIL
PORTS/INTERMODAL SUBCOMMITTEE MEETING
MINUTES

Thursday
October 11, 2007
9:30am – 11:00am

Commission Room
Helena, MT

RSCC PORTS/INTERMODAL SUBCOMMITTEE MEMBERS PRESENT: Bill Fogarty (Chair), Mike O’Hara (Chair of RSCC), Larry Bonderud, and Andre Giles (via phone).

RSCC PORTS/INTERMODAL SUBCOMMITTEE MEMBERS ABSENT: George Paul, Sen. Trudi Schmidt.

RSCC MEMBERS PRESENT: Carla Allen, Sen. Ken Hansen

MONTANA DEPT. OF TRANSPORTATION REPRESENTATIVES: Dick Turner, Zia Kazimi

RSCC TECHNICAL ASSISTANCE: Terry Whiteside, Gloria O’Rourke

GUEST: Wayne Budt, PSC

INTRODUCTIONS AND APPROVAL OF MINUTES

RSCC Ports/Intermodal Subcommittee Chair Bill Fogarty requested introductions be made around the room. Following introductions, Chairman Fogarty requested approval of the August 15th minutes of the RSCC Ports/Intermodal Subcommittee conference call. Larry Bonderud moved for the minutes to be approved; Sen. Ken Hansen seconded the motion. All voted in favor to approve the minutes.

INTERMODAL STUDY UPDATE

Dick Turner provided an update on a study being conducted by Montana Department of Transportation (MDT). MDT has a research program and solicits for research topics. Larry Bonderud proposed a study to investigate ways Montana could build the volume required to obtain service from Class 1 railroads. The topic was selected and Libby Ogard, of Prime Focus, out of Wisconsin, has been working on the study. Libby has an extensive background with intermodal issues.

A survey was mailed out to Montana shippers. As a good response was not obtained, phone interviews were conducted. The surveys indicated trucks are being used for shipping outbound products, with a haul length of seven to 1,000 miles. The overall general comment was that more access to rail is needed.

Also interviewed were several ports and several ocean carrier companies. One company, Ming Yang, Port of Tacoma, seemed very interested in doing business in Montana.

In addition, a lengthy meeting was held with Libby, Dick (via phone) and BNSF executives located in Ft. Worth. BNSF said that in order to consider intermodal service in Montana they would require 250 lifts per week per one ocean carrier at one port. BNSF also indicated they would be interested in conducting a pilot project to better understand the Montana market and gather proof that business in Montana would be sustainable.

Regarding the shortage of containers issue, Libby has some thoughts on finding containers and creating the container volume needed, including the concept of a rail brother.

Larry Bonderud suggested a joint meeting with the RSCC and the study team as the information gathered is very important to the RSCC. Libby's report should be available in December. Larry also questioned if the study has been able to identify where the containers traveling through Montana are coming from, where they are going, and at what volume. Gloria is to send Libby a copy of these minutes for her records.

CONGRESSIONAL LETTER UPDATE

Terry Whiteside shared a draft of a letter to be sent on behalf of the RSCC to Montana's congressional delegation. The letter addresses the pending tax infrastructure bill that would benefit railroads. A major concern, should the bill pass, is the infrastructure improvements will be made within the Chicago Los Angeles corridor and other high population areas, with no benefit to Montana.

It was suggested that the letter include Montana's trouble in obtaining containers and that Montana is not receiving competitive rates.

Terry Whiteside will add these items to the letter. Chairman O'Hara will review the letter and it will be sent to Montana's congressional delegation.

PSC Discussion

Wayne Budt, of the PSC, was invited to the subcommittee to share what involvement and authority the PSC has with railroads. Wayne explained that in the early 1900's, rail was the first and only function of the PSC. Now the PSC's authority is greatly diminished.

Currently, the PSC is responsible for employee safety, inspecting rail equipment, brakes, appliances, ladders, etc., and some authority on railroad fences. The PSC receives an annual report from each rail carrier every year. The report details statistics of loads that originate and terminate in Montana. Last year the PSC inspected 9,000 units and enforced motor carrier laws.

Subcommittee Survey Questions from Terry

Terry Whiteside developed a survey for the subcommittee to assist in identifying problems relating to ports/intermodal rail issues. Once the problems are identified and ranked, solutions can begin to be developed. It was suggested that the subcommittee hold off on this survey until results are obtained from the MDT study with Libby Ogard.

Next Meeting and Agenda Items

The subcommittee will meet in conjunction with the next RSCC meeting and/or when Libby Ogard's report is released. If an issue comes to the surface prior to this, a conference call will be held.

Montana Rail Service Competition Council (RSCC) Proposed Initiative for Competition Plan

Title: PORTS/INTERMODAL SUBCOMMITTEE

Brief Description:

Enhance intermodal competition and service by gathering data on shipping volumes commodities and potential markets. Working with three or more railroads to determine their interest, rates and service potential. What incentives do we need to provide for service to reoccur?

Benefits to Increased Competition:

Renew intermodal service for Montana business, provide access to new markets and increase commodity volumes both inbound and outbound.

Implementation Needs (analysis, legislation, etc):

- ❖ Analyze interest of railroads and trucking companies in providing service.
- ❖ Identify commodities and destinations.
- ❖ Identify container and shipping companies that have an interest.
- ❖ Determine rates and identify what incentives are needed to regain competitive service from truck and rail.

Estimated Cost: \$10,000—rough estimate.

Additional Comments:

Intermodal is a big void in Montana's transportation options. Needs to be revived.

Submitted by: Bill Fogarty

Date: June 8, 2008

**RAIL SERVICE COMPETITION COUNCIL
SUBCOMMITTEE**
Conference Call April 29, 2008
11:00am

ON THE CALL: RSCC Chair Mike O'Hara, Larry Finch, Russ Hobbs, Jim Lynch and Gloria O'Rourke.

PURPOSE OF THE CALL:

The RSCC has a contract with Scott Rickard, Center for Applied Economic Research, MSU- Billings, to conduct research projects for the RSCC. The RSCC previously approved a study of the relationship of coal severance taxes on the delivered cost of Montana coal as compared to Wyoming. The study will proceed immediately and be completed before the end of June. The cost for the study is estimated at \$27,475 which will leave a balance of \$13,000 in the contract.

During the RSCC meeting on April 2nd, a motion was passed for the RSCC to delegate authority to a subcommittee to make the decision to select the analysis that needs to be done with the remaining \$13,000. Carla Allen seconded the motion. All voted in favor. Subcommittee members were appointed and contacted for this call, including: Larry Finch, Jim Lynch, Mike O'Hara, Evan Barrett and Russ Hobbs.

Prior to the call, Larry Finch sent a summary of the April 2nd RSCC discussion and made a suggestion as follows:

**Montana Rail Services Competition Council
MSU-Billings Contract Project Description and Proposed Enhancement**

The RSCC has contracted with Steve Rickard, Center for Applied Economic Research, MSU-Billings, to provide an analysis and estimate of the percentage of total delivered cost of Montana and Wyoming coal that state coal severance taxes and transportation costs represent, for a set of comparable standardized size/distance hauls.

The contract cost is \$27,000. The RSCC has an additional \$13,000 of funding available for further research expenditures. Following is one proposal for how this additional funding could be spent.

* * * * *

Severance taxes and transportation costs are but two of many different components that make up the total delivered cost of coal. Other components of the final delivered cost include:

- Production costs, which can further be broken down into:
 - Direct production costs
 - Reclamation costs and other costs related to regulation of the industry, and
 - Preparation and loading costs
- Taxes other than severance taxes
- Price differentials related to the quality of the coal
- Profit margins
- Other costs(?)

(The report *Minnesota and Western Coal: Requirements, Costs, and Implications*; Agricultural Extension Service, University of Minnesota; Jerry E. Fruin and Thomas F. Stinson, 1979 provides a good example of this type of study. Copies available if wanted.)

Fully understanding Montana's ability to compete based on final delivered costs is enhanced when the extent to which all of the above costs contribute to that final cost are known. This proposal would simply expand the current contract with MSU-Billings to include these other types of costs in the project.

DISCUSSION:

After some discussion the subcommittee came to consensus regarding the \$13,000 expenditure. The group agreed with Larry Finch's suggestion to expand the study to include all (or as many as possible) of the above four areas. Of the four, the subcommittee was most interested in the price differentials related to the quality of coal.

NEXT STEPS:

- Jim Lynch will inform Evan Barrett of the subcommittee's decision. Jim will ask Evan to contact Scott Rickard to determine the cost of the expanded research and learn how many of the above items could be included.
- Jim and/or Evan will report back to the subcommittee which will give the final approval for the expanded research.

ATTACHMENT H
RAIL SERVICE
COMPETITION COUNCIL

PLANNING REPORT
June 2008

RSCC REPORT June 2008

**PURPOSE: BASED ON THE INFORMATION BELOW, A COMPREHENSIVE AND
COORDINATED PLAN WILL BE DEVELOPED TO INCREASE
RAIL SERVICE COMPETITION IN THE STATE**

Forest, Paper, and Industrial Products Shipping:**A. Title: Improving access for forest, paper and industrial products to Southern markets via UP, CP and/or other rail service access.**

Description: Work to address issues and obstacles to expanded rail access to Southern and Intermountain West markets for Montana's forest, paper, and industrial products with the goal of making these products more competitive.

Barriers: Identified barriers: "paper barriers" including contractual and regulatory issues and the problems being created by changing Federal regulation.

- **"Paper Barriers":** While the physical linkages between railroad lines already largely exist to provide for improved market access, contractual and regulatory issues between carriers and between carriers and industrial consumers create major obstacles to expanding market access.
- **Federal Regulation Changes:** Major changes in Federal regulation presently under consideration may significantly alter the nature of this problem.

Benefits of increased competition:

- **Improved Competitiveness:** Overcoming these barriers and creating improved rail access for Montana's forest, paper, and industrial products will make those products more competitive and foster improved growth in these industries.
- **Reduced reliance on truck carriers:** Creating expanded rail access to southern markets will reduce truck traffic on Montana's highways and possibly reduce product costs related to rising fuel costs for the trucking industry.

Implementation Needs: Improved understanding of the "paper barriers", acquiring expertise to address these issues, and improving communication between the state, industrial consumers and the rail service providers are seen as key needs.

- **Understanding "paper barriers":** Understanding the nature of contractual agreements between the various rail service providers in the state (primarily BNSF and the MRL and other short line carriers) needs to happen. Issues to be considered should address what role, if any, the state can play in negotiating contracts, creating incentives and addressing regulatory issues to overcome these "paper barriers".
- **Acquiring expertise:** The commission needs to access expertise from successful models from surrounding states facing similar concerns. Particularly North and South Dakota and Wisconsin have addressed similar obstacles successfully.
- **Improving communication:** The commission needs to determine what role, if any, state government can play in expediting communication between rail service providers and industrial consumers beginning with improved communication with the UPRR.

Estimated Costs: Unknown at this time.

Ports/Intermodal Shipping:

B. Title: Enhance access to intermodal rail service available to Montana consumers.

Description: Work to address issues and obstacles to expanded intermodal rail service in Montana. Intermodal refers to the transportation of freight in the same container between modes (ship-rail-road) reloading freight at each juncture.

Barriers: Identified barriers include the limited amount of current intermodal volume, the access of Montana industries to sufficient containers, and the limited incentives in place encouraging rail providers to extend intermodal services to the state.

- **Limited volumes:** BNSF prefers a minimum of 220 containers or 110 railcars per week and also prefers that all containers go to the same port or destination. So far in-state shippers have not been able to create the volume necessary to meet this level of demand.
- **Access to containers:** Containers for intermodal transport are not readily available in the state in sufficient numbers to attract industries and businesses.
- **Limited incentives:** There are few if any incentives for rail providers to consider expanding intermodal access to the state's shippers.

Benefits: Renewing and expanding intermodal service for Montana businesses and industry would provide access to new markets and increase the volume of both inbound and outbound commodities.

Implementation Needs:

- **Identify market thresholds:** The commission needs to identify the market thresholds necessary to renew and expand intermodal services from both the rail service providers and the container providers.
- **Seek creative solutions to the container shortage:** Investigate the possibility of using salvaged containers, trailer-on-flatcar configurations, encouraging short line carriers to create intermodal loading centers, and/or acquiring a state fleet of containers.
- **Create incentives:** Encourage entities involved such as carriers, container providers, and/or the Montana Board of Investments to invest in solutions.

Estimated Costs: Unknown at this time.

Agricultural Products Shipping:

C. Title: Enhance access for agriculture commodities shippers to rail service.

Description: Montana's agricultural producers need enhanced access to continental rail service providers for their commodity crops. In addition producers of specialized and identity-preserved crops need enhanced access to intermodal shipping for their products.

Barriers:

- **Limited access to shipping for agricultural commodity crops:** Class one railroads want a minimum of 110 cars per run. Limited and now almost non-existent loading facilities make it hard for producers to get crops to loading facilities without using long-haul trucking.
- **Limited access to intermodal shipping options:** Railroads need sufficient loads to justify intermodal service while growers need rail transportation options

Benefits:

- **Improved market access:** Improving access to rail service for Montana's agriculture producers will in turn improve the market access for these products both nationally and internationally.
- **Reduced truck traffic:** Improving access to rail service will also reduce truck traffic on Montana's highways which are presently being negatively impacted by high fuel costs.
- **Improved competitiveness:** Improving access to rail service for Montana's agriculture producers will help to make the state's products more competitive.

Implementation Needs:

- **Enhancing rail access to UP and CP:** Study ways to build and/or gain access to UP and CP loading facilities via alternative rail connections.
- **Motivate Class 1 Carriers to improve intermodal access:** Find incentives to influence Class 1 carriers to improve intermodal access for specialized agriculture products.
- **Explore successful models:** Explore successful models for expanding intermodal rail service in Canada and North Dakota.
- **Haulage rights:** Study what successful models from other states in addressing haulage rights for Montana producers.
- **State Rail Authority:** Consider establishing a state rail authority to deal with rail service providers and producers.
- **Revisit "Common Carrier Obligations":** Congress is presently revisiting the definition of what constitutes a "reasonable" request for services which the RSCC should monitor closely.

Estimated Costs: Unknown at this time.

Coal Shipping:

D. Title: Keeping Montana's Coal competitive in the U.S. and Around the World.

Description: Montana's Coal producers, both existing and new, will need ready access to both local, short line rail service, and national rail service in order to remain competitive in booming national and international markets.

Barriers: Emerging coal producers including those in the Roundup area will need newly constructed rail links to get their coal to market while existing and re-opening mines will need more readily available and less costly rail service to keep their coal competitive.

- **New construction:** The present need for new rail services and the impending need for BNSF to address growing capacity demands for coal shipping are creating a prohibitive barrier to the expansion of Montana's growing coal industry.
- **The Surface Transportation Board:** So far the STB has apparently been unwilling to move toward addressing issues directly and indirectly affecting the cost of Montana's coal causing it to remain less competitive in global markets.
- **Challenges of growing markets on both coasts:** The rising national and international demand for coal makes it essential for Montana's coal producers to be able to meet market demand on both coasts. At the present time BNSF is the sole carrier for Montana's coal and nearly all of its coal shipments are eastbound.
- **Other factors:** Does the combination of coal production costs, fees and taxes, and the high cost of shipping coal via BNSF making Montana's coal non-competitive in current markets?

Benefits of increased competition:

- **Opportunities for expansion:** The present demand makes Montana's coal a premium resource for the state if ways can be created with both existing and new mines and rail service providers to control costs and to move the state's coal to markets on both coasts and abroad.
- **Opportunities to market high quality coal:** Coal production in the Roundup area can bring much needed and much sought-after high-quality coal to both national and international markets.

Implementation Needs: Addressing the need for expanding the present rail capacities and building new rail capacities to bring Montana's coal to markets as competitively as possible is essential.

- **Study needs and capacities:** Studies are indicating the capacity for coal shipments provided via BNSF will need considerable expansion in the next ten to fifteen years. The need for new spur construction connecting new mining operations to rail service is also a growing concern.
- **Addressing the apparent inaction of the STB:** It may become necessary for the RSCC to bring federal legislative pressure on the STB in order to begin addressing concerns about shipping rates, etc.
- **Accessing growing markets on both coasts:** Improved rail service will be essential in developing markets for Montana's coal in the east and through west coast ports to markets in China and India.
- **Identify the impact of Montana's Coal Severance Tax on the competitiveness of Montana's coal:** It will be essential to create quantifiable data on the total delivered cost of Montana's coal as compared with other states like Wyoming.

Estimated Costs:

- Legislation would probably cost over a million dollars.
- Analyzing multiple components of cost of production and transportation to the delivery of coal to final destination of coal: \$27,500
- Analyzing differentials in other costs related to coal production: \$13,000

ATTACHMENT I
RAIL SERVICE
COMPETITION COUNCIL

FARM PRODUCERS SURVEY 2006

Summary

Montana Rail Grain Transportation Survey and Report 2006

Montana Rail Service Competition Council

A Joint Survey and Analysis

Montana Department of Transportation

and

Whiteside & Associates

By: Jim Lynch, Director
Dick Turner, Chief, MultiModalPlanning Bureau
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Dated: May 5, 2007

II. EXECUTIVE SUMMARY

The survey in brief found

1. Grain is being hauled further and further primarily over the state and county highway systems.
2. The majority of farm producers have experienced increasing hauling distances over the past 10 and 20 years.
3. Those farm producers experiencing increased haulage are hauling over 3 times as far as those farm producers who have not experienced any increased hauling distances.
4. The non-wheat crops are experiencing significantly greater hauling distances than wheat crops, further burdening alternative and rotational crop practices.
5. Some counties show average hauling distances upwards of 80+ miles.
6. The 2006 harvest in Montana could be best described as a tale of two cities – with Winter wheat showing average to above average yields and Spring wheat, durum, barley, pulse, peas and lentils showing average to below average yields.
7. The vast majority of farm producers have the capabilities of storing most if not all of their grain production.
8. Even with the diversity of yields, most Montana farm producers experienced elevator pluggings multiple times during harvest – due to lack of rail cars.

9. With the multiple elevator pluggings, most farm producers held onto to their crops and waited for the rail car shortages to abate rather than take their grain to more distant elevators.
10. Farm producers generally thought these delays and elevator pluggings were 'about average' and par for the course.
11. Farm producers are finding unloading delays at ever more distant elevators each year.
12. As the elevator system is being forced to larger, more rail efficient shuttles coupled with the loss of thousands of miles of rail branchlines in the state, the costs of transportation for gathering grain seem to be shifting from the railroads to the farm producers and to the State and local highway system.
13. The service levels do not seem to be improving with the transition to larger grain handling facilities.

The full report is available on the RSCC website.

ATTACHMENT J
RAIL SERVICE
COMPETITION COUNCIL

FARM PRODUCERS SURVEY 2007

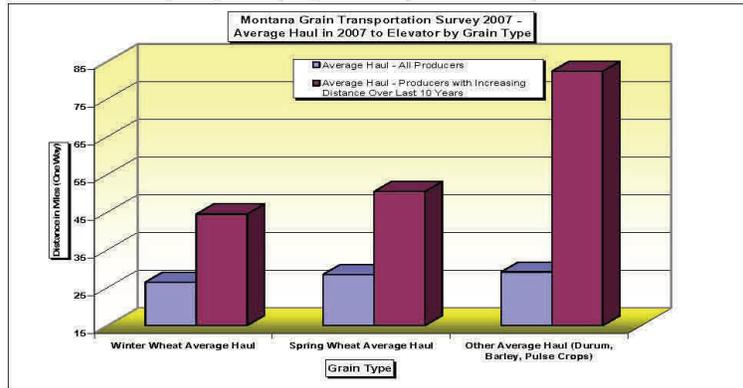
Summary

EXECUTIVE SUMMARY OF THE MONTANA RAIL GRAIN TRANSPORTATION SURVEY AND REPORT 2007

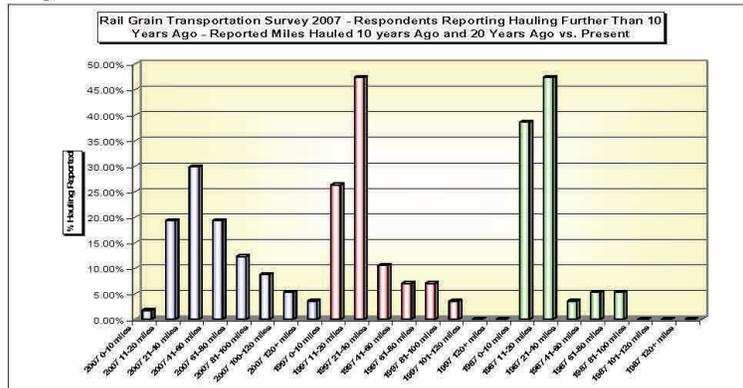
This project completes a second year of contiguous data providing one of the most comprehensive examinations of shipping patterns by Montana farm producers in the marketing of their grain.

The survey in brief found:

1. **Grain is being hauled further and further primarily over the state and county highway systems year over year.**

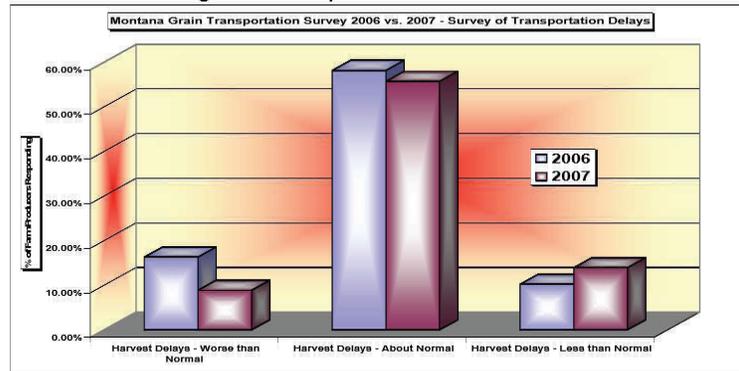


2. **The majority of farm producers have experienced increasing hauling distances over the past 10 and 20 years – year over year.**



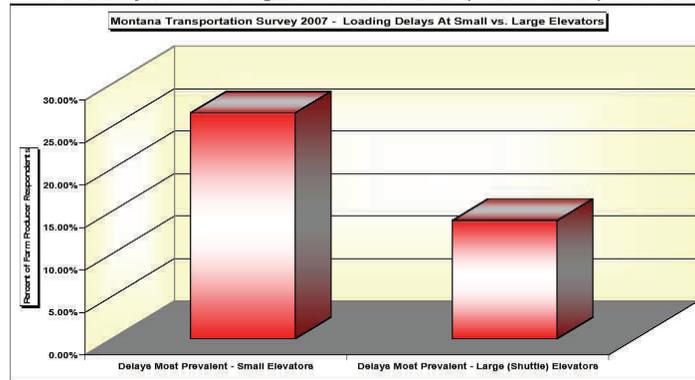
3. **Those farm producers experiencing increased haulage are hauling over 2-3 times as far as those farm producers who have not experienced any increased hauling distances and they hauling distances are continuing to increase..**

4. **The non-wheat crops are experiencing significantly greater hauling distances than wheat crops**, further burdening alternative and rotational crop practices in both 2006 and 2007.
5. **Some counties show average hauling distances upwards of 80-120+ miles.**
6. As the shuttle operations become more dominant in the capture of grain producer traffic, **farm to market transportation is increasing primarily on Montana secondary and county roads** – which translate to higher future public costs.

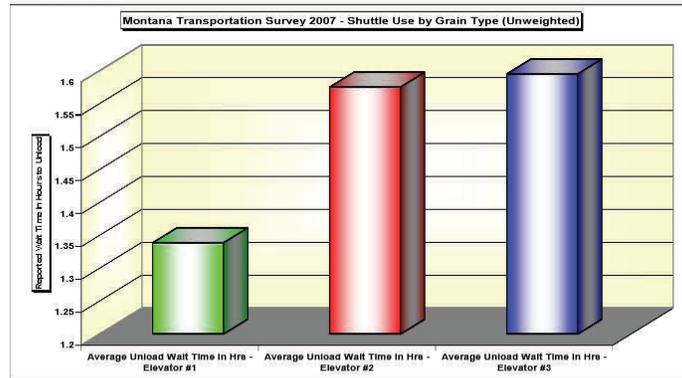


7. The 2007 harvest in Montana could be best described as a tale of two cities, similar in some respects to the 2006 harvest – with Winter wheat showing average to above average yields and Spring wheat, durum, barley, pulse, peas and lentils showing average to below average yields. Although the 2007 showed higher ‘above average’ production percentage response than the 2006, the two harvest years were similar in nature.
8. The vast majority of **Montana farm producers have the capabilities of storing most if not all of their grain production.**
9. Even with the diversity of yields, **most Montana farm producers experienced elevator pluggings multiple times during harvest** – due to what is perceived by the farm producers as lack of rail cars. In conversations with railroads – blame is leveled at the grain industry for not ordering cars in time. On the other hand, officials in the grain industry suggest that they are not the source of the problem. It is troubling that they railroads and grain industry appear to be shooting arrows at each other on transportation car supply, when the farm producers bear the cost of these delays. The good news, the elevator delays did not appear as significant as those experienced in the 2006 harvest.
10. With the multiple elevator pluggings, although most farm producers held onto to their crops and waited for the rail car shortages to abate

- rather than take their grain to more distant elevators, **many more this year sought out alternative outlets than in the 2006 survey.**
11. **Farm producers generally thought these delays and elevator pluggings were ‘about average’ and par for the course.** Clearly the delays were longer at the smaller (non-shuttle) elevators.



12. **When farm producers chose to utilize alternative elevators, they encountered increased unloading delays at more distant elevators**



13. **As the elevator system is being forced to larger, more rail efficient shuttles coupled with the loss of thousands of miles of rail branchlines in the state, the costs of transportation for gathering grain continues to shift from the railroads to the farm producers and the State and local governments.** This survey quantifies the patterns which show increased use of the State and local highway system (see item 6 above).
14. **The service levels seem to improve in 2007 over 2006.** The railroad is doing considerable outreach with farm producers and it

- appears that service level perception by farm producers improved in 2007.
15. This survey found the increased transportation costs associated with positioning grain at shuttle facilities may not fully cover the increased costs associated with getting the grain to that location.
 16. The results of this study and survey already show that farm-to-rail costs are continuing to increase while the railroads may be achieving their own internal operating efficiencies through railroad and grain company investments in large part paid for by the farm and public sectors. Some areas are experiencing truck hauls of over 100 miles one way to deliver grain to market elevator

