

# Montana Transportation Commission

January 26, 2012 Meeting  
Helena, Montana

## IN ATTENDANCE

Kevin Howlett, Transportation Commissioner, Chairman  
Barb Skelton, Transportation Commissioner (by proxy)  
D. Winterburn, Transportation Commissioner  
Rick Griffith, Transportation Commissioner  
Carol Lambert, Transportation Commissioner  
Tim Reardon, Director MDT  
Jim Skinner, Planning Administrator  
Dwane Kailey, MDT Engineering  
Kevin Christensen, MDT  
Dave Ohler, MDT  
Lori Ryan, MDT  
Kevin McLaury, FHWA

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

## OPENING – Commissioner Kevin Howlett

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

## Approval of Minutes

The minutes for the Commission Meetings of October 4, 2011, November 29, 2011, and December 13, 2011 were presented for approval.

Commissioner Griffith moved to approve the minutes for the Commission Meetings of October 4, 2011, November 29, 2011, and December 13, 2011. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## Agenda Item 1: Construction Projects on State Secondary Highway System - Yellowstone County

Jim Skinner presented the Construction Projects on the State Secondary Highway System in Yellowstone County. Jim said he would be presenting nine agenda items to the Commission. The first one is for a construction project in Yellowstone County on State Secondary 310

Yellowstone County is planning to design and build transportation improvement projects on the state Secondary 310 which is north of Custer, Montana about 50 miles east of Billings. There are two segments to the improvements they plan on making are a minor realignment and the other is in ditch clearing and realignment. The Yellowstone County projects will be funded with local funds using local labor. In general, the public supports this project. MDT would be involved in review of these improvements on the system. These improvements would be made in 2012.

*Summary:* The projects will be designed with input and concurrence from MDT staff to the extent practicable. On behalf of Yellowstone County, Planning Division staff

is requesting that the Transportation Commission to allow Yellowstone County to improve Secondary 310 through the projects listed below:

| Location   | Type of Work   | Estimated Cost | Construction Year |
|--|--|----------------|-------------------|
| Secondary 310 (S-310) approximately 1.3 to 4.5 miles north of intersection with Buffalo Creek Road | Clean ditches, minor vertical alignment of road (1.3 to 3.5 miles north of Buffalo Creek Road intersection). Realignment (3.5 to 4.5 miles north of above intersection). | \$146,000      | 2012              |

MDT staff recommends that the Commission approve these improvements to the state highway system pending concurrence of MDT’s Chief Engineer.

Commissioner Howlett asked if there was any additional right-of-way needed. Mr. Skinner said he did not know but would find out. Commissioner Howlett said he assumed the research had been done and the project cost would include that. Mr. Skinner said the above was an estimate of all project costs. He did not believe the design had been done the project at this time.

Commissioner Skelton moved to approve the Construction Projects on State Secondary Highway System – Yellowstone County. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 2: Construction Project on State Highway System – Carter Grain Facility – Carter MT**

Jim Skinner presented the Construction Project on State Highway System, Carter Grain Facility, Carter Montana to the Commission.

EGT,LLC, in a joint venture with Bunge North America, is planning to construct a high- capacity grain loading facility, capable of loading 110 car unit trains, adjacent to US-87 at RP 30.8, about four miles north of Carter in Chouteau County. The facility will directly access US-87, a National System Highway.

Adding a new access at this location, which will encounter a high number of truck turning movements, combined with the 70-mph speed limit on US-87 requires roadway improvements to preserve the safe and efficient operation of US-87. To mitigate the safety and operational impacts to US-87, EGT, LLC, will construct a left-turn lane, right-turn lane, and acceleration lane on US-87 at the facility approach location.

MDT’s headquarters and district staff concur with these improvements and provided guidance and oversight to EGT, LLC, during the development of the mitigation design.

The project is estimated to cost about \$1,050,000 and will be funded through a combination of private and state funds. It will use contract labor.

Listed below are the location, scope, estimated cost, and type of labor used:

| Location             | Type of Work  | Cost (estimate)     | Fiscal Yr. | Type of Labor |
|----------------------|---|---------------------|------------|---------------|
| Carter, US-87 (N-10) | Left-turn lane, Right-turn lane & Acceleration lane | Approx. \$1,050,000 | 2011       | Contract      |

*Summary:* EGT, LLC, is planning to construct roadway improvements on US-87 to address truck turning, safety, and operation issues at their high-capacity grain loading facility, north of Carter in Chouteau County.

MDT staff recommends that the Commission approve these improvements to the state highway system pending concurrence of MDT's Chief Engineer.

Commissioner Howlett asked if it was a contract that would be bid through the department. Jim said it would not be run through the State; EGT would let the contract and MDT would participate financially in the improvements. Director Reardon said there were several of these projects in that area. Apparently there have been some changes across the border in Canada that has had some impact on grain truck traffic. Burlington Northern has discontinued utilization of a lot of the spur lines up in that area. One of the spur lines in the Lewistown area was damaged during the floods and the trusses are unusable and may not be repaired any time soon so a lot of that local truck traffic is going to be diverted to this facility. The smaller grain facilities are being eliminated and most of the traffic is being sent to these large loaders. This is the first of three under construction right now.

Director Reardon said this is one of those chicken and the egg things because most of the traffic associated with this facility is going to be a result of the facility. I'm told the truck traffic during harvest at peak times could be 400-500 trucks daily in and out of this facility. A portion of the traffic is being diverted because there is nowhere else for these trucks to go. So the department has agreed to contribute a portion of the funding. We kept our finger in the pie by requiring concurrence from the Chief Engineer. We're certainly not going to turn these guys loose with a contract to just build it however they want to build it. They are still going to have to meet all the required specifications. The Chief Engineer and the District are going to have to approve the traffic plan. It could turn into a difficult project because the facility is under construction. We're hoping to get the construction completed before they start moving the truck traffic. It's complicated a little bit because the highway parallels an existing railroad that is still used although not frequently. There was concern on our part about what happens if we have a train blocking the road that leads into the facility on the other side of the tracks. My understanding is there is barely enough storage on that access between the highway and the railroad for one grain truck. There were concerns about backing them up on the highway. So we worked with them, they obviously needed the approval to go forward with their facility. The local area farmers who raise grain were very concerned that this facility not be delayed. We saw a significant safety hazard, some of which was not related to this economic development project. We agreed to contribute and monitor the contract at least to the extent that they have to build it to our standards – they have to have a traffic plan that protects the traveling public, and subject to the concurrence of the Chief Engineer on the design, and the District on monitoring the progress.

If you remember a few years ago they built a new plant just north of Great Falls and we knew there would be traffic problems and there was a three-fatality crash. Since then we've modified how we look at these things. We want to avoid that and get ahead of the curve with the increased truck traffic. When you start adding 300-400 trucks a day throughout the harvest, it's just an inherently dangerous situation. They understood our concerns. So our participation was to try to address what we perceived to be a safety issue that could not be 100% laid at their feet.

Commissioner Howlett asked who EGT was. Mr. Skinner said he didn't know what the initials stood for, but they've partnered with Bunge North America which is a larger corporation. It's a local group of investors; people who got together to move this project under that larger corporation. Commissioner Howlett asked if the company was doing the design work and MDT was approving it. Mr. Skinner said we have an agreement with this group that they must meet all of our design standards; we will review and approve the modifications. We will also be on site

during construction and review and approve the traffic control while they're doing the work. Commissioner Howlett asked if the traffic plan would look at things like speed limits and other things that would be applicable. Mr. Skinner said it would look at it during construction but it wouldn't look at changing the speed on the roadway. They will be coming out of Carter and getting up to speed and there would be a speed reduction during construction. Other than that it would be 70 mph.

Commissioner Griffith asked what the Commission was being asked to approve. Mr. Skinner said they were asking the Commission to approve the modifications to the System. Commissioner Howlett asked how it was going to get funded. Mr. Skinner said the project will be funded by private contributions; EGT is committed to 80% of the funds and MDT agreed to commit 20% of the funds. Commissioner Griffith said it didn't say that anywhere. Commissioner Winterburn asked if the agreement is that we will contribute one million dollars. Mr. Skinner said no. The way the funding would work is EGT would be responsible for \$800,000 and we would be responsible for the other \$200,000. Commissioner Griffith said it would be \$200,000 plus the time for the oversight. Mr. Skinner said yes. Commissioner Griffith asked where the \$200,000 would come from. Mr. Skinner said his understanding was that it would come out of state funded construction program. Commissioner Griffith said there is a lot on this agreement that isn't specified in the letter and we have an expectation of what we're voting on. Commissioner Howlett asked if he had sufficient information now. Commissioner Griffith said yes. He asked what would happen if it went over \$200,000. Mr. Skinner said there is a provision in the agreement. It was a little bit difficult dealing with these guys, so we talked about them funding the first \$600,000 and we would fund \$200,000 for the project cost and beyond that we would have a discussion; the goal was to keep it under one million dollars. According to the discussion I had with the District they felt the estimate was a on the high side for the work to be done so there was some cushion in that. Director Reardon said Mick Johnson believes the project can be completed for less than the estimate. We do have preliminary design from their designer that has been reviewed, some of which was rejected outright. So the District has worked with the designer. There have been a lot of meetings regarding this facility, it's really planned out. We can certainly give you a copy of the contract with the details.

This is one of those economic development things you're faced with addressing. It's not like a landowner came to you and said we need a brand new approach and ask us to give them the approach. We've have a System Impact process for a long time but this one is different because there is already an approach there. They bought the property on the other side of the tracks and they'll make money off it because the local agricultural community is stuck either trucking that stuff many more miles and losing money doing it or getting it to these loaders. We have three under construction in this area. These shuttle loaders are probably all we're going to have here –Carter has a facility but I don't know that it's been used for years. This one is on the other side of the tracks and they'll pick up all that local traffic.

Commissioner Griffith said I know you would protect the state's interest in the contract, it's just what was provided to the Commissioner was insufficient. Director Reardon said he could provide more detail to the Commission. Commissioner Griffith said you guys do the technical work but we, as the Commission, need to ask these questions when we're not certain. Director Reardon said in the future they could provide an aerial view. Commissioner Griffith said the dollar amount was the issue – a combination of state funds doesn't give us enough information to know what the combination was. Director Howlett suggested that MDT compile answers to the questions and bring them back to the Commission. Director Reardon said they would do that.

Commissioner Griffith mentioned speed on the project. The impact the facility down by Butte has on the Interstate when they are in season and then thinking about that road up there, I truly think something needs to be planned to make people aware

of the situation. I don't want Mick to design it on the cheap because we have to hit a target, I'd rather make sure it is safe. Three hundred trucks per day and some double trailer trucks will be a problem. So I would ask that they take a look at that. Mr. Skinner said he would carry that back into the discussions about the design for this.

Commissioner Griffith moved to approve the Construction Project on State Highway System – Carter Grain Facility – Carter. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 3: Montana Essential Freight Rail Loan – Port of Shelby Project**

Mr. Skinner presented Agenda Item 3 to the Commission. The Essential Freight Rail Loan Program is a low interest revolving loan fund for construction, reconstruction, or rehabilitation of railroads and related facilities in the state. The program is established by Montana Code 60-11-113 to 120.

Eligible applicants for loans under the Montana Essential Freight Rail Loan Program include railroads, cities, counties, companies, and regional rail authorities. Port authorities may also qualify, provided they have been included in the state transportation planning process. Eligible activities include projects to preserve and continue operation of viable railroad branch lines; and for the development, improvement, construction, purchase, maintenance, or rehabilitation of intermodal transportation facilities, branch lines or short lines, sidings, light density railroad lines, and rolling stock, including rail cars. Rehabilitation and improvement assistance projects require a 30 percent loan-to-value match. Facility construction assistance projects require a 50 percent match.

*Summary:* MDT has developed a loan agreement for a \$320,000 loan through the Montana Essential Freight Rail Loan Program. The effect of this agreement would be to provide 50 percent funds for construction of a rail siding serving the Port of Northern Montana. This is part of a much larger project funded, in part, through Tiger III grant funds for a Trans loading facility in Shelby.

MDT staff requests approval of a loan agreement for \$320,000 through the Montana Essential Freight Rail Loan Program for construction of a rail siding at the Port of Northern Montana.

Commissioner Griffith moved to approve the Montana Essential Freight Rail Loan – Port of Shelby Project. Commissioner Lambert seconded the Motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 4: Rail/Highway/Crossing Improvement – RR Xing – Pratten Street – Columbus, MT**

Mr. Skinner presented the Railroad Crossing Improvements request to the Commission.

MDT is requesting approval for a rail crossing improvement in Columbus. The proposed funding source for this project is the Surface Transportation Program Primary (STPP). STPP funds are used to preserve, restore, or reconstruct highways and bridges on the Primary Highway System.

*Summary:* MDT is asking the Commission to approve a railroad crossing improvement project on Pratten Street (P-78) in Columbus. This project will replace the existing rubber crossing surface with concrete. The total estimated cost for all phases is approximately \$74,000, to be funded through the Surface Transportation Program Primary.

Staff recommends that the Commission approve the addition of this project to the program.

Commissioner Lambert moved to approve the Railroad Crossing Improvements, RR Xing – Pratten Street – Columbus. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

## **Liquidated Damages Dispute with Prince Construction**

### **Kevin Christensen – MDT**

Kevin Christensen said Mike Sharp is here from Prince Construction to address the Commission regarding liquidated damages on JCT MT 7S. Commissioner Howlett asked Mr. Christensen to give the Commission some background information. Kevin said this project had a calendar completion date of October 15, 2010. It was overlay, seal, and cover. The contract was awarded to Prince Construction February 23, 2010. The Notice to Proceed was issued March 22, 2010. Work began on August 1, 2010. We came up to the August 31<sup>st</sup> date which is the last day that we allow contractors to perform seal and cover. Hertz Inc. had not reached that stage in the project. Mr. Sharp will provide more detail regarding that. Essentially the project didn't get chip sealed by that date. Beyond August 31<sup>st</sup> we don't let contractors chip seal on projects. History has shown us that we have a pretty poor success rate with chip seals if they are allowed to occur past August 31<sup>st</sup>. One reason is asphalt emulsion has a hard time curing with the low night-time temperatures so you're in danger of losing the chip seal. It is a pretty hard and fast rule and I won't pretend there aren't exceptions to that but they are project specific and unique.

So unfortunately Prince didn't get the project sealed and this was a calendar completion date. Contractually once the October 15<sup>th</sup> completion date hits, the contractor is into liquidated damages from that point forward until they get the project completed. They can't begin seal and cover operations until April 15<sup>th</sup> of the following year. So they'd be assessed liquidated damages every day up to the point where they can actually get out there which is weather dependent as well. So the time might roll around where they can get out there and chip seal but the weather might not permit them to do that.

So Mr. Sharp elevated this. It was a difficult situation for the department yet that was what the contract provided. So contractually we were bound to the contract. Through negotiations with FHWA and MDT upper management, we agreed to a Change Order that would have restructured the contract so that Prince wouldn't incur an exorbitant amount of liquidated damages. So essentially we chopped the project into Phase 1 to be completed by October 15<sup>th</sup> and that was everything but seal and cover and final stripping. Once Phase 1 was done, MDT agreed to suspend time. Time would begin the following year on May 1<sup>st</sup> which is actually the first day we allow contractors to chip seal. The Change Order was executed and signed by Prince. If we wouldn't have done that Prince have incurred \$577,000 plus in liquidated damages. So by elevating it and negotiating that through FHWA and MDT senior management, we were able to restructure the contract. It's really not a typical thing for us to do; in fact in that past there have been situations similar to this where we haven't done that. The following year rolled around, Prince began seal and

cover operations on June 4, 2011 and completed on June 12, 2011. It took them approximately eight days to do the work. The final epoxy striping was applied July 6<sup>th</sup> for a total of 54 days of liquidated damages at \$145,746.

Commissioner Howlett asked when they executed the Change Order, was there a perception of belief that this was the remedy? Kevin Christensen said not in his mind. This was a difficult situation and it was a negotiation between a contractor, FHWA and MDT upper management. Commissioner Howlett asked if everything would have gone the way it should have including the Change Order, would we be talking liquidated damages. Kevin Christensen said yes we would. We understood fully that cutting the contract into two distinct phases – Phase 1 which Prince completed by October 15<sup>th</sup> and Phase 2 started on May 1 – we knew that on day one, May 1<sup>st</sup>, they were into liquidated damages. Commissioner Howlett said the Change Order had the net effect of extending the contract. Kevin Christensen said that was correct. The way the contract was structured was Phase 1 was everything but the seal and cover and Phase 2 would begin May 1, 2011 and they would have zero contract days. Commissioner Howlett asked if you would not have done the Change Order, they would have been in default. Kevin Christensen said no. Commissioner Howlett said they would have been accruing lost days. Kevin Christensen said that was correct. Commissioner Howlett asked the value of the contract. Kevin Christensen said \$2.8 million.

### **Mike Sharp, Prince Construction**

Mike Sharp said Kevin was absolutely correct. We've always had a good working relationship with the department and I've got no complaints about that. Our primary complaint in this particular case is something that Kevin didn't describe. We were there on the 31<sup>st</sup> and we were ready to chip; we had the oil on site and we probably could have completed 70% of the job on that day with the materials we had on site. But we had just chipped in Culbertson South and we were already experiencing some chip loss. Those were much better conditions to chip under, it was 90 degrees. We applied the seal and we typically never get any chip loss. Well it started to come unraveled so I got nervous. On the 31<sup>st</sup> we had the oil sitting there, we were ready to chip, and the weather was marginal for chipping. I talked to the Project Manager and said I didn't see any sense in building a failure. He directed me to talk to Clay Blackwell, the District Construction Engineer in Glendive. I said I wasn't comfortable with building a failure and it was quite possible that might happen. So he elevated it to Mr. Mangle, the District Administrator at the time. They discussed it, they called Jim Jones, the Project Manager, and he said don't seal it. I sent the oil back at our expense and sent all the traffic control people home, and we paid for the traffic control. Then three to four days later Clay called me and said Helena would not support his decision and they were going to assess liquidated damages for the duration of the winter.

You can imagine how I felt at that point; I was pretty frustrated. So I called Kevin who discussed it with upper management and FHWA and negotiated the Change Order. Like I said my problem isn't the resolution because that was more than fair; they didn't have to do that and we certainly appreciate it. It's the communication on the project level – basically they directed us not to seal the project because they didn't want to risk a failure either and we'll work out the details later. That's the reason I'm here. I'm not disputing the resolution; I think that was more than fair. But on a project level, we were directed point blank by the Project Manger to not chip seal. Kevin's right, the date says August 31<sup>st</sup> but typically and historically if we start at the end of August, we typically finish the seal. So we were just going by what we had done in years past. Start on the 31<sup>st</sup> and finish on the 1<sup>st</sup>, sweep it on the 2<sup>nd</sup>, stripe it before the contract time is over, and then it's complete with no liquidated damages and everybody's happy.

The weather last fall was abnormal in August and there were a lot of failures across the state. The job at Culbertson's lasted until the warranty period and now it's a mess – probably a 50% chip loss. We were seeing the early indications that the chips were unraveling and that typically does not happen. I just didn't want to risk another failure and now it would appear that even at a reduced rate we're still going to pay \$150,000 for not building a failure. That's the only reason I'm here. MDT has always been good to us and us to them; it's a good working relationship.

Commissioner Howlett asked what date the discussion took place where you chose not to put the chips down. Mike Sharp said it was August 31<sup>st</sup>. Commissioner Howlett said between August 31<sup>st</sup> and October 15<sup>th</sup> there were no 70% days that you could chip. Kevin Christensen said I've been in this position for five years, and in those five years I've gotten several requests from Contractors to chip seal after August 31<sup>st</sup>. I've never allowed it. I think I approved it one time where the majority of the project had been sealed and it was hot and sunny – they had a day or less left and they did that on September 1<sup>st</sup>. But even with good weather, you're risking a poor seal and cover because of the night-time temperature. If it gets below 30 degrees at night during the curing period, you're going to lose the seal and cover. As I said before history has shown us that we've had a very poor success rate when we allow seal and cover to occur after August 31<sup>st</sup>. In fact, we recently changed our specifications to say if a contractor has all the work done except the seal and cover, and it's after August 15<sup>th</sup>, at their request we'll suspend contract time if they're not comfortable performing the seal and cover. Speaking to Mr. Sharp's remarks, we're looking at this strictly from a contractual standpoint. Contractually August 31<sup>st</sup> was the last day we allow Contractors to seal and cover especially given the weather conditions at the time. If the request would have come in, it would have been absolutely not. We were into September as Mr. Sharp indicated, the temperatures were pretty low for that time of year and it was not conducive to a good seal and cover. Again we have to go by the contract and that's what we did.

Commissioner Howlett said it seems to me that August 31<sup>st</sup> is the cut off. So that's the day they were there and were ready to go but it would have gone beyond August 31<sup>st</sup>. It seems to me that you should have been there a couple days earlier instead of the 31<sup>st</sup>. I think the Department, in good faith, did the Change Order that resulted in a significant reduction in what would have been assessed. So I think it's a fair resolution. Commissioner Griffith said you were issued a Notice to Proceed on March 22<sup>nd</sup>, what brought you to the point where you were up against August 31<sup>st</sup>. As I recall spring may have been a little wet but summer was beautiful. Mike Sharp said to be honest with you, we got greedy. We did some work on the front end that we didn't have on contract for Monty Weeden on Lewistown West. We got trapped there on a three week project; we were there for 10 weeks. We got 14 inches of snow three times. You know you can't get time back. So we had seven weeks in there where we had to cram that amount of work into the rest of our schedule and we were right up against it on the tail end. In August it started to rain – not a typical August by any stretch of the imagination. So we pushed everything back and worked as many hours as we possibly could, including seven days a week, we got there on the last day, the weather wasn't conducive to chipping and I didn't want to risk the failure. We perhaps could have started the day before but the weather was in climate then too.

Commissioner Griffith asked if they were issued a Notice to Proceed on March 22<sup>nd</sup> and work didn't begin until August 5<sup>th</sup> and you say that's because of greed. Mr. Sharp said when you are a company that functions like ours; we don't have multiple hot plants or multiple chipping crews. We've got one hot plan and one paving and chipping crew and we essentially do all the work. Our business philosophy is to take on as much work as you think you can schedule in a season and as long as you stay busy, you can't help but make a little bit. So that's what we typically do. Scheduling issues started at the beginning and carried on all the way through the end. We thought we had it and then it rained on the 28<sup>th</sup> and all of a sudden we weren't going

to get done. It had impacts to our entire schedule all the way through. I'm not making a lot of excuses but the project in itself had to be crushed and hauled 100 miles, we had to get there, we had to mill it, we had to pave it; it's a lot more than what this timeline indicates. It's not a simple commercial plant that goes out and paves and chips. There was material that had to be crushed, mixed designs to be developed. This was somewhat deceiving. Commissioner Griffith said it sounds like you overextended. Mike Sharp said perhaps but we take that gamble. My biggest problem is the department directed us not to chip it. Counter to what Kevin said, the year before we chipped on September 6<sup>th</sup> south of Lame Deer. Commissioner Griffith said that doesn't matter because as standard practice you weren't approving chips after August 31<sup>st</sup> except in rare occasions. Kevin Christensen said he would have to talk to Clay afterwards. Mike Sharp said it was a unique circumstance. We were ready before August 31<sup>st</sup> but the moisture wouldn't come out.

Kevin McLaury pointed out their involvement with this. I want to bring to light the discussion that when the contract was bid and executed it was under one form of contract. It's not our policy to typically change contracts because it then gives an advantage to the contractor that was selected and does not allow that same opportunity to the other contractors that bid. So we are typically not in favor of changing contracts; so this is a pretty big deal for us to allow this to move forward. We don't take changing contracts lightly once they've been executed. Again all pieces put together this is a fair settlement because if we had not agreed to change the contract, the liquidated damages would be significantly more. So whether or not the over-extension happened, the contractor did sign the contract and knew the rules of the game going into it and they failed to meet that. By allowing the change to lessen the severity of that impact but still allow us to recuperate some of the dollars the department expended because of the extended time is well within the bounds of the Commission.

Commissioner Howlett asked the Commission if they had any desire to do anything other than the recommendation of staff to let the damages stand. Commissioner Griffith asked Kevin about the change of contracts to reflect something different than what was in place. Kevin Christensen said the change order essentially restructured the contract time. Commissioner Griffith asked if the specifications were changed to create a different scenario if it happened this year. Kevin said no. We made the change that if a contractor didn't want to chip after August 15<sup>th</sup> we would suspend time – we made that change before this; three or four years ago. Commissioner Griffith asked where in the contract the liquidated damages were – is it on the paving part, did they not finish the paving part on time. Kevin Christensen said the liquidated damages began on May 1<sup>st</sup> and we started time on that day and Prince had basically the green light to finish the project with the seal and cover and final stripping. Commissioner Griffith asked if that was under the original start. When did they run out of time? Kevin said under the original contract they would have run out of time on October 15, 2010. Commissioner Griffith asked about the suspension of time on August 31<sup>st</sup>. Kevin said this project was a calendar date completion. The scenario where a contractor had a project and had everything except the seal and cover and it was August 15<sup>th</sup> and they didn't want to go forward with the chip seal, they would request us to suspend time and we would. That would be on a working day contract. Commissioner Lambert asked if their start date was May but it didn't start until June and completed in July, what happened to the month they were supposed to start? Mike Sharp said on May 1<sup>st</sup> it rained a lot and the emulsion supplier would not supply the material until the conditions were favorable for a successful seal. I wrote a letter requesting to start in June because you can't chip in May. In the real world if you start before the 1<sup>st</sup> of June you're asking for trouble; that's just the nature of a chip seal. That was just a date they picked because the specifications say you can begin on the 1<sup>st</sup> of May, but none of us do. Commissioner Lambert asked if they requested to do it later. Mike Sharp said they denied that request as well.

Commissioner Griffith added an editorial comment. Given Kevin's last explanation, if this were a calendar day project, I can see the time being suspended. There had to be some reason this was a calendar specific date that it had to be done. I don't know where this project was specifically at but we had one in Butte last year that was very tenuous because of all the businesses that were interrupted and disenfranchised because of the project. For the locals the calendar date was the final say. So I'm not inclined to change it because of that issue alone. I feel bad for you but I've been a contractor and been in the place you've been but that was a choice I had to make.

Director Reardon said one comment I heard this morning was in respect to the communication issues and I don't know that we've gotten to the heart of that yet. Maybe that's an internal MDT issue that we need to take a look at. I heard that the District made a decision and/or recommendation with Clay and the DA relative to the chip. Even though there was one day in August where they could have proceeded and if I heard correctly somewhere between 50-70% of the work might have been done but there was reluctance to pursue because of some failures on another job and a likelihood of similar failures on this job. So the District said no. It sounds like we had a lag time of about four days before Helena said they wouldn't support the DA's decision. I think we need to have some internal reviews of authority as to who decides those kinds of issues. It puts Kevin in a tough spot if they are two or three days behind the curve of the District's decision. Then the question becomes does the District have the authority to do that or not. It seems to me we need to take a look at how we deal with what happens in the field. We encourage this stuff to be resolved in the field and 99% of the time it gets resolved out there. That includes FHWA; they've always been available very quickly to sit in and often times offer resolutions we didn't think of and telling us no when we need to be told no. The lawyer in me thinks there may be some other issues we need to take a look at.

Mike Sharp said that is the heart of the issue. I'm not necessarily here about the money; it's the breakdown in the system that's a problem. Commissioner Howlett said there has been some sunlight shed on an area that needs some internal review and I trust the Director and his staff will address that.

Commissioner Howlett said having heard no willingness on the part of the Commission to alter the recommendations, the liquidated damages will stand. We appreciate you coming forward.

### **Agenda Item 5: Intersection Improvements – Glendive District Fairview Intersection Improvements**

Jim Skinner presented the Intersection Improvements in the Glendive District to the Commission. The city of Fairview, located along the North Dakota/Montana border (near Sidney), is experiencing a dramatic increase in traffic due to the expansion of oil-related activity in the area. As a result of the exploration and development of the Bakken oil field (in Eastern Montana and North Dakota), a significant amount of commercial truck traffic has begun utilizing Montana 200 (P-20) through Fairview.

Since that route serves as the city's main street, this has created significant traffic safety concerns within the community, particularly with regard to pedestrians attempting to cross Montana 200.

*Summary:* MDT is requesting Commission approval of a project located in the city of Fairview to install traffic signals at the intersection of 9<sup>th</sup> St./MT-200 (P-20) and 6<sup>th</sup> St. The project will also improve the intersection of 9<sup>th</sup> St./MT-200 (P-20) and 1<sup>st</sup> St./S-201 so that it can better accommodate truck turning movements.

The total estimated cost for all phases is approximately \$764,000 with funding coming from a combination of Surface Transportation Program–Primary and the State Funded Construction Program.

Commissioner Lambert moved to approve the Intersection Improvements – Glendive District, Fairview Intersection Improvements. Commissioner Winterburn seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

**Agenda Item 6: Enhancement Projects on MDT Right of Way  
Sidewalks – SE Browning  
5<sup>th</sup> Street West ADA Ramps – Billings**

Jim Skinner presented the Enhancement Projects on MDT Right of Way to the Commission. The Transportation Commission approves Community Transportation Enhancement Program (CTEP) projects that are located on or adjacent to state-designated streets and roads. CTEP projects are funded with the enhancement set-aside of the Surface Transportation Program, which is allocated by population to Montana’s local and tribal governments. Communities select projects to fund with their allocations and provide the required non-federal match. The program is based on an agreement between MDT and Montana local and tribal governments.

MDT is requesting Commission approval of the following CTEP projects:

1. **Sidewalks – SE Browning:** The Blackfeet Reservation is proposing a project to design and build approximately 5,000 feet of 5-foot-wide concrete sidewalk incorporating ADA features at the following locations in Browning:
  - Along the east side of Piegan Street between 2<sup>nd</sup> Ave. SW and 7<sup>th</sup> Ave. SW.
  - Along the north side of 7<sup>th</sup> Ave. SW between Piegan St. and US-2/89 (N-1).
  - Along the east side of 1<sup>st</sup> St. SE between 7<sup>th</sup> Ave. SW and 8<sup>th</sup> Ave. SW.
  - Along both sides of 8<sup>th</sup> Ave. SW between Piegan St. and 1<sup>st</sup> St. SE.
  - On the west side of US-2/89 (N-1) from 8<sup>th</sup> Ave. SW, north for approximately 780 feet.
  - On the east side of US-2/89 (N-1) from 7<sup>th</sup> Ave. SW, north for approximately 800 feet.

The total estimated cost for all phases of this project is approximately \$225,000.

2. **5<sup>th</sup> St West ADA Ramps – Billings:** The city of Billings is proposing a project to design and install approximately 115 ADA ramps at street intersections along 5<sup>th</sup> St. West (U-1015) between Montana Ave. (U-1020) and Alderson Ave. The project will replace old, noncompliant ramps and install ramps where they do not currently exist.

The total estimated cost for all phases of this project is approximately \$227,000.

*Summary:* MDT is requesting Commission approval of two CTEP projects: The first project would design and build approximately 5,000 lineal feet of sidewalk including ADA features in Browning at six locations. The department route affected by this project is US-2/89 (N-1). The total estimated project cost is approximately \$225,000 for all phases. The second project would design and install approximately 115 ADA ramps at intersections along 5<sup>th</sup> St. West (U-1015) between Montana Ave. (U-1020) and Alderson Ave. The total estimated cost for this project is approximately \$227,000 for all phases.

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

Commissioner Skelton moved to approve the Enhancement Projects on MDT Right of Way, Sidewalks – SE Browning & 5<sup>th</sup> Street West ADA Ramps – Billings. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

### **Agenda Item 7: Intersection Improvements – Sidney Signals West Holly St – Sidney**

Jim Skinner presented the Intersection Improvements in Sidney to the Commission. The city of Sidney is experiencing a dramatic increase in traffic due to the expansion of oil-related activity in the area. As a result of the exploration and development of the Bakken Oil field (in Eastern Montana and North Dakota), a significant number of commercial trucks have begun utilizing MT-16 through Sidney. As a result of this increased traffic, two intersections on West Holly Street are experiencing operational difficulties. At present, the intersection of West Holly and Lincoln meets warrants for a new signal. Further, it is anticipated that West Holly Street and 22<sup>nd</sup> Avenue NW/Airport Road will meet warrants once analysis for this intersection is complete.

*Summary:* MDT is requesting Commission approval of a project to install traffic signals at two locations on West Holly Street (N-62) in Sidney. The first project area will be located at the intersection of West Holly Street and Lincoln. The second project area will be located at the intersection of West Holly Street and 22<sup>nd</sup> Avenue NW/Airport Road. The proposed funding source is the National Highway System Program, and the total estimated cost is approximately \$840,000 for all phases.

Staff recommends that the Commission approve the addition of this project to the program.

Commissioner Griffith asked if there was a bypass that goes through Sidney. Jim Skinner said he was not aware of a bypass through Sidney. The Department put a truck route through Sidney some time ago. Commissioner Winterburn said there wasn't a bypass but the city of Sidney would like us to put one in. Commissioner Griffith suggested putting up those reoccurring message signs to steer trucks to another route. Commissioner Winterburn said there was no other route to Sidney. Commissioner Howlett said there was a lot of exploration happening with the Bakken and we're seeing the effects of that. Maybe Director Reardon might have an opportunity to talk about some of those things during your discussion time.

Commissioner Lambert moved to approve the Intersection Improvements – Sidney, Signals West Holly St – Sidney. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

### **Agenda Item 8: Highway Safety Improvement Program**

Jim Skinner presented the Highway Safety Improvement Program to the Commission. MDT is asking the Commission to approve 16 safety projects to be funded through the Highway Safety Improvement Program (HSIP). The overall purpose of HSIP is to reduce traffic fatalities and serious injuries by implementing infrastructure-related safety improvements. Funding distribution is prioritized according to benefit/cost ratios at locations where feasible countermeasures to crash trends are identified.

The projects on the attached list meet the criteria set forth for HSIP-funded projects. These projects will be let for construction individually. The estimated total cost for

all phases is approximately \$7,473,000. Combined, these projects will provide safety improvements for approximately 341 miles of federal-aid highways.

*Summary:* MDT is requesting Commission approval of 16 safety projects to be funded by the Highway Safety Improvement Program. Attachment A lists the project names, locations, scope, and cost. The total estimated cost for all 16 projects is approximately \$7,473,000.

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

Commissioner Howlett asked if the projects were bought forward by the Districts based on crash studies and the number of accidents. Jim Skinner said these projects come from the Traffic Safety Bureau. Dwane Kailey said these projects are actually nominated by the Traffic Safety Bureau in Helena. They take a look at the statewide roadway system and they also take input from local agencies and Tribes. If a Tribe, City, or County has an area of concern, they send the information to the Department and we go in a look at the traffic trends in their area and/or look at the statewide system. We're looking for trends whether it's fatalities, severe injuries; we're looking for certain trends. We do a cost benefit analyses and look at what potential mitigations we can do for those accidents. What's the cost of the improvement versus the benefit which is reducing the cause of those accidents? Commissioner Howlett said he didn't question whether any of these are priorities but in his own district there has been quite a stir with the fatality in Hamilton at Skalkaho and US 93. The county requested lighting for that intersection and we agreed to do that. Was that separate and above this? My understanding is there would be the pool of money that would support that. Dwane Kailey said he would double-check on that. I'm not sure how that is being funded but my understanding is that lighting project is moving forward.

Commissioner Griffith moved to approve the Highway Safety Improvement Program. Commissioner Winterburn seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

**Agenda Item 9: Bicycle/Pedestrian Striping (Phase 3)**

Jim Skinner presented the Bicycle/Pedestrian Striping (Phase 3) to the Commission. The Missoula Metropolitan Planning Organization has prioritized Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds to a project to stripe bicycle lanes and pedestrian crossings within the city. Some of these crossings are on state-designated streets and roads. The Missoula Transportation Policy Coordinating Committee approved this project, and it is included in the Missoula 2011 – 2015 Transportation Improvement Program. The total project cost is capped at \$48,500 (\$41,991 federal). The following table lists the potential work locations:

| Department Name | Signed Route                   | Beginning RP | Length |
|-----------------|--------------------------------|--------------|--------|
| P-7             | Brooks Street                  | 93.67        | 0.85   |
| U-8107          | Stephens                       | 0.00         | 0.27   |
| U-8102          | S. 3rd Street                  | 2.96         | 0.38   |
| U-8102          | S. 3rd Street                  | 3.46         | 0.21   |
| U-8113          | Higgins                        | 0.15         | 0.38   |
| U-8116          | Mount                          | 1.02         | 0.25   |
| U-8120          | Higgins to Bow                 | 3.23         | 0.75   |
| U-8124          | Broadway to Reserve            | 0.00         | 0.89   |
| U-8128          | Broadway                       | 2.70         | 0.67   |
| P-7             | Higgins @ S 6 <sup>th</sup>    | 94.55        |        |
| P-7             | Higgins @ S 5 <sup>th</sup>    | 94.44        |        |
| P-7             | South 6 <sup>th</sup> @ Gerald | 94.20        |        |

| Department Name | Signed Route                | Beginning RP | Length |
|-----------------|-----------------------------|--------------|--------|
| P-7             | Madison @ Front             | 95.20        |        |
| P107            | 5 <sup>th</sup> & Gerald    | 0.40         |        |
| U-8105          | Russell @ Btrt Trail        | 1.70         |        |
| U-8105          | Russell @ School            | .22          |        |
| U-8105          | Russell @ YMCA              | 0.49         |        |
| U-8113          | Higgins @ S 4 <sup>th</sup> | 0.083        |        |
| U-8117          | Higgins @ Agnes             | 1.356        |        |
| U-8117          | Higgins @ Brooks            | 0.00         |        |
| U-8117          | Higgins @ University        | 0.37         |        |
| U-8121          | Arthur @ Beckwith-E         | 0.57         |        |
| U-8128          | Broadway @ Madison          | 3.39         |        |
| U-8128          | Broadway @ Orange           | 2.80         |        |

*Summary:* The proposed Missoula Bicycle/Pedestrian Striping project is an eligible CMAQ activity. The new striping will define bicycle and pedestrian facilities on the roadways and encourage people to use alternate modes of transportation resulting in fewer pollutants. The total estimated project cost is approximately \$48,500.

Staff recommends the Commission approve the addition of this project to the program.

Commissioner Griffith moved to approve the Missoula – Bicycle/Pedestrian Striping (Phase 3). Commissioner Winterburn seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

### **Agenda Item 10: Letting Lists**

Duane Kailey presented the Letting Lists for January 26<sup>th</sup> through July 12<sup>th</sup> to the Commission. There is a discussion item on these for your information. If you recall a few years ago we changed our Letting system. It used to be one Letting per month with the exception of October which was always reconciliation of the federal system. We changed that to two Lettings a month. However, in looking at MDT's goals and what works best for the contractors, we are looking at modifying that again. Essentially we want to look at having two Lettings in the months of January, February, March, April, and May. Then go back to a single Letting for the remainder of the year and again omitting any Lettings in October. We've had the conversation with the MCA and they appear to be supporting it.

We didn't get this done until after request for Agenda Items so it is not presented here today for your approval or review. I just wanted to let you know in case you get communications from contractors. One reason is because we have a goal of trying to get all the contracts out and we get 75% those out very early in the year by April, so we believe the dual Lettings in those months are more appropriate. As you progress towards the end of the fiscal year, the number of projects should be diminishing. We've got some lag because of ARA and the delay in receiving the federal funds this year. We're still very tied to what Congress does, so this year's going to be a little odd and we're planning on that getting rectified but time will tell. As soon as we can get back to a normal year, we anticipate Letting the majority of projects in the first part of the year, getting the contractors out there and on the ground early in the year rather than having later Lettings.

Commissioner Howlett said he didn't feel anything would be normal before the next Presidential election. It would be appropriate if you would propose some dates and let this Commission adopt those dates in terms of the Lettings. Everything is tenuous based on congressional appropriations but if that's what works best for the contractors and the construction season, then we don't have any problem with that. It would be appropriate for you to bring this back and we'll adopt it.

Dwane Kailey said the larger contractors have crews that do their estimating and they are very happy with things; the dual Lettings don't affect them too much. The smaller contractors have an estimator and a superintendent, so during the summer time they are a lot more challenged with the dual Lettings because they are doing work. That's what we've heard from the contractors. Again going to the single Lettings over the summer months allows those smaller contractors the ability or the superintendent/estimator to do the estimating and still be able to go back out on the projects. Commissioner Howlett said it might have some impact on the number of Conference Calls the Commission needs to have to approve projects. Dwayne Kailey said it was his plan to have that Agenda Item prepared for you for the next Commission meeting.

Commissioner Griffith asked Dwane to check on Amherst to see what the ready date was. I thought we had an earlier ready date on that project. My concern is getting into the situation with the seal and cover. There isn't much project there so if you award it June 21<sup>st</sup> it's almost with the expectation that it is going to be hard to get done. Dwane said we've had some challenges with brand new paving jobs and chip sealing them in the same year especially in that short time frame between paving and chip sealing. One of the things our staff has been looking at is setting the time in such a way so it can get paved in one year and we're ok with and in fact we encourage you not to chip seal until the next year. Commissioner Griffith said if that was the case, then it was fine.

Commissioner Lambert moved to approve the Letting Lists. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item 11: Certificates of Completion October & November, 2011**

Dwane Kailey presented the Certificates of Completion for October and November, 2011, to the Commission. They are presented for your review and approval. If you have any questions on any of these projects, please feel free to ask.

Commissioner Griffith moved to approve the Certificates of Completion for October and November, 2011. Commissioner Winterburn seconded the Motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item 12: Project Change Orders October & November 2011**

Dwane Kailey presented the Change Orders for the months of October and November, 2011. One of the things you will see in the month of October is the rather large values in the Change Orders. That is not normal. Those values are coming out of the Glendive District and there is a very good reason for that. One of the issues we've run into is the Bakken Oil Field and the substantial increase in the traffic, predominantly truck traffic. We had two projects out there that were under construction but when we started looking at the ADT and the traffic we designed these roadways for versus what we're actually experiencing, we recognized that the design life was being significantly reduced. While under construction we initiated the Change Order with the contractors to essentially beef up or strengthen the typical section on these roadways. Obviously it costs a fair amount more money but we

believe that is an appropriate response to the impacts we're seeing from the Bakken Oil Field. With that we present the Change Orders for your review and approval.

Commissioner Howlett said we need to have a discussion about the Bakken situation. We've dealt with it numerous times today. Is it confined to the Sidney Richland County area or are we looking at it moving west? There are a number of things we need to ramp up for. Director Reardon said it wasn't confined to Sidney and Glendive. It reaches to Great Falls and even west of Great Falls in some areas. We are seeing today that drilling leases and exploration opportunities are being afforded in virtually the north half of the state all the way to Glacier Park. How many of those actually get drilled for oil and/or gas who knows but the leasing is out there. The President has indicated he intends to open federal lands a little bit. The candidates for President on the other side of the isle have indicated support for opening up all federal lands. So it's a wide-open opportunity in Montana all the way to the Canadian border. We're starting to see a lot of companies come in and purchase those opportunities through leases.

The immediate impacts are just that – they are immediate. The Change Orders Kevin just talked about reflect what I suspect is an anecdotal response at this time. The Planning Division has initiated studies and is gathering data to forecast where we need to start focusing our energies. Obviously Dwane's reference to truck traffic is the big hurdle; they put a lot of pressure on the system. North Dakota on US 2 closed their scale house because they had so many trucks backed up that it basically stopped traffic on the highway. Now you have trucks coming in from North Dakota that haven't been checked and they are coming into Montana where they are going to get checked. The statistics are mind-boggling at what's happening in North Dakota. We've been told by some folks in the industry that Montana should not expect similar type numbers. There is some research that says in some areas there are 25,000 truck movements per day in certain portions of western North Dakota. That's a lot of truck traffic! It's not just the drilling rigs it's all the support and maintenance. An article I read talked about the changes in the way they drill has added to the need for trucks. Fracking, which I won't pretend to understand, requires a tremendous amount of water and other chemicals that are hauled by truck. There are some indications that some of the rail activity might pick up to see if they can get some of that business. A lot of those rail lines haven't been worked on for a long time. We have initiated the project through Lynn's shop; we've got data from North Dakota; we have a new DA in Glendive and he is taking the brunt of this right now. He's heard from every County Commissioner, Legislator, neighbor; Commissioner Lambert is probably getting phone calls on a regular basis from everybody wanting to know what you can do to help.

Fairview, Montana, which is a very small town, went from a few trucks per day to 2,000 trucks per day. They are just non-stop, 24/7 and they don't take a break. They are only making money when they are working so they just roll. They are going in full and coming out empty. So that exploration is significant on virtually every facet of those communities – it's not just the highways. Other state agencies that I've been visiting with have been impacted. The employment offices are certainly seeing a lot of impacts. A lot of people think they can just head to North Dakota and Montana and they'll hire you before you get out the door. Those things simply aren't holding true. The social impacts associated with no housing, we're hearing amazing stories. Dwane mentioned yesterday that he's aware of one instance where a local farmer is simply charging \$800/month just to put your camper on his property. He's not offering any service, just to park it there. We've had some difficulty finding housing for our own employees. We actually purchased a trailer for a maintenance guy to go to Baker. They can't afford to pay the rates that the oil field people can pay. The impacts are broader than just the highway. The medical systems around there – some

of these small clinics that see a dozen people a day will start seeing a lot more. People who don't get jobs are still going to need places to stay and a place to eat. So I think you'll see those kinds of impacts.

From our perspective it's really difficult – you get all the forecasts and gather all the data and put it together and make best guesses, and you still have some funding constraints. We have statutory funding constraints as to where the money goes in the financial district laws on the Primary System. We have some limitations on what happens on the Secondary System and how that money gets dispersed. Local roads and county roads are at a greater risk than our roads. Most of them are gravel roads. They usually have small bridges that aren't capable of handling some of the weights they are starting to see. Our Off-System Bridge Program might start seeing some requests that we simply can't meet. You don't want to over build; you don't want to build a system that you anticipate will be needed for the next 50 years, only to have the boom-bust cycle which seems to follow this exploration, and leave you with an expenditure that maybe isn't the wisest use of money. Couple that with the limitation that right now we don't know what the Federal Aid Program is going to be. We have a great Red Book; you've already past it. It's designed, intended, and developed using the best possible information we can to spread all that money around the state the way the law requires. Nobody is questioning the need for any of the projects. What's happening out there is a compounding problem.

The federal program looks like it's going to run to the end of March and now the Secretary is conceding that the chances for any sort of long-term solution in the next 60 days is pretty remote. We will more than likely end up with an extension for this calendar year. After the election who knows what the new Congress is going to want to do. The Senate has passed a two-year bill that is basically the current level with some funding gaps. The House is introducing its version of the bill today. I've been asked to participate in a conference call this afternoon where the House staff is going to explain the nuances of what the legislation is going to look like. It's a five-year bill with totally different funding. They have details that are significantly different than what the Senate put together. The probabilities in the next 60 days of them getting together to agree on a bill that gives states the ability to plan is not very likely. I'm confident that the money won't dry up on April 1<sup>st</sup>. There will be some bill and it will probably look a lot like we have right now. One bright spot is Congress just passed the 23<sup>rd</sup> extension of the FAA funding with an agreement that this is the last one because they've worked out a permanent bill. Twenty-three extensions! The Highway Program is on its 8<sup>th</sup> extension. It has been very difficult to plan anything! When I look at what's happening in eastern Montana and I expect that it will be a problem for several years as to where the money goes. The Change Orders and the Safety Improvements you talked about in Sidney and those areas, the DA up there told me there are times during the day you can't get on the highway because the traffic is full in both directions. People are finding that all the benefits of this money coming into their communities are not without some detriment. It's a difficult issue.

North Dakota's system is a lot different but their Legislature just took \$800 million out of these oil revenues and put \$400 million into infrastructure – not just highways but water and sewer. They put the other \$400 million into social needs and impacts. Where are you going to house them; whose going to take care of the medical needs, how are you going to handle all that stuff? Come next January I wouldn't be surprised to see our Legislature looking at some of those issues. I know the other agencies are starting to do their own research and we will exchange information. That's the easy part; it's the solution part that's the hard part. There's obviously some boom to the local communities – grocery stores, restaurants, gas stations, etc. These guys get paid a lot of money and when they get off their shifts, they are going to come to town and spend it. But it also brings other complex social issues in terms of

law enforcement. North Dakota had a consortium of law enforcement people that recently met to discuss the issues like recruiting officers, recruiting drivers, recruiting staff because they can't compete with this private industry oil money. Truck drivers can make \$100,000 per year using their CDL hauling for the oil companies versus our maintenance drivers who make \$18 per hour. That's a tough competitive market up there. We've lost some drivers; the last I heard it was about a dozen so far.

We're trying to get ahead of it as best we can. At some point in time not too far down the road, we'll try to go down and stay in Miles City because there's no room in Glendive. We'll invite Kevin along and if our counterparts from North Dakota would be available maybe they would share some ideas on how they are addressing things and what Montana might be able to do to get ahead of it. It's a good news/bad news thing. It's great for the economy obviously but it has some down side to it. If we don't get hit as bad as North Dakota, that would be good thing in terms of impacts to the highway system. It's going to be bad enough. On top of that sooner or later it sounds like the Keystone Pipeline is also going to be running through a portion of eastern Montana which is directly related to being able to tie into the development out there. That brings with it two or three 600-person man-camps to come in and build it. Again more impacts! Not so much to the highway because once they get there they stay there but again you've got housing, water, sewer, food, and medical and all that goes along with that. Lots of good stuff; don't get me wrong. The development in that part of the State – back in the 80's I spent six months in Glendive running a law office and it was a boom time; overnight millionaires. Farmers and ranchers who had been scratching a living out the land literally became overnight millionaires. When those companies come in, they just write you a check for the mineral rights; they know the money is there and they take it. Some guys buy a \$600,000 Combine and some just say "I'm done." It's still happening out there. Commissioner Howlett said, for the Commissioners whose districts may be affected, I would encourage you to be a part of those discussions as well. You are the conduit to the people that have issues about highways and transportation and the more you're involved in it, the healthier it will be for all of us to make decisions.

Commissioner Griffith moved to approve the Change Orders for October and November, 2011. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

### **Agenda Item 13: Public Comment**

There was no public comment made.

### **Agenda Item 14: Liquidated Damages**

Dwane Kailey presented the following Liquidated Damages.

| Project ID         | Project Desc                      | Contractor              | Disputed? | LD Days | LD Amount  |
|--------------------|-----------------------------------|-------------------------|-----------|---------|------------|
| NH 23-3(14)109     | Hammond - SE                      | Century Companies       | NO        | 39      | \$ 105,261 |
| ARRA 1031(11)      | Shiloh Road Corridor - Billings   | Knife River - Billings  | NO        | 6       | \$ 20,130  |
| IM 1011(6)         | SF069 Signal Frontage Rd & Zoo Dr | Colstrip Electric       | NO        | 8       | \$ 9,352   |
| NH 7-1(125)0       | Lost Trail Pass                   | Riverside Contracting   | NO        | 2       | \$ 3,196   |
| IM 94-3(61)116     | Hathaway E & W (WB)               | Riverside Sand & Gravel | NO        | 4       | \$ 8,880   |
| STPS 322-1(5)0     | Jct MT 7 - South                  | Prince Inc              | YES       | 54      | \$ 145,746 |
| ARRA-IM 94-1(68)24 | Pompey's Pillar-Waco Interchange  | Prince Inc              | NO        | 14      | \$ 46,970  |
| ARRA 27-1(9)2      | Structures NE of Ekalaka          | Franz Construction      | NO        | 1       | \$ 2,699   |

The Commission did not need to take any action.

Liquidated damages stand.

## **Commission Discussion**

### *West Yellowstone Speed Zone*

Director Reardon said back in 2005-2006 the Commission was asked to address the risks created by the wandering Buffalo coming out of Yellowstone Park in the winter. One of the solutions was to reduce the speed limit from November through February of that year. It was approved by the Commission. Since then the Commission has annually installed signs at the same location reducing the speed. There are a couple of issues that need to be addressed regarding that. We've never truly had an appropriate speed study done during the period of the migration of the Buffalo. There is no question when they are out on the highway, especially at night and they come in the hundreds, it's a tremendous hazard to motorists. During the day they are still a hazard but the visibility difference doesn't warrant reducing the speed. For the last six years the Department has simply done it. Typically at the request of the Save the Buffalo environmental groups as well as different constituencies that see and perceive the danger associated with it. The downside is we've never done the speed study. It was originally a one-year shot from the Commission. So Dwane and his folks brought it to my attention and about a month ago I received a call from one of the local people asking when we were going to put up the signs. At that time the Buffalo weren't moving and the weather hadn't turned so they were not getting out on the road; they were pretty well confined in the Park. We went ahead and put up the portable message signs and I visited with Jeff Ebert and told him to go ahead and put the speed limit sign out but we should make it an advisory sign at this point in time.

Here's my concern: I think it's appropriate to have a reduced speed at least during a portion of the day – maybe 45-50 mph at night and maybe during the day but we don't have any studies to tell us one way or the other. I've talked to Dwane and the District to see if Gallatin County would request a speed study. Jeff contacted the Commissioners and they declined. Politically they felt it was a little bit of a hot potato. There are some down there who don't believe a speed reduction is warranted. I don't know what the crash data shows, if anything. I don't know if it differs between the daytime and nighttime.

We have the authority to go ahead and initiate a study on our own and we're going to do that; I think it's appropriate. We need to find out what we should be doing down there and get back to you for a seasonal permanent on-going speed limit. That makes sense given the traffic, given the crash data, and given all of the information that we can gather for a speed study. There is a provision in the statute, not the usual one; there's another statute; MCA Section 61-8-303 refers to a special hazard and it doesn't require a speed study in order to identify a special hazard to reduce the speeds. I'm going to utilize that because I think it's supportable to have the Department do that in this instance. In any other instance of a special hazard like a flooded road, we would not likely try to call the Commission together to have you approve a study.

At best this is going to be temporary. We're already through January; it's all weather dependent on how soon the Park Service can move the Buffalo back into the Park once the weather breaks. I don't know much about Buffalo but what I do know is they go where they want to go. I wanted you to know what we were doing because you may get a call. We do have the signs up; we want people to be aware and be cautious of what's going on down there. The message boards are visible at night.

They're up and hopefully we won't have any incidents. I think we should put people on notice that they ought to slow down because there are big hairy slow moving things on the road out here at night and you don't want to hit them. That message may be too long; by the time they read it they would have hit the Buffalo. So we'll go ahead and do the best we can.

We should be look at adopting something that seasonally makes this adjustment so the next Administration doesn't have to come back here looking for changes on an annual basis. It just makes sense to me. If we have to do it statutorily, I certainly would be willing to look at that too and visit with the Governor if we thought it was a good idea. I believe a speed reduction is appropriate and we'll use the hazard provision in 303 for an out. If we get a good speed study done this winter, we'll be back to you in March asking you to take action on it. Commissioner Howlett asked how you get a speed study done when you have a reduced speed. Director Reardon said they'd be looking at crash data to start with – seasonally in different months of the year. That will give us one point. But you're right; if they're already slowing down and still hitting the Buffalo then it's not the speed limit that's the problem. But we've got to be able to put some justification together to back that up. I don't know what happens if you go through a study for an entire cycle of the pattern of the Buffalo and come up with zero crash data. There's a retired law enforcement officer who lives down there who believes that is what you're going to find.

Commissioner Griffith said one of the things I've seen over the years on the Commission is a consciousness about things other than just vehicular traffic. We take into consideration wildlife, development, pedestrians, and livestock. All those things come into play. With a great sense of pride, I talk about wildlife crossings and that we want to make sure we are trying to stay balanced with some of the demands out there. Whether it's Elk in route to Ennis or Buffalo or Sheep along the Flathead River, there are numerous places in this State where this comes into play. Those are special conditions that warrant some reduction in speed. So I applaud you; I think it's appropriate that you are doing that. From my personal perspective think it is the appropriate thing to do. Maybe we should be looking at a broader scope that would allow this Commission or the Department acting upon this Commission's approval to go ahead and do those things. It is a situation where we're asked on an annual basis to slow people down for the Sheep or the Elk or whatever it might be. That just makes good sense. Thank you.

Director Reardon said he would report back when they got some information. One of the ironies is people go down to see the Buffalo. Commissioner Griffith said that it is a bit different than the issue with the Sheep. The Sheep are almost to the point where they need to be a protected species. Any time in broad day light going 35 mph you can kill eight Sheep, something is wrong with the equation. Usually it is the driver. But it also leads back to us and the awareness for them. I applaud doing that; I think it's the proper thing to do. I'm telling you whether you're in the Park or out of the Park, the Bison like the road. They walk on the road in the Park – that's their pathway to get to and from places. So it's not just outside the Park you encounter problems. But the speed limit is 35 mph all the way through the Park so you have the opportunity to make that correction easier.

Director Reardon said we have an agreement with Deer Lodge County to address the maintenance on that section of road west of Anaconda where the Sheep have been gathering. The agreement was that the county would maintain that section of the road and they would use sand that had not been mixed with salt which was an attractant for the Sheep to come down to the Highway. Unfortunately during a storm a few weeks ago Deer Lodge County simply couldn't keep up so we had our maintenance crews go through there. Unfortunately it turned out our guy sanded the road and used our regular mixed material. It's a dangerous road and you can't leave it unsanded. We have since visited with the county and decided that we'll take over that section and have a separate stock pile that is not mixed with salt. We will dedicate a

truck to use the material that does not have that blended material in it from the city limits west to a certain point. Our guys are coming from the shop anyway on the east end of town and if we have the material available we'll just take care of it. The Sheep are out there; they go down toward the River so they are there no matter what; we just need to try and keep them off the road. Commissioner Griffith said those are some unique solutions. At the public meeting someone asked why we don't just dump a load of salt back away from the road. I understand not creating a worse situation.

Commissioner Griffith went back to an earlier point for the need to look at what is going on up in Baker. On US 93 we looked at the animal crossings and I'm not sure if this would work but there may be a physical improvement that might help that situation. I don't know if you guys looked at that. Director Reardon said there were so many approaches and so many access points. There had been some discussion about fencing to try and coral the critters in a certain area but the fencing option didn't seem pragmatic given all the gates you'd have to put in. Commissioner Griffith said the water is on one side of the road and the habitat is on the other – that's the bottom line.

Commissioner Lambert said we should look at seriously drafting legislation so that it covers incidence like part-time hazards. It's always smarter to be covered by law. I think we should draft some legislation. Director Reardon said within the last two weeks they received their package from the Office of Budget and Program Planning which is the kick-off point for putting together agency budgets and eventually the Governor's budget and any legislation that agencies believe should be passed. That would be one we could put on the radar for discussion. It makes sense to me that there is some appropriate means if we are going to put up a special speed restriction even on a temporary basis that law enforcement not be hamstrung in their ability to enforce it. It has to be reasonable and it has to be necessary. There is a concurrent burden on the agency to show why you need to do it other than "we think it's a good idea."

Director Reardon let the Commission know that had filled the Human Resource Administrator position. We hired a gentleman who was the HR Department head at the Department of Labor and Industry here in Helena. He has 18 years of state service plus some private service. His name is Brent Ravey; he's been on board two weeks and we're happy to have him. He is relishing the role and the challenges we have here and I'm looking forward to some significant improvements for our processes.

Commissioner Winterburn asked about what happened on Shiloh Road. Director Reardon I've been hearing a lot about it and I've been advised by the staff of the Legislative Revenue and Transportation Interim Committee that Senator Essman is asking for an investigation relative to the story that came out in the Billings Gazette.

### **Next Commission Meeting**

The next Conference Call was scheduled for February 7, 2012 and February 21, 2012. The next Commissioner Meeting was scheduled for March 22, 2012.

### **Adjourned**

Meeting Adjourned

Commissioner Howlett, Chairman  
Montana Transportation Commission

Tim Reardon, Director  
Montana Department of Transportation

Lori K. Ryan, Secretary  
Montana Transportation Commission