

# Montana Transportation Commission

May 29, 2014 Meeting  
Helena, Montana

## IN ATTENDANCE

Kevin Howlett, Transportation Commissioner, Chairman  
Rick Griffith, Transportation Commissioner  
Barb Skelton, Transportation Commissioner  
Carol Lambert, Transportation Commissioner  
John Cobb, Transportation Commissioner  
Mike Tooley, Director MDT  
Pat Wise, Deputy Director MDT  
Dwane Kailey, MDT Engineering  
Tim Reardon, MDT  
Lynn Zanto, MDT  
Kevin Christenson, MDT  
Jim Skinner, MDT  
Lori Ryan, MDT  
Dave Ohler, MDT  
Kevin McLaury, FHWA  
Paul Harker, FHWA  
Chris Riley, FHWA  
Lloyd Rue, FHWA  
Gregg Russell, Stillwater Excavating  
Scott Stermo, North Core  
John Richards, JR/HRCC  
Robert Creel, Bridges for the Fallen  
Cary Hagreberg, MCA  
David Cripps, Secondary 238  
Mark Wessinger, Private Consultant

*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 March 25, 2014, March 27, 2014, April 8, 2014, April 22, 2014, and May 6, 2014 were presented for approval.

Commissioner Lambert moved to approve the minutes for the Commission Meetings of March, 25, 2014, March 27, 2014, April 8, 2014, April 22, 2014, and May 6, 2014. Commissioner Griffith seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Agenda Item 1: System Action – Missoula**

Lynn Zanto presented the System Action, Missoula to the Commission. The city of Missoula and Missoula County, through the Missoula Metropolitan Planning Organization (MPO), have requested that the Montana Transportation Commission add the following roads to the Urban Highway System:

1. Garfield St. (L-32-5472) between South Ave. and Fairview Ave. (0.19 miles)

2. Fairview Ave. (L-32-4600) between Garfield St. and Russell St. (0.26 miles)
3. Sussex Bend (L-32-5490) between Stephens Ave. and South Ave. (0.11 miles)
4. W Sussex Ave. (L-32-4597) between Brooks St. and Stephens Ave. (0.17 miles)

These roadways are the support streets for the reconfigured Brooks St./South Ave./Russell Street intersection. The Brooks St./South Ave./Russell Street intersection improvement project, completed in 2005, limited directional turns on Russell Street and Brooks Street and rerouted the flow of east-west traffic from South Avenue to these alternate roadways. As a result of the intersection improvement project, these streets now function as the east-west system links for travel on South Avenue, which is a major corridor through Missoula (connecting Reserve Street to Higgins Avenue and Arthur Avenue).

The addition of these streets to the Urban Highway System will complete system connectivity in the Brooks St./South Ave./Russell St. area of Missoula. The Missoula MPO Transportation Policy Coordinating Committee (TPCC) is requesting to add these routes to the Urban Highway System.

In accordance with MCA 60-2-125(6), roads must be classified as urban collectors or arterials to be eligible for Urban Highway System designation. The functional classifications of the identified roadway segments meet the functional classification requirement.

The total additional proposed mileage is approximately 0.73 miles. System Action Policy directs that when mileage is added to the Urban System, a reasonably equal amount of mileage may be required to be removed from the Urban Highway System. However, in 2012, the functional reclassification of four roadways in Missoula resulted in the removal of 0.37 miles from the Missoula Urban system (with no additional mileage added, per Commission Action in May of 2012). Thus, presently, this requested action would only increase the Missoula Urban system by 0.36 miles (when compared to the pre-May 2012 Missoula Urban system mileage). At this time, there are no logical 0.36-mile segments for removal in Missoula.

With this small increase, the extent of Missoula's Urban System will be less than many other urban areas when calculated as a percent of total public mileage – with Missoula's Urban System mileage remaining at 7.9 percent, compared to an average of 10.9 percent in all other urban areas in Montana. In addition, the increase in Urban Highway System mileage does not affect the STP-Urban funding distribution; which is based on urban area population (rather than mileage).

Staff recommends the Commission approve the Missoula Urban System revisions as summarized below and illustrated on Attachment A.

#### Urban Highway System Action:

1. Add the segment of Garfield St. between South Ave. and Fairview Ave.
2. Add the segment of Fairview Ave. between Garfield St. and Russell St.
3. Add the segment of Sussex Bend between Stephens Ave. and South Ave.
4. Add the segment of W Sussex Ave. between Brooks St. and Stephens Ave.

Commissioner Cobb asked if the other urban areas are going to want to add a little bit to their routes also or is this a one-time thing. Lynn Zanto said in the past there have been routes added without removing mileage. We encourage locals to find a one-for-one but sometimes it's pretty tough. The amount of mileage does not affect the amount of funding they get, it is population based. Commissioner Howlett asked if they had taken some things off some time ago and not added anything back on. Lynn Zanto said it is not exactly a one-to-one; it's a .37 mile difference in what they

are gaining. With each census the urban areas expand and their communities are growing.

Commissioner Griffith moved to approve the System Action – Missoula. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 2: Local Construction Projects on the State Highway Systems – Local Forces Great Falls, Kalispell & Garfield County**

Lynn Zanto presented the Local Construction Projects on the State Highway Systems – Local Forces, Great Falls, Kalispell and Garfield County to the Commission. Under MCA 60-2-110 “Setting priorities and selecting projects,” the commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways. This statute exists to ensure the safety of our system, protect transportation investments, and encourage better coordination between state and local infrastructure improvements. MDT staff reaches out to local governments to solicit local projects on state systems to ensure compliance with this statute.

*Summary:* The cities of Great Falls, Kalispell, and Garfield County are planning to design and build transportation improvement projects on the Urban and Secondary Highway Systems. The projects will be funded with local funds using local forces. These projects will be designed with input and concurrence from MDT staff to the extent practicable. In general, the public supports these projects.

On behalf of the local governments, as required by MCA 60-2-110, staff requests that the Transportation Commission approve the local projects listed below. The projects are also illustrated on the attached maps: Great Falls, Kalispell, and Garfield County.

Location	Type of Work	Cost (estimate)	Fiscal Year	Type of Labor
25 <sup>th</sup> St. N. (U-5217), Between Central Ave and 4 <sup>th</sup> Ave N, in Great Falls	Mill & Overlay	\$100,000	2014	Local
26 <sup>th</sup> St. N. (U-5226), Between Central Ave and 4 <sup>th</sup> Ave N, in Great Falls	Mill & Overlay	\$100,000	2014	Local
18 <sup>th</sup> St. E. (U-6733), Between US 93 and 3 <sup>rd</sup> Ave E, in Kalispell	Mill & Overlay	\$11,940	2014	Local
5 <sup>th</sup> Ave. NW (U-6721), Between Idaho St and Wyoming St, in Kalispell	Mill & Overlay	\$38,640	2014	Local
Woodland Ave. (U-6726), Between 3 <sup>rd</sup> Street and Park Place, in Kalispell	Mill and Overlay	\$67,050	2014	Local
Hell Creek Rd. (S-543), From RP 0.00 to RP 2.79, in Garfield County	Cold Mill Paving	\$6,000 - \$8,000	2014	Local
Brusett Rd. (S-245), From RP 0.00 to RP 0.31, in Garfield County	Cold Mill Paving	\$6,000 - \$8,000	2014	Local
U-All Rd. (S-462), From RP 0.00 to 38.46, in Garfield County	Cold Mill Paving	\$6,000 - \$8,000	2014	Local

Staff recommends the Commission approve these projects, pending concurrence of MDT’s Chief Engineer.

Jim Turbo, city of Great Falls addressed the Commission. He stated the city of Great Falls is ready, willing and able to perform this work. Obviously we would rather not use local assessment dollars on an FAU route but they are in desperate need of some maintenance efforts to extend their service life because they are not on the short or long list for reconstruction and will not be over-laid if we do not do it. There have been a lot of complaints and that is the driving force behind these projects.

Commissioner Lambert moved to approve the Local Construction Projects on State Highway Systems – Local Forces – Great Falls, Kalispell, and Garfield County. Commissioner Griffith seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 3: Local Construction Projects on Urban Highway System – Contract Labor Billings – Governors Boulevard Lewistown – 7<sup>th</sup> Avenue**

Lynn Zanto presented the Local Projects on the Urban Highway System – Contract Labor, Billings – Governors Boulevard; Lewistown – 7<sup>th</sup> Avenue; and Missoula – S 3<sup>rd</sup> Street to the Commission. Under MCA 60-2-111 “letting of contracts on state and federal aid highways,” all projects for construction or reconstruction of highways and streets located on highway systems and state highways, including those portions in cities and towns, must be let by the Transportation Commission. This statute exists to ensure the safety of our system, protect transportation investments, and encourage better coordination between state and local infrastructure improvements. MDT staff reaches out to local governments to solicit local projects on state systems to ensure compliance with this statute.

*Summary:* The cities of Billings and Lewistown are planning to design and build transportation improvement projects on the State Urban Highway System. The projects will be funded locally and will utilize contract labor. The projects will be designed with input and concurrence from MDT staff to the extent practicable.

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

Location	Type of Work	Cost (estimate)	Fiscal Year	Type of Labor
Governors Blvd. (U-1027), between Bazaar Exchange and Babcock Blvd, in Billings	Overlay	\$200,000	2014	Contract
7 <sup>th</sup> Ave. N (U-7105), between Broadway and Boulevard St, in Lewistown	Overlay	\$60,000	2014	Contract

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

Commissioner Howlett said that not so long ago there was some controversy between the contractor’s association and the city of Missoula. The contractors didn’t want the city to do it, they wanted to contract it out. In the last couple of weeks the news has been talking about the project on 3<sup>rd</sup> Street. I’m glad you clarified that this was approved in 2011. On a personal side I support local governments; if they have the ability to do it, we have to allow them to do it. That doesn’t always mesh with the contractors thinking they should do all the work in the state but at the same point in time we’re employing local people and I’m a strong supporter of local decision making.

Commissioner Griffith moved to approve the Local Construction Projects on Urban Highway Systems – Contract Labor, Billings – Governors Boulevard; Lewistown – 7<sup>th</sup>

Avenue; Missoula – S 3<sup>rd</sup> Street. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

#### **Agenda Item No. 4: 2014–2018 Statewide Transportation Improvement Program**

Lynn Zanto presented the 2014-2018 Statewide Transportation Improvement Program to the Commission. In order to spend funds on federally supported surface transportation projects, federal law requires Montana to submit a Statewide Transportation Improvement Program (STIP) to the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for approval. The STIP includes projects that MDT plans to program for preliminary engineering in the current federal fiscal year as well as other phases necessary to move projects forward during the next five federal fiscal years. The following is a list of most of the federal funding programs included in the STIP:

- Federal-aid highway programs such as the National Highway Performance Program (NHPP), Surface Transportation Program (STP), Highway Safety Improvement Program (HSIP), Congestion Mitigation and Air Quality Improvement Program (CMAQ) and the Transportation Alternatives Program (TAP).
- Federal Lands Transportation Program
- Federal Lands Access Program
- Tribal Transportation Program
- Federal Transit Programs
- Discretionary Programs
- Aeronautics Program
- Earmark Projects

The STIP provides an opportunity for the public to comment on new projects. It also demonstrates that funding is reasonably expected to be available for the various project phases that will move forward in the next five federal fiscal years. If a project has already entered a phase and funds have been obligated, that project will not be shown again in the STIP.

FHWA and FTA approval is based on their finding that the STIP was developed through a process consistent with federal statute. Montana's STIP has been developed according to federal planning requirements. The STIP meets the policy goals and objectives of MDT's 20-year policy plan, TranPlan 21; the Performance Programming Process (P3); and the metropolitan transportation plans developed in Billings, Missoula, and Great Falls.

Prior to submitting the STIP to the Commission for approval, the state is required to conduct a formal public involvement process. This process began on March 21, 2014, when the draft project list was posted on MDT's Web page and the public was notified that it was available for viewing and comment. On March 28, 2014, MDT distributed the STIP edition of the *Newsline* newsletter (construction projects only) and invited public comment. The public involvement process ran through April 18 and was carried out according to all pertinent federal laws including the following:

- 23 CFR 450, Subpart B
- 23 CFR 450.218
- 49 CFR 613.200

- Title VI of the Civil Rights Act of 1964
- Title VI assurance executed under 23 USC 324 & 29 USC 79
- Americans with Disabilities Act of 1990
- 49 CFR 20—restriction on influencing federal activities
- 40 CFR Subpart A of CAAA

MDT mailed the 2014-2018 draft STIP to the Transportation Commission on May 14, 2014. Any comments it receives during the public involvement period will be addressed at the May 29, 2014, Commission meeting.

The STIP includes proposed highway projects for each of the five financial districts as well as statewide programs. The proposed highway projects include nominated projects that will enter the preliminary engineering phase of project development upon Commission approval. This project list is attached to this agenda item.

Once the Commission approves the 2014–2018 STIP, MDT will submit it to FHWA and FTA for their review and joint finding that the STIP is based on a statewide planning process that meets the requirements of federal law (23 USC 134 and 135, 49 USC 5304 and 5305). Following the federal finding, MDT will program new projects entering the preliminary engineering phase using FFY 2014 funds.

MDT staff recommends that the Commission approve the 2014–2018 STIP and that it add the projects listed in the 2014–2018 STIP that will be entering the preliminary engineering phase during federal fiscal year 2014 to the program. Following approval, these projects will be submitted for programming.

We received some comments as follow:

- The Montana for Safe Wildlife Passage National Parks Association that identified several projects to consider wildlife amenities on. If the project are reconstruct or of a nature that wildlife is conducive, we do that from the beginning. Commissioner Howlett asked how many projects they listed. Lynn said they listed about 10 projects. Commissioner Howlett asked if all the projects had been identified in the Red Book. Lynn Zanto said yes. Commissioner Howlett asked if there were alterations or deviations or if there are corridor studies going on, are they factored in. Lynn said at the start of any project we involve our environmental staff from the start to consider whether it's a wildlife-rich corridor and if we need to mitigate.
- We had a Big Sky resident that was concerned about the condition of the bridge deck on Hwy 64 near Big Sky. Our Butte District Maintenance went out and looked at that and will do some more maintenance on it.
- We had a Butte resident that wanted to express support for the Climbing Lane Project near Rocker. He asked for some additional information on that project.
- The STIPP has to be reviewed by FHWA and FTA so they did a pretty thorough review and had some comments that we incorporated in as well.

Commissioner Griffith asked if there were any comments on Hwy 93 and Grizzly Bears. Lynn said no. Commissioner Griffith asked if Nine Pipes and Post Creek were in the STIP. Those have a lot of wildlife. Lynn said this group was interested in wildlife around Yellowstone Park. Commissioner Howlett said as these projects come forward we will discuss them in Red Book and pay particular attention to those issues surrounding Nine Pipes and Post Creek Hills. Lynn said what goes in the

STIPP is if we have to advance a request to obligate funding to FHWA within the timeframe of the STIPP for a particular phase. So if we are already working on design it may not appear in this particular STIPP but in the next one. Commissioner Skelton asked if they were working on design for Nine Pipes and Anaconda. Dwane Kailey said Post Creek Hill is nominated so it should be in the STIPP. Based on the schedule we'll be looking to go to the next phase, IC and Right of Way, about 2018 so it may be in the STIPP in those phases. We have a preliminary schedule coming from the consultant. We have the contract from them and should have it signed in the next week or two. Dwane Kailey said Nine Pipes is not programmed so it will not be in the STIPP at this time.

Dwane Kailey said he was not aware of anything in Anaconda at this time. Commissioner Howlett said there is a project west of Anaconda that is in the STIPP. My concern is that we get some wildlife relief for the sheep. Dwane said he was not aware that the Butte District has nominated anything in that area at this time. I will check into it and let you know.

Commissioner Cobb said we did the Red Book last year, now this is the STIPP, so there are new projects in here now that we approve next October. Lynn Zanto said that is correct. The new projects are in your agenda today and you will need to add those projects. The STIPP also shows those projects that are in right-of-way phase or are moving to construction. The Red Book takes projects that have been approved in the STIPP by Federal Highways and shows the construction sequencing and timing. It is more of a planning tool.

Commissioner Cobb asked about page 15 in the STIPP regarding deficient bridges. Lynn Zanto said they would be updating the data this year. Commissioner Cobb asked about the information that is disseminated to the public. This is a public meeting so what information goes to the public. Tim Reardon said what you have in front of you is a hybrid that takes projects plus cost so that you can include it in funding allocation by system type. So you're adding on another layer so you can manage the money. The information you have is proprietary to the department and the Commission for those costs to be kept separate at this time. Eventually the overall program will be broken into urban, rural, etc.

Commissioner Cobb asked about Great Falls District Bridge on page 18. Is that more than the bridge and the exchange together? Lynn said it is the whole thing – the project limits are the railroad structures on the Interstate between Cedar and Capital Interchange. The scope is bigger than the bridge. Dwane Kailey said it is a little bit more because you've got the connections into Cedar as well as Capitol Interchange. We are looking at a four-lane in both directions because of all the traffic accessing the Interstate in this area. So a majority of the cost is the MRL overpass structure.

Lynn Zanto said the Anaconda project is in the STIPP. In terms of wildlife we did the Corridor Planning Study and there were some wildlife considerations in it. So that will be a consideration in the design.

Commissioner Griffith moved to approve the 2014-2018 Statewide Transportation Improvement Program. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## DBE Discussion – Megan Handl, MDT Civil Right Bureau

Megan Handl addressed the Commission. We sent out some information to you earlier this week which I will cover briefly. Regarding the project specific agreements with the Tribes, a couple of the districts had zero percent DBE goals in their templates with the Tribes. We aren't sure why or how long that's been in there. As of April 2014 the zero percent goal has been removed from all the templates and will not be in any of the projects going forward. When MDT is in the position of setting goals, we will be setting the goals. I will be getting into our DBE Goal Methodology which explains how we set the goals for each project. Commissioner Howlett said the DBE program has been really confusing for the Commission to understand. In some cases we have goals and in some others we don't. Sometimes there are projects on Reservations with no DBE goals. How do we get a handle on this? Megan said we have an overall goal which we set on a three-year basis based on federal requirements. The overall goal currently is 3.55% which we are proposing to achieve through race-neutral mean. That means there will be no project specific goals. We have an overall goal of 3.55% but no project-specific goals. Commissioner Howlett asked if there would be project specific goals for the Tribes. Megan said no. Commissioner Howlett said he didn't know if you will be able to get projects done. There are specific issues related to Tribes that FHWA has an obligation to meet under their statutes. Having been a former Tribal Councilman I wouldn't entertain a project unless there were project specific goals that would be accomplished in our Reservation project.

Director Tooley said we are talking about two different things. Are we talking about the project specific agreements by which the Department is required to participate with the Tribes to hire tribal members for the duration of the project or are you looking at DBE which is a state-wide issue? Commissioner Howlett said I think it would be difficult for this Commission to look at projects on Reservations and ignore the fact that we have some federal obligations in working with Tribes to do these project-specific agreements. It's not an elective; it's a requirement. Director Tooley said that is addressed through TERO through the project-specific agreements. Commissioner Howlett said we can't go into this saying we don't have any goals because we obviously have federal goals and those are not waived. Megan said we have an overall goal that has been approved by FHWA. Right now we are operating under the interim goal that we submitted on May 6<sup>th</sup> which has not been formally approved. It needs to get legal sufficiency and then be put out for public comment. Commissioner Howlett said you are operating under an interim rule that hasn't received approval. Megan said that is correct. As soon as we submitted our current proposal to go race neutral, then we didn't have basically the methodology at this point to support putting project-specific goals.

Dave Ohler said when we submit goals it is a three-year process. Every three years the Department of Transportation has to evaluate the availability of Disadvantaged Business Enterprises in the State and based on that evaluation come up with an overall goal of the participation we would like to reach. So we've just gone through that process and submitted our new goal methodology for the next three years. Coming up with our DBE goal we came up with 3.55% - that's the overall goal we need to meet each year for participation on our contracts in each of the years. There are a couple of different ways to achieve that: (1) race neutral means which are things like outreach, education and training opportunities to DBEs, etc. Those things generally help DBEs to compete; (2) race conscience methods which are where you actually set a goal on a particular project. For instance, we say on this project our goal is 5%. Historically in the past our goal has been 3.55% and based on our history we have been able to meet or beat that percentage simply by providing different types of help through race neutral means to DBEs. So there isn't a necessity for us to use race conscience goals which are project specific goals. The federal rules require us to the extent that we can meet our overall goal using race neutral means, that we should

do so. That is why going forward our projection is that we can meet our goal using race neutral means only. I hope that answers your question.

Commissioner Howlett said then there is no specific goal on projects. Dave Ohler said that was correct. This is a proposed goal methodology that we submitted to FHWA and have put it out for public comment. When we submitted that, FHWA advised us that we should use the 3.55% race neutral means. So we've now dropped the project specific goals although you may see project specific goals on some bids but those were let some time ago. Going forward we won't have project specific goals provided it is approved by FHWA. Commissioner Howlett asked how you monitor this if you don't have any project specific goals. You just say we have a 3.55% goal and overall we met it? If you're not going to do it by project, how do you monitor it? Megan Handl said the contractors are required to submit their payments to their subcontractors and we monitor those payments and at each bid letting they have to report their DBE utilization. Commissioner Howlett said that is after the fact. Megan Handl said they get it on the award side as well, so at every bid letting every subcontract with a DBE or non-DBE goes into our tracking system.

Commissioner Howlett said you don't have a project specific goal and that's what we've wrestled with here for two years. Megan Handl said that is what the race neutral means – they get the participation overall. Commissioner Howlett said I don't get it if you're moving from race conscience to race neutral, I don't know how you are going to get there. Megan said the current utilization report indicates our numbers for right now and although we had some projects in the last six months that had project specific goals, there was also contracts that did not. Commissioner Howlett said obviously this is a sensitive issue. We went from 10% to 7% to 5% to 3% over the last couple of years and now we've eliminated another opportunity for this Commission to ensure that we're providing opportunities to Disadvantaged Businesses by going race neutral. I don't agree with that! Megan said our past participation has been around 3%. Commissioner Howlett said the past participation is the indicator I'm referencing. If we had originally 10% and we're only getting 3% then .... Megan said she was not aware of what was achieved then, I know they had a 10% goal nationwide but I'm not sure they ever achieved that. Commissioner Howlett did not want to belabor the issue. Are we operating under the existing rules in the interim? Director Tooley said we are operating under the federal guidelines with respect to DBE.

Commissioner Howlett asked if this has to be approved by this Commission. Tim Reardon said part of your contract approval will include all of the federal requirements but they can't be outside of the federal requirements. Commissioner Howlett said he understood that but do they come in front of us for approval? Tim Reardon said if FHWA approves it then it will be adopted into all of the contracts you let. You have to remember we are in federal court over the very issues the DBE Program is now trying to work their way through, that is, we could not have a race neutral goal and we are finding in the litigation that as we go forward we may not be able to sustain that position. We're working on it; we're going to court and we have a trial scheduled in December and we're taking Depositions now. We've been forced to make a review and analysis of the current situation that is leading us frankly to a new Disparity Study. Our old Disparity Study is old and dated and needs to be updated but the litigation is forcing us to take another look at that. So it's really not a matter of choice to put goals back in there; we're trying to move forward meeting our federal requirements with a race neutral goal but it doesn't change the fact that we have an overall goal. When you get to the end of the year you have to meet the goal or you're going to get a phone call from Mr. McLaury saying we didn't meet our goal. Right now, under the race neutral we are currently using, we are meeting that goal and in some instances exceeding it significantly which indirectly says the race neutral provision is working at this point. Will it sustain itself through the end of the year? Nobody knows. Nonetheless we still have litigation that we have to try our best to defend.

Kevin McLaury said when we talk about goals there is a number of different meanings when it comes to goals. Briefly, you have an overall goal that is established by looking at data that Montana has to the availability of DBEs. That's the 3.55%. That's established through a Disparity Study which is outdated. By not having a Disparity Study available to us that has the most accurate information, we fall back on the most current data to help us determine at what percentage are there DBE's that are ready, willing, and able to work in the highway industry. That's helps establish the overall goal of 3.55%. Now when we talk about race conscience and race neutral – that's how you achieve this. Race neutral means it's up to the contractors. The contractors have the ability to hire DBEs or not. There is nothing that says you must hire a DBE. That's the race neutral piece. The race conscience is – if we believe the contractors will not meet this overall goal of 3.55% and data shows there is DBE availability and it's not being used, that's race conscience. That's where you're setting specific goals. So the race neutral, race conscience is the "how" you achieve the big number. The big number uses the most current data to help us determine what that should percentage be for contracts.

Commissioner Howlett asked what they do on Reservation projects. Kevin McLaury said for Reservation projects, this is where we weave in TERO because DBEs are firms but TERO is tribal individuals. If you've got a 3% TERO on a project, the contractor is required to come to the TERO office and say I need "X" number of people for this project. The TERO office will work with the contractor to help find individuals from that Tribe to help work on that project. So TERO is really not DBE. It has kind of the same look from the outside but TERO has its own provisions. You're right; each Tribe has their own percentage TERO usually is between 3% and 5%. DBE is for all disadvantage business; it's a firm not an individual. It is very complex and very sensitive.

Commissioner Griffith said he understood that a lot of what happens in the DBE is driven by the lawsuits about race conscience and race neutral and Disparity Studies. A lot of the goals were made by artificial means and weren't done by a Disparity Study. Today is the first time I'm hearing it and if we hadn't requested information I'm not sure we'd have heard it at all. At some point in this discussion the Commission, however tacit, should buy into the approval of this discussion and we should approve the goal that is set. I realize you don't have much flexibility about where the goal ought to be and you are driven by all the lawsuits around you of where that goal needs to be. Truly a month ago we had goals of near 6% and all of a sudden it's 3.55%. What happened to get us to this point? We went a whole meeting where we didn't have anything on the agenda and that would have been a good discussion topic to let us know that was changing. That's the point I'm making. Somehow it just appears and we're just supposed to accept it. At some point we ought to be tacitly involved and, although we don't have much control over the actual goal, we ought to be able to buy into our own process.

Commissioner Howlett said I don't view TERO as an individual, I view it as a government-to-government relationship. Kevin McLaury agreed. Commissioner Howlett said it is the responsibility of the federal government to Tribal Nations. Kevin McLaury agreed.

Commissioner Cobb said we have these bids before us with a 3% DBE goal on a contract but on others we didn't have a DBE goal but we'd get someone who was meeting 5.6%. So this gets rid of the projects that say 2% or 3% and you're already getting some that say 3% or so – that is the new plan? Then I'm confused on the race neutral, I got the impression that as long as you weren't a white male contractor you could bid on these – so what are we going to do now? I'm confused on the DBE portion. Megan said the DBE Directory lists people who have been certified as Disadvantaged Firms and typically the white male does not qualify unless he is disabled. Megan said the DBE would still be through the certified firms, it just

means that even though we don't have a specific goal, they still get participation from those firms. Commissioner Cobb said then all we're doing is getting rid of the individual goal and when people bid we'll still see it on the bid when we let the contract? Kevin Christensen said you have to be a certified DBE. In the past when we were setting project specific goals, we were doing that based on the amount of available work that we saw in the contract to DBEs. Now that those goals are gone, the work is still available and it is up to the contractors to choose whether or not they are going to use the DBE firm for part of the work. The only thing going away is the project specific goals, the amount of available work is still there. The contractors know we still have a race neutral goal and that we need to strive to attain that goal. So it's putting it on the contractor to attain that.

Commissioner Howlett asked if there was a penalty for non-attainment. Megan said when we evaluate the goals, if we haven't been meeting them then we meet with FHWA and put an action plan in place. It may not necessarily be goals, it may be increasing our supportive services and helping firms bid, etc. There is no penalty for non-attainment. Commissioner Howlett asked what the incentive was to attain it. David Ohler said it's an inspirational or aspirational goal. That's how the federal legislation describes the DBE program – an aspirational goal. Commissioner Howlett said isn't there a moral obligation. David Ohler said I'm a lawyer and I don't deal in morals, I'm just telling you what they are. Commissioner Howlett said I'm a sociologist so I am dealing with it. David Ohler said the federal law describes the DBE program as an aspirational goal to achieve 10%. Commissioner Howlett asked why we even have it then; why are we wasting all this time if the requirement is a paper tiger. Kevin McLaury said how we got to the project specific goals, if you look at the history of the participation rate, we started at a higher number and it just continually went down and down. Working with MDT to have action plans to see what we could do to help the DBE community get better, it was apparent that through those efforts we still weren't able to achieve the big goal. That's how we ended up with project specific goals. So no, there isn't really no penalty; the program is not to penalize, it is to give a hand up not to punish. Commissioner Howlett said I understand that but there is no incentive to use it. Kevin McLaury said the incentive is to put the control in the contractor's hands and tell them this is federal law and you are supposed to meet this goal. Commissioner Howlett said there is usually a penalty associated with not meeting it. Commissioner Griffith said if Montana doesn't meet the goals there could be a suspension of funding. David Ohler said there aren't penalties if we don't meet our goals but there are penalties if we don't participate in the program and use our best efforts to try and meet the goal and follow the federal regulations. There are penalties if you just ignore the DBE program. But if you get 3.4% instead of 3.5% there aren't penalties.

Commissioner Howlett said it all comes back to this table. I'd like to know beforehand if they are meeting it rather than after the fact. David Ohler said he understands the DBE Program has changed quite a bit over the last couple of years and I understand the frustration. The program is a dynamic program, we set goals every three years but the goals change and they changed based upon how many DBEs there are in the state doing business in the highway construction industry and how they are being utilized. So we set these goals based on the evidence we have and then we monitor whether we are achieving that goal. In the middle of our three-year program we may find that we're not meeting our goal and we may have to re-evaluate how we're trying to achieve that goal. It's a dynamic process.

Commissioner Griffith asked how long in that process do we have to wait – six months, a year and a half. At what point in time do we realize we're not doing a very good job of meeting these goals. Megan Handel said we have to send in a federal report every six months so we get a good picture every six months. Right now we are at 4.97% of all contracts awarded with DBE participation. That's based on information from October to March which is a slower season. We are looking to the big lettings to see if there is DBE participation and need to step up more effort.

Commissioner Griffith said the point we want to make is that it is a dynamic program and it is changing relatively quickly. I do think the Commission was not kept dynamically aware of the program as it should have been and to that end we are frustrated now because we're still dealing with a program two years ago that we were trying to understand. When those six-month windows hit, the DBE Group should be here explaining how we are doing and keeping us aware of the dynamics of the program. If we can meet it using race neutral, we're all the better for it. If they don't meet it, what consequence is there? Surely we can't make the contractors consequent, it has to be the Department because we're not meeting our goal and some readjustment of the program needs to be done. Commissioner Howlett said perhaps there is a way to incentivize DBE participation by the contractors and we ought to explore that. Give them an incentive for increasing the DBE participation. You're not going to have a lot of DBEs out there continuing to exist if they don't have an opportunity to participate. You're slowly eliminating the availability. I think in Montana small business, disadvantage business, family owned business, disabled veteran's business – let's give them a chance to get going instead of one, two or three DBEs existing in the state. I want to have more discussion on this and have a better understanding of it. I want to look at exploring opportunities to incentivize and help create DBE. I think we have that kind of an opportunity and an obligation to do that.

Commissioner Lambert asked if there was ever a contract that wasn't considered because they hadn't met the DBE goal. Commissioner Griffith said yes. Commissioner Lambert said Montana has been very conscious of the DBE Program. The overall federal goal is still in place, right? Megan said that contractors who were penalized had project specific goals and didn't meet the assigned goal. Commissioner Lambert asked if that was the federal goal. Megan Handel said it was a project specific goal. We just now have an overall state goal not a project specific goal. If a contractor bid on one project and didn't attain any DBE participation we wouldn't have any...

Commissioner Howlett asked the Department to track the contractors and report to the Commission regularly how they are doing. We have 10 major contractors in this state so let's track it and see how they do. Megan Handel said they would be happy to report that information to the Commission. The goal methodology is still out for public comment and is open until June 25<sup>th</sup> so it's not finalized yet. We would be happy to share any comments we receive. Commissioner Howlett asked the Director to schedule some time for further discussion on this subject. Director Tooley said they would have staff available every quarter to report the status. Commissioner Lambert asked if they wanted to wait until the next Commission meeting because it would be after the comment period ends. If the Commission is going to comment we need to meet before June 25<sup>th</sup>. Commissioner Howlett said it would require a special meeting of the Commission and the date would be determined at the end of the meeting.

### ***Agenda Item 16: Liquidated Damages Stillwater Excavating***

Dwane Kailey said this is Agenda Item 16 on your agenda. It is liquidated damages on D4 Culvert, Phase IV. The project was let February 23, 2012. The contract was awarded March 6, 2012 and the Notice to Proceed was April 2, 2012. You have a letter from the contractor with their complaint and they detailed the issues relative to the complaint. The main issue surrounds the issue of their claim that there was a change in the requirement in the contract. That stems from a couple of issues. The first is MDT changed the requirements because we required prime steel. Steel manufacturers produce two types of steel (1) prime steel and (2) seconds. Seconds might have some sort of flaw. It is good steel for the most part but it has some sort

of flaw so they don't include a mill test in their certification. Our specification clearly required mill test. The specification is in your packet and includes a letter dated May 21<sup>st</sup> from the EPM to the contractor that clearly states mill test. The only way to meet that requirement is to use Prime Steel. It was clearly identified in the contract when it was bid and therefore was not a change in the contract. Any contractor that knows steel and supplies certifications to MDT should understand that and should be aware of that.

The second issue brought forward by the contractor is they claim they lost time sorting out specification 70901.2 which refers to a requirement of the American Water Works Association C200. That question was brought up in the Q&A by another contractor who asked "is MDT going to require the specification and is it required in this contract?" MDT clearly stated the pipe material needed to be AWWA C200. It was asked in the Q&A and clarified in the Q&A. So it was very clear that it was a contract requirement. Commissioner Howlett wanted to know who asked the question on C200. Dwane said it was Stadelley Boring and Pipe Fitting. Commissioner Howlett asked if he was one of the subcontractors. Dwane said they were a subcontractor that did not receive the job.

Next and probably most important to you, further back in your packet you will see a timeline for this project. I want to walk you through the timeline because it is very telling. In May Stillwater first submitted their certification for the steel casing. Then later on May 11<sup>th</sup> the EPM sends a letter to Stillwater stating the submittals were not acceptable. From then we were trying to resolve the issue with them and on May 21<sup>st</sup> the EPM clearly sends a letter identifying the contract requirements. That timeline adds up to about nine chargeable days. From May 21<sup>st</sup> to August 6<sup>th</sup> we heard nothing from the contractor relative to this issue. On August 6<sup>th</sup> they submit sample certification for the pipe casing. Those samples were then forwarded to Helena and a response was sent to the contractor on August 9<sup>th</sup> stating those appeared to be okay but again they were samples, they are not the official certifications. That adds up to about three chargeable days. We then have a lapse in time and the contractor on September 12<sup>th</sup> sends us new fabricated drawings. Those drawings were reviewed by MDT and approval was given on September 20<sup>th</sup>. That adds up to 12 chargeable days. All total MDT reviewed the submittal from contractor for a total of 19 days.

In our contract we advised the contractor that we allowed for 20 days for review of submittals for the first submittal and a subsequent 20 days for any resubmittal. So in our contract we allow MDT up to 40 days for review of submittals. In this case we documented that we only took 19 total days for these submittals. In the meantime, if you look at the dates between May 21<sup>st</sup> and August 6<sup>th</sup>, there were 65 chargeable days where we had no discussion with the contractor on this issue. It was in their lap and we had no discussions. Furthermore, if you go to the timeline between August 9<sup>th</sup> and September 12<sup>th</sup>, there is an additional 30 days that MDT was waiting for the submittals from the contractor. That adds up to a total timeframe where it's in the contractor's lap of 95 chargeable days. In this situation we are charging the contractor 49 chargeable days in liquidated damages.

Last but not least I would ask the Commission when you deliberate on this issue to think about the other contractors that didn't get this low bid but had bid to meet the intent of the contract – the specifications and the timeline. With that I will turn it over to the Commission for any questions as well as comments from the contractor.

### ***Greg Russell, Stillwater Excavating***

Also here is Scott Stermo, North Core Subcontractor. Gregg Russell said basically the summary is correct. The thing is, if you read one of our letters requesting additional time, we were never asking for additional time based on the buy-American domestic materials. Those issues led to the first two pipe suppliers who had supplied pipe for the State of Montana under the same spec previously, both bailed on North

Core because they did not want to get prime plate and go through that process. They normally use the “seconds” type of plate to build their pipe. Also in their normal fabrication process, they don’t hydro-test the pipe, their welders that run the welding machines aren’t certify, they don’t certify their machines on a regular basis, they basically roll the plate into a round shape, weld up the seams, visually inspect the welds and ship it out. That is the normal process for all three suppliers that were involved in this. The time we’re asking for is exactly between May and August because when we wound up with a third supplier, they read the spec and said they could do this but needed some answers. The specifications require hydro testing on the pipe, coating of pipe, welder certification, welding machines certification, nondestructive testing, and some destructive testing related to machine certification that is not normally done by these casing pipe suppliers especially for steel pressurized water pipe like in a municipal water system type thing.

The time we’re asking for is the time it took the third supplier to figure out, based on this spec and the requirements that the state would actually hold them to, what they would have to do and how much it would cost to supply pipe to this job. In your packet is a letter from the supplier that talks about this learning experience and three and half month timeframe. If you read the spec it clearly states that the specifier holds some clarification on these issues because it is very broad. Not all pipe purchasers would require everything in the spec.

Commissioner Howlett asked if they were aware of the spec when they bid the project. Greg Russell said yes, we were well aware the question was asked in the Q&A session. They also cited welding specifications that relate to field pressure pipe that had nothing to do with factory fabrication, welding machines and processes. Commissioner Howlett said 95 days is a long time to get an answer. Greg Russell said exactly and that’s the time we’re asking for. Commissioner Howlett said you do this for a business. Gregg Russell said these suppliers routinely supply this casing under their normal fabrication process. Because two suppliers had opted out and basically bailed out on us, when we went to this third supplier they said before they would commit to making the pipe for a certain price, they wanted to have these questions answered so they didn’t have any surprises. Those questions specifically related to the pipe being hydro-tested. It was in the spec but would they waive that and although they never gave us a waiver in writing, they required some of the fabricator’s welding personnel be certified, which they did. I think they required some non-destructive testing of the wells. None of this was ever given to us in writing; it was kind of a long back and forth where nobody would really commit to anything. They said what they would probably accept in a submittal. We gave them a test submittal because we still basically didn’t have anything in writing. They looked at the test submittal and said that would work.

Commissioner Howlett asked if he was saying they relaxed the standards to your advantage. That’s how I’m interpreting it. Gregg Russell said the spec basically says the purchaser, which is ultimately MDT, can modify and select, pick and choose, the things in this spec, the things they feel they need for the pipe. Commissioner Howlett said basically they relaxed some standards. Gregg Russell said but that’s okay though. Commissioner Howlett said it was to your advantage. Gregg Russell said it took a long time to get it ... casing pipe is never built to this spec; they never follow all this. I talked to three different suppliers and none of them hydro-test the pipe. The State has never written a letter to tell them what pressure to hydro-test it to which the spec clearly states they are supposed to do. The ultimate supplier was Arnson and the letter should be in your packet. They said it was a three and half month process. Arnson is the largest steel casing pipe supplier in the United States; they supply steel casing to every state in the union. They don’t build any of it to the full contents of this specification. Commissioner Howlett asked if it was a specification written prior to the bid. Gregg Russell said the same specification has been used for several years and all these suppliers have supplied pipe under this specification to the State of Montana in the past. The first two had never supplied

the certified mill test report that you get with prime plate; they supplied the pipe using some independent lab certification and a written statement of the pipe being domestically made. The kind of plate they normally use they don't get that one page mill test report or mill certification. We brought that up in our letter and we never asked for time based on that because we understood a mistake could change what they require for acceptance at any time. But those issues pushed us to the third supplier who asked for clarification on all the things in the spec that the purchaser is obligated to clarify.

Commissioner Howlett clarified a statement. A mistake could change it but the change means the State could opt to waive or reduce the specs not increase the specs. Dwane said that is correct. For clarification, in your packet you've got a clarification on AWWA C200 and all the requirements of that specification were addressed in our contract. In your packet it goes through AWWA C200 requirements point-by-point and how they are addressed in our contract. Gregg Russell asked how hydro-testing was addressed. Kevin Christensen said it's in there. Gregg Russell said we never got anything in writing stating you don't have to hydro-test, you do have to certify welders, and you do have to do this specific non-destructive testing. Commissioner Howlett said if they don't tell you specifically you don't have to do it, then you have an obligation to meet all the specs. Gregg Russell said exactly and because with the past history... Commissioner Howlett said I'm not talking about past history, the questions you asked were addressed, right? Gregg Russell said no. We never got anything in writing that clarified what they would do. Commissioner Howlett said if they didn't put it in writing then you have an obligation to do what was there. Isn't that right? If they don't say they were waiving this then you have an obligation to meet this. That's what you bid. Gregg Russell said the spec does say the purchaser is required to specify what parts of this they want to be followed for their particular project. When these suppliers have supplied pipe in the past under the same spec, they should have some reasonable expectation that what was accepted in the past under this same spec should be accepted in the future. Commissioner Howlett said not necessarily because you have different projects, different soils, and all kinds of different things. Gregg Russell said then it should be in the special provisions which is basically what this spec says – the purchaser is obligated to adjust and clarify.

Gregg Russell said the time we're asking for is the time it took to get the issues in the spec clarified so that the fabricator could do what they needed to do to meet the spec and be able to price the piping and deliver it successfully. Commissioner Howlett said we are talking 95 total days and the State is assessing 49, so basically half. Dwane Kailey said the 49 days is the time the contractor went over in the project, so it is specific to the timeline of the project itself; it has nothing to do with how much time they had. Commissioner Howlett said but you granted up to 40 days for responses. Dwane Kailey said the way our contract is written we put the contractor on notice that we want up to 20 days for each review. So 20 days for the first review and if there is a resubmit then we grant another 20 days. So they need to allow for that in their contract time. Commissioner Howlett asked if the days were then calculated into the days they were over. Dwane Kailey said yes they are a part of the contract and are still chargeable days. This was a calendar date contract so a date specific was set when this contract had to be done. They needed to account for that in their contract when they bid. Commissioner Howlett said but you give yourself 20 days to respond, are they being penalized for the time you've taken to review? Dwane Kailey said no we are not penalizing; we put them on notice when they bid the project that we have up to 40 days to review those submittals. They need to account for that in their construction schedule so they allow us 40 days. Commissioner Howlett said but if there was a change or the supplier backed out on them isn't that a consideration? Dwane Kailey said from our standpoint no, they should have had that upfront. Commissioner Howlett asked if they could have known upfront that the supplier would back out on them. Dwane Kailey said I can't speak for the contractor, I would defer to them. Commissioner Griffith said it is not the Department's problem if a supplier backed out. It's the assumption that if you bid a job or you supply pipe for a

job that you have an obligation to not back out. You're fight at that point would be with the supplier for backing out not with the Department. It is the contractor's responsibility to make sure the supplier that quoted the price for the project can deliver and doesn't back out. That's the risk the contractor takes when bidding the job. Dwane Kailey said that's correct.

Gregg Russell said we are not asking for any of that time for switching suppliers when the first two backed out. That ate up a lot of time. The only time we're asking for is when the third supplier got involved and said they wanted clarification from the state. The spec was very complex and they wanted clarification on exactly which parts of it they wanted them to do so they could supply this job. In their letter they said it took three and half months. It is been a real learning experience for everybody involved including the state. The state specs are very hard to interpret. At one point they were asking us to meet field welding requirements for a manufacturer not a contractor. This has been a time-consuming process – three and a half months to be exact. All that stuff should be in the special provisions – what the state requires and what they don't require. On these complex specs when these fabricators look at that, they know what they are going to have to do. They know what they do for every other state.

Commissioner Howlett said whether it was the water works spec, that's the one you bid, and that's the one you should bill to, and the fact that it took longer than that was for you to get a lesser spec to not have to weld it so diligently. That was for your benefit, not the state; the state wanted the water works spec even though it was more than they needed. Gregg Russell said the past history of these same suppliers to the State of Montana under this spec... Commissioner Howlett said we can't look at past specs, all we can look at is what we have here. Gregg Russell said they didn't have to do it in the past and they wanted to make sure that was still acceptable to do it like they'd been doing it. Commissioner Howlett said but it's different than what you bid. The question should have been raised in the bid process. Gregg Russell said it was but it was inadequately answered. They said "follow the spec" but if you read the spec you'll see that the purchaser owes the fabricator and contractor a lot more information. There's actually a list in here "Purchaser Options and Alternatives. The following items should be included in the purchaser's specification" which goes from the bottom of this page clear to most of the next page. The only thing in the special provisions is the steel requirements which we've not asked for any time on. And those problems actually pushed us into the other issues.

***Scott Stermo, North Core Corporation***

We are certified in North Dakota and Minnesota. I bid this on a horizontal boring company. We bid these projects not even using the DBE Program in Montana; we just bid them straight out. When I bid this job we had the quotes from Arnson and Pittsburg Pipe and OPS. Now typically I don't know a lot about the specifications, I just put the pipe in. We put our welds in with certified welders. I put that onto the supplier. When they bid the job out then they send in their submittals and that is when all this timeframe happened, I didn't get too involved in it at that time except to say they needed to step up and handle whatever these guys are asking – you bid the job, you bid the pipe to me and I need that information. As it went then Pittsburg said they couldn't do what they're asking for. I said you've used the pipe before and they said yes they supplied it on the previous project. Over this whole time finally they backed out and I went to Arnson which is a higher price to me but I was in a contract to another guy I bid this job out to. Arnson was working with MDT and we were waiting to go to work. I have six people in my company; I'm very small. We waited, got it approved, went in and did our job. My project came out good, the bores were good, there was nothing wrong with anything I did other than the timeframe. I didn't know anything about liquidated damages coming on to me until it happened after we were waiting for payment. The amount I'm being charged is \$140,000. That's 10% of my entire year. This project has the potential of closing my

business; this is very big for me. So I'm here saying look at whatever the specification is ... I don't really understand. Arnson is really angry with me because they are waiting for payment. I spoke with Lisa Durbin and asked for help, I've got this full liquidated damage on me but I did my project in the time I bid it, it took me exactly the same time. Now this \$140,000 I can't make that up. She said if the prime contractor is putting it on you then you should file on his bond. Well he's trying to advocate for me to help me out here. That's a huge amount of money for us. I didn't do anything poorly; I did a good project for you. The issues with the specification shouldn't be that harsh on me that it closes my business because of what's going on. I talked to the DBE Program here and she said you can file a complaint with FHWA afterward. I just want to get my payment and move on. This is a big deal for us. This is a part of a large project and we performed as a DBE and we did everything we were supposed to do. Arnson wrote a letter to Stillwater because it was hard for them to understand what was being asked.

Commissioner Howlett said then Stillwater isn't being assessed it is this small company that's being assessed. Dwane Kailey said that is a contractual issue between the prime and the sub and we have no control over it. Scott Stermo said that is why I have to get someone to help me – everybody passes the buck. Commissioner Howlett said it is kind of reflective of our earlier discussion today. Scott Stermo said exactly, thank you for saying that. Commissioner Howlett said it was disturbing. Commissioner Skelton asked if the total amount of liquidated damages was \$140,000. Dwane said it was \$141,561. Commissioner Skelton asked if it was for a total of 49 days. Could somebody please clarify why if they did their project in the timeframe allotted to them, are they getting the penalty? Commissioner Howlett said because they are a DBE and just a sub. Gregg Russell said they did their part of the project in the time they said they could do it in but because of the issue of obtaining the clarification... Commissioner Howlett said that was your responsibility. Gregg Russell said it was his; it was part of his subcontract to supply the casing pipe. We're just trying to help him out. Commissioner Howlett said you're not on the hook for \$140,000 and you're not a small business. Gregg Russell said we had completed all of our contract work and the last thing in the project was the jack and bores. When they got done with that then the contract time stopped. That put us into the 42 days of liquidated damages. That pushed the contract out into the winter which made things a lot more difficult for everybody. Commissioner Howlett asked if this contract cost us more money as a result of this. Dwane Kailey said it does cost us more money. There's more administrative costs associated with managing a contract beyond the contract deadline. The Supreme Court has said it does.

Commissioner Cobb said Arnson got involved June 5<sup>th</sup>. Were they talking to you people because they didn't do anything until September 17<sup>th</sup> so you had all those months in between where nothing was going on according to your time line chart? Were they working with you? It seems like they're the ones who held it up. There is no correspondence from them or the Department and they were the ones waiting to resolve this issue so you could go to work. He's just caught in the middle of this thing. Where was Arnson? Dwane Kailey said I'm not aware if there were verbal communications taking place at that point in time, there is no written documentation of any kind of communications or discussions. Gregg Russell said at the initial time frame, June 5<sup>th</sup>, Arnson was submitting questions, North Core was submitting questions to me and I was going to the Engineering Project Manager in Wolf Point who was then going to someone else. After about a week of that when we weren't getting any answers, I called the Engineering Project Manager and asked him if it would be okay if the fabricator communicated directly with whoever was in charge of approving these submittals. He said that would be fine and would expedite things. There is no written record of what happened but per Arnson it was a long and arduous process of verbal communications between the materials department here in Helena before they felt they could submit a test submittal they were comfortable with. Commissioner Cobb said for those few months a company that big should have been able to get something done real quickly. I'm trying to figure out what was

going on during that whole gap; that should have been resolved with any contractor. Scott Stermo said I know there was discussion going back and forth between Arnson and MDT because they asked them to do something to help us. I didn't know that the liquidated damage came until after we were complete and waiting for payment. Gregg Russell said they wrote the letter in September when they realized this was going to be a big issue. Up until then I thought we could make it, at that point I knew we had to do something about the delay. Commissioner Cobb said I know we have to have rules to get things done but then do we make exceptions because it's such a mess. Scott Stermo said I submit to you that I'm a small company and the bank is waiting to hear what happens at this meeting. Arnson has a collection out on me right now; I haven't been able to pay anything. That's a huge amount of money for us. Commissioner Howlett asked if he did his job in the time allocated and got caught in the middle of this mess. Gregg Russell said he did his job in the time allocated but the job was pushed ahead past the contract time.

Commissioner Howlett said this is totally unfair. Commissioner Lambert agreed with him. If we do nothing then the liquidated damages stand; if we chose to waive them, then they are not imposed and this gentleman can continue in his small business. I think we'd better explore in greater detail the previous discussion so this kind of stuff doesn't happen again. Commissioner Lambert said the correspondence says the state changed their specs. Dwane Kailey said essentially they alleged we changed our specification. They've alleged again that in the past we didn't require mill tests and that goes back to the difference between prime versus second steel. We have not found any evidence where that has happened but it was very clearly identified in the contract specifications that we require mill tests. Those mill tests require prime steel. Further they state we changed the specs because of requiring the AWWAC200 specification. As admitted by the contractor that is consistent and has been in our contracts for a long time.

Gregg Russell said it has to do with the domestic certification; they wanted the mill test report not because of the quality of the steel but to prove the steel was domestic. In the past they accepted written certification with shipping certificates to show the steel was shipped from a domestic mill. Currently when I said the rules have changed, now they will again accept a written certification from the fabricator that the steel is American made. Like I said the steel issue has only pushed us into the time delay issue; we've never asked for time related to the steel issue. I hope that distinction is understood. The steel issues were because of domestic certification not the quality of the steel. Dwane Kailey said that is not completely accurate. There are two things we require in the specification – mill test and a certification from the mill. The mill certification certifies that it is built in America; it is a federal aid requirement. The mill test is what certifies it as prime steel. In our specification we required both items. We can get certifications on second steel, we cannot get mill tests on second steel. Commissioner Howlett said if these steel company suppliers have previously supplied steel for the State of Montana as was suggested, but you can't find any evidence of that? Dwane Kailey said yes that is accurate. Commissioner Howlett said so let's be clear, when these bids go out to any contractor, these are the requirements. They ought not to be dealing with companies that don't have any interest in supplying that quality of steel. I don't want to see this small company penalized; it's just not fair. Commissioner Cobb said I think we need to waive the damages. I think the Department did everything correctly but it was just a bad thing that happened. The contractor was involved too not just the subcontractor. So I'm in favor or waiver but I think the Department did everything correctly.

Commissioner Cobb moved to waive all Liquidated Damages \$141,561.00 against Stillwater Excavating. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimous.



## **PUBLIC COMMENT**

### ***John Richard, Seeley Lake***

I'm John Richards from Seeley Lake. Earlier you talked about incentivizing the DBE and I think that's a great idea. I'm here in the spirit of collaboration. I've been building a business in Seeley Lake since 1972 when I started working at a crushing pit at mile marker 12 at Seeley Lake. In 1986 I bought the pit from the people I was working for previously. In 1993 I sold a portion of the pit to MDT that had been mined already to build a maintenance facility. It has saved MDT hundreds and hundreds of thousands of dollars just by having a facility there and combining a couple of sections eliminating a person and equipment. That savings is continuous and going on. My father actually sold it because I had a claim against MDT at the time from the Troy Libby job and Marv Dye didn't want to deal with me buying property from him on one hand and having a claim on the other hand. MDT ultimately paid the claim which was \$755,000. Ten years I fought that battle. I did a Quit Claim on the property to my father so he could deal with MDT. I was at the discussions for all of them. During those discussions MDT assured us that we could lease the property as long as we needed to.

Let me show you the picture – this is Hwy 83 (at the time it was Hwy 209 in the 70's). This was the area being mined and this was the area that was sold to MDT. A portion of it is leased; this portion here I leased back until I mined the mountain back far enough that I had adequate room back here to move the equipment, the crusher, a wash plant. You can see it is so tight I don't have room to operate. There is an Affidavit here from my father in 2009. In 1997 we did a formal lease which was part of the Sales Agreement that was done in 1993. This is a letter from Tim Reardon to Dennis Lynd. The last paragraph reads "based on my commitment that your client can crush enough materials to move the equipment, I believe we can finalize this disposition and close the case." That was talking about closing the Troy Libby case. So it was based on those assurances. As you can see from the picture I have a pretty big operation going here.

Currently MDT wants to cancel the lease. They've given us notice and we had to go to court to get an injunction against them canceling it which is scheduled for August. In that whole process MDT will not sit down with me. I've been to Mike's office half a dozen times asking him to meet with me. He won't step out of his office and meet with me. Here we are today face-to-face and I told him we needed to talk. I'm asking the Commission to ask the Department to meet with us and sit down and figure out the problems they have, the problems I have and come to a resolution. The savings to the state has been over one million dollars over the past 20 years; there's no reason to cancel that lease, put me out of business, and forget those savings for the next 20 years. That's a big chunk of change for the taxpayers and the Commission. I'm just asking for somebody with some reason to sit down and meet and talk and discuss this. Mr. Kiley has sent me letter after letter after letter stating "no we won't talk." I don't understand and that's why I'm here. I hope we can come to some sort of an agreement, sit down and move forward and not fight about it. Going to court is not the answer. I'm asking the Commission to help here. Thank you very much.

Commissioner Howlett said he didn't know if it was within the Commission's prerogative to intervene in a management issue but for general purposes I'd like to know why we want to cancel the lease. Tim Reardon said the Department has some future plans for this site and the maintenance facility in the Missoula District. Mr. Richards is right, the lease issue is in front of the District Court here in Helena, there is a second lawsuit over the same property that has been filed in the Missoula District Court which seeks a Rescission of the original sales agreement and that is pending as well. From the Department's standpoint we are simply not going to discuss that.

Commissioner Howlett said he understood Mr. Richard's desire to have the Commission intervene but it's in litigation. We have some broad authority but one of those is not to micromanage the Department. We look at policy and make sure the rules are followed as far as contracts and those types of things. Maybe if those suits were dismissed there would be room to talk. While it's in litigation it is just inappropriate to have any discussions.

Mr. Richards said he was just asking for an audience with the Director and whoever else he wants to try and resolve it. Why have to go through the legal process for the next five or ten years and battle when we could sit down and resolve our differences. I'm in business and the whole purpose of buying that property to build this facility – this is the MDT facility (showing picture), this is their land, this is the parcel I have leased. I have two leases. Originally I had one lease and we expanded it on a gentleman's agreement in the Missoula District. We have documentation of that in letters. There was never an issue. This area the county wanted to lease and so I said I would work with the county and give up part of that area so they could put a stock pile in there. So I moved this equipment off here and moved this big stock pile off, and leveled it up. I needed access around here and that was part of the agreement with the county. After the county got in there they said I couldn't have access but that was the reason I gave it up so I would have the access. That's what the lawsuit is about. I'm just asking to sit down with somebody in authority to resolve the issues.

Commissioner Howlett said they are restricted by law. If the lawsuit weren't filed you'd have an audience with this Commission; right now we are the Department. Mr. Richards said then, as the Department, I'd like to sit down and talk to you. Commissioner Howlett said by you filing lawsuits you've restricted our ability to be able to discuss this with you. Now it's between the attorneys and the judge. Mr. Richards said if that is where we are then that is where we are. The last lawsuit took ten years and I got a unanimous decision from the Supreme Court. I would have settled that Troy Libby claim for \$75,000 – ten years later the Department paid me \$755,000. That's ridiculous! We need to sit down and resolve this.

### ***Robert Creel – Bridges for the Fallen***

My name is Rob Creel; I'm a Montana Representative for a nation-wide group of volunteers to get bridges named after warriors who have been killed in action in the Iraq War or Afghanistan War. Currently there are 27 states on board and almost 1,050 bridges right now that have been named in various states all the way from San Diego up to Boston, George and Florida. We'd like to get Montana on board and do the same. Right now there are only about 10-15 from Montana in the two wars so we're not talking about a huge amount of money here. Commissioner Howlett said we have a process for naming bridges in Montana as well as sections of highway. I know that we have done that in some cases like the Veteran's Memorial Bridge in Hamilton. We are doing one up in East Glacier. When you look at the warriors killed in Afghanistan and Iraq, we certainly pay homage to their service. I don't know if that's where we want to prioritize the naming of bridges. Sometimes it is families or organizations that come forward with recommendations but I appreciate the work you are doing. Rob Creel said currently we have two local families in Helena that are 100% on board with the process – the Baucus family and the McKenna family. They are 100% for us. I haven't proceeded to contact any other families yet but this was to get the ball rolling first and see if it can be done. I think Montana could do it pretty easily. Commissioner Skelton asked how this would change the process we already have in place to name bridges.

Director Tooley offered a little bit of background. He said Mr. Creel initially contacted me about naming pieces of infrastructure. We had a discussion clear back at the July Commission Meeting where the Commission decided they wanted a procedure to get to this point. This was the genesis of that. Now we have a procedure and a policy that Tim will talk about. Tim Reardon said as you recall I

distributed the third or fourth draft of that policy but we haven't acted on it. In the interim we've had more requests. We have submitted a legislative proposal to clarify the Department's authority on all of these signs. The proliferation is fairly significant and while it's not up to me to decide the merits of any particular application, trying to put some sideboards on it is tough. We have various kinds of memorials being erected along the highways. The White Cross Program is the most well-known but there are a number of others and you've been asked to put up a lot of signs and there are more coming. I was trying to establish a process with the policy draft but we haven't refined it yet which is why we decided to get some authority from the Legislature that is clear and specific to the Department and to the Commission as to how to do this. It would make life a lot easier for every group and every individual who would like to see a sign go up. More signs is not necessarily well received by the traffic safety people or FHWA. They are potentially put up in the clear zone and they get expensive after a while – \$300-\$500 per sign. We are trying to get our arms around it a little more. We have 18 separate legislative requests for signs that have been approved. If we have the specific authority within the Department and with the Commission it would make life a little easier rather than ad hoc presentations to the Director and the Commission. We're moving forward with that draft; it is in the process now and it will be in front of the Interim Committee in July. If we get their support hopefully we will be able to move forward and get a sponsor and get it introduced in January. Commissioner Lambert said it would make it easier on the Legislature too. I took part in a couple of these designated pieces of highway and quite honestly it would be far better if MDT had the authority to do it and the Legislature didn't have to do it.

*Cary Hagreberg, MCA*

My name is Cary Hagreberg with the Montana Contactors Association. I must confess that I don't know how to read a public agenda because I intended to be here for Agenda Item 2 but for some reason I thought that was going to occur after 9:00. My apologies to both you and my members who are in the room.

We wanted to talk specifically about our concern as an organization with local governments performing construction work that should be done by private contractors. I understand that you already authorized the City of Great Falls and the City of Kalispell and Garfield County to perform work on your state system. We're not going to ask you to rescind that decision but we are going to ask that you, as a Commission, take a look at how, when, where, and why local governments are authorized to perform work on state designated routes. Earlier today you heard a very interesting and complex discussion about liquidated damages and dealing with contract time and very precise specifications. Our concern is that when local governments perform construction even on their own streets that it's inefficient. As you are aware that we are in various places around the state protesting and contesting and opposing local governments performing their own work on their own infrastructure because we think that it's inefficient. We think it is a double standard; that they don't perform to the same specifications you hold a private contractor to. So we would ask that the Commission and the Department to perform a study, an analysis, and come up with some criteria for when, where, why, and how you authorize local governments to perform work on your state system. For example contract time, is there going to be any jurisdiction on how long a local government is out there on your route, will they be using the Manual Uniform Traffic Control Devices like a contractor would be held to. If a contractor is doing work on your system road there is very specific indemnification language in the contract indemnifying the state from liability. If there is an accident in a work zone, where does the liability rest that is caused by inadequate traffic control being provided by the city of Kalispell, Great Falls, Garfield County, et al., where does the liability rest? Probably with the Department of Transportation. So we would ask that you do a study, come back with some recommendations that we could then react to. This is an issue we are dealing with statewide and frankly this is something our contractors

feel very, very strongly about. There should not be a double standard and if work is being done on public infrastructure it should be done to a certain standard regardless of who is performing the work. We believe there is a double standard when local governments perform their construction work versus when a contractor is held accountable for it. Thank you for the opportunity to comment.

Commissioner Skelton said when I was a County Commission I always said we're not in the construction business but we did have standards on gravel roads and those kinds of standards. So if they are doing construction work in these cities, is there a set of standards the city has to adhere to when the City is doing the work and who monitors those? Do you go inspect? Dwane Kailey said most local governments use what's called the Public Works Specifications. Do we set these standards for this local work? No we don't. Typically our district offices will work with the local government, they will review the scope, the proposed work that's going on and approve that but we're not getting into the weeds and details as to all these specifications and requirements nor are we going back out and reviewing the work other than maybe a drive by through the project. Keep in mind that most of these projects, while they are on the state system, typically are on a roadway that is owned and maintained by the local government. So yes it is on the state system but it is under the local government's maintenance; it's not a main road. Commissioner Skelton asked about the liability. Tim Reardon said there is liability for the work, liability to third persons during the project and that would be the responsibility of the city who would be assuming the contract responsibility.

### *David Cripps, Hwy 238*

I want to thank the Commission for the opportunity to speak on behalf of many central Montanans who use Secondary 238. We have waited for many years for this opportunity to have our concerns for highway safety heard by someone who may have the authority to act on our behalf. I'm David Cripps. I live at the historic Red Barn at milepost 9 which is the intersection of East Fork Road a/k/a S238 and Forest Grove Road. I grew up there on the family ranch and witnessed the traffic every day. I challenge the accuracy and legitimacy of the July 19, 2013 MDT Speed Limit Investigation submitted by Danielle C. Bolan, Traffic Engineer based on data collected one day in May, 2013. How can any Engineer schooled in the science of statistics declare average annual daily traffic volume as 660 based on data collected one day in May? Common sense tells us that for 365 days one would need more than one sampling to declare an average for the entire year. Engineer Bolan goes on to state that only 10 single vehicle crashes were reported in the previous three years and concludes that the crash rate is 1.56 crashes per million vehicles miles travelled. She said the statewide average for rural secondary highways is 1.34 crashes per million vehicles miles traveled. Implying that it is not too much more than the statewide average. Bolan makes this bold statistical analysis based on information collected one day in May and underreported data that only 10 vehicles crashed in the three previous years. One must question Bolan's source of a data base. In the past three years, there have been four hit-and-run crashes into my coral fences and barn alone and she says there were only 10 in three years. It is a well-known fact in Fergus County that most accidents like the recent roll-over that involved an unbuckled intoxicated police officer with a baby in a pick-up does not make the reported list. Bolan goes on to state only one of the crashes involved a conflict with an animal. That's in three years but anyone who drives this road knows that there is closer to one domestic or wild animal killed every day of the year with conflicts with vehicles. Nowhere in the report on this short Secondary road that connects Lewistown to graveled roads does Bolan discuss the variety of traffic including steel welders, commercial truckers, bicyclers, tractors, 4-wheelers, tourists, boaters, air force military vehicles, school busses, commuters, joggers, horses, and cattle. After all, how could that be reflected in a study made one day in May? From her scientific engineering study she concludes that it would be entirely safe to increase the speed limits on speedway 238.

For the past 20 months, since the Montana Transportation Commission in September, 2012, ordered this 70 mph speed limit temporarily reduced to 50-55 mph, has the traffic generally slowed down to honor those speeds. It is common knowledge among local drivers that seldom seen County Sheriffs and Highway Patrolman do not ticket unless the speeder is going at least 10 mph over the speed limit, therefore many local drivers automatically drive 5-10 miles over the speed limit. Wide-load commercial truckers hauling steel, logs, hay, gravel, propane, and intercontinental ballistic missiles and nuclear warheads generally comply with the posted speed limits for fear of losing their CDL with speeding tickets. Engineer Bolan has recommended that the temporary speed limits of 50-55 mph be increased by five miles per hour based on some 85<sup>th</sup> percentile theory of the state that drivers would appear to be travelling based on data collected one day in May and a limited data base of reported crashes. Using this theory the speed limits could be increased on a yearly basis since drivers here automatically drive 5-10 mph over the posted speed.

We must ask ourselves why MDT is so determined to increase the speed on this road. Could it be that a slower, safer speed would reduce the number of accidents and negate the necessity for the super highway that they proposed within the Department three years ago in May of 2011? Coincidentally that was the month the Fergus County Community Council put pressure on the Fergus County Commissioners to reduce the 70 mph speed limit which had been set by the Legislature for all Secondary Highways. The County Commissioners were presented with a petition with 200 signatures of 238 users who wanted the speed limits reduced. For many prior years local residents had their requests to reduce the speed denied by Fergus County Commissioners who happen to live on gravel roads beyond the end of this roadway. These Commissioners, who have subsequently been voted out of office, had not informed the public they had requested a super highway be built on this local road for their convenience of speeding to town. When MDT presented their superspeedway proposal to the community at a public meeting in August, 2011, I was the first person to point out that road safety could be increased by simply lowering the existing 70 mph speed limit. This was met with thunderous applause by 100 plus residents in attendance but with ferocious resistance by Ryan Dahlke, MDT Project Manager. One year later in August, 2012, Engineer Bolin arrived in Lewistown to do a windshield survey of the road. Three days after the survey Bolan proposed that an interim speed limit of 55 mph should be posted until she could conduct a speed study investigation. This was accepted by the Fergus County Commissioners and left to the discretion of the Transportation Commission. In September, 2012, two days before the Transportation Commission Meeting in Helena, we heard a rumor that a current County Commissioner and an ex-County Commissioner had assembled a group and were travelling to Helena to argue that the speed limit should remain at 70 mph. Thankfully the Transportation Commission set the interim speed at 55 mph and 50 mph at this meeting.

Ten months later in July, 2013, District Administrator Stefan Streeter sent Engineer Bolan's Speed Study to Fergus County Commissioners requesting they have public comment returned within 60 days. The Fergus County Commissioners waited the 60 days and then announced to the residents that the Speed Study had been completed and then voted to raise the speed limit to 65 mph for the entire length of the roadway from milepost 3.4 to 11.0 according to the News Argus and the Fergus County Clerk and Recorder. We haven't had official verification of that. The Fergus County Commissioners stalled another seven months before they sent their recommendations back to the Transportation Commission. We have now waited three years for a final determination on the speed limits for S238.

In the meantime new formerly straight sections of primary state highway approaching Lewistown from Great Falls, Billings and Malta have been completed with 12-foot lanes, additional turning lanes, and 10-foot wide paved shoulders with a posted day time truck speed limit of 60 mph and 55 mph at night. These are primary roads. On

Hwy 191 going north from Lewistown the sign also says “no off road vehicles”. Our little road has many off-road vehicles. Yet now MDT recommends raising the speed limit for the traffic to 60 mph on S238 day and night. The MDT would have wide-load commercial trucks carrying nuclear warheads share this short secondary scenic route with bicycles, horses, and deer on lanes only 11 feet wide in a one-mile no passing zone without even grass shoulders along steep creek banks and deep ravines on a blind curve at a blind junction to a heavily travelled steep gravel road at the historic Red Barn with two hidden driveways that serve eight residences, ranch, free meadows and pasture at the same speed as trucks on nearby reconstructed primary highways travel.

The Fergus County Commissioners and a group of road bullies, mostly welders from Allied Steel organized by ex-County Commissioners who were voted out of office want to set the speed limit at 65 mph or 70 mph day and night. Local residents try not to venture out on speedway 238 at 5:00 am, 3:30 pm, or 2:00 am shift changes at Allied Steel. The Montana daytime speed limit for trucks on the four-lane state highways with very wide paved shoulders and exit lanes is only 65 mph. Yes Engineer Bolan has the audacity to claim in her report that is it safe for trucks to travel on East Fork Road at 65 mph day and night. What is wrong with this picture?

The last time I spoke before the Transportation Commission in September, 2012, I apologized that I'd been impatient and angry that after 16 months still no speed study had been done on S238. This time I'm not going to apologize for my outrage that after three years of waiting, MDT and the Fergus County Commissioners allowed this sort of rubbish called a Speed Investigation Study conducted one day in May of 2013 be the basis for suggesting the speed limit now be raised five miles per hour on S238. I'm not angry at the Transportation Commission; I realize your hands are tied by the information and the time it takes MDT and the County Commissioners to present their views. On the contrary, I'm very grateful to the Commission that we've had 20 months of considerably reduced speeds on the upper Spring Creek and East Fork Road. Considering that most drivers travel five-to-ten miles over the posted speed limits on S238, I strongly urge the Commission to keep the present speed limit at 55 mph for the section between milepost 3.4 and 8.6. I have photos if you'd like to see those.

Commissioner Howlett said your point is well taken. We had a long discussion over that and we had a County Commissioner show up here and he was the only one in opposition to us reducing the speed. I'm assuming that it was him and his colleagues that banded together to try and get it raised. We didn't make that permanent; that was an interim? Yes. Is that coming before us again? Dwane Kailey said it was Agenda Item No. 7. Commissioner Howlett said we will have more discussion when we get to this Agenda Item. Dave Cripps said he would finish his comments at that time.

### ***Elk Park Project Bid***

Commissioner Griffith said I have some comments on why the bid on Elk Park was mathematically imbalanced. I think in the beginning both Kevin and I thought maybe it was because they were authorized to use recycled asphalt products which would lower your requirement for asphalt but the asphalt price that the lower bidder bid was \$350/ton. There were approximately 4,700 tons of oil required. The cost of oil is about \$720 and the contractor bid \$350. So that mathematically imbalances his bid by \$1.7 million. Now that isn't saying he was \$1.7 million low, he put that in other items. The problem I have is that we as the Commission and the Department have broken up projects into unit prices to both not disadvantage a contractor if we go over those but the intent is that if there is something we go under then you don't disadvantage the Department. It is my opinion this bid is mathematically imbalanced and has the potential for being materially imbalanced. It is within the Commission's

prerogative to cancel that contract and I'm going to recommend that we do that and rebid the project.

If we allow this to happen, as a Commission, it will set a precedent for how we see bids come in in the future and the imbalancing of bids will try to take advantage to get a project and I don't want to see that happen. I think it will confuse the issue. I would like the contractors involved with this project to stand up and have their day before the Commission. Commissioner Howlett asked Kevin Christensen if he was in agreement with Commissioner Griffith's observation. Kevin Christensen said it is a mathematically unbalanced bid. When I did my initial bid review I assumed the contractor had bid this job to use recycled asphalt but subsequently I found out that was actually prohibited on this job. I looked into it further and I do not believe it is materially unbalanced and that's why my recommendation was made to award this. It certainly is mathematically unbalanced.

*Mike White, Nelcon*

I'm Mike White, I'm the owner of Nelcon. Thank you for allowing me to be here. I bid work for the State of Montana on many, many projects for you folks and I appreciate that. Prior to this bid two weeks earlier we were second on a bid in Hardin that had the exact same oil price at \$350/ton. If that's material on this particular project on Elk Park then it's also material on the project in Hardin. Additionally we were second on a \$10 million job last year in Libby where the contractor bid \$1 for select borrow. If we're going to open this up then you are opening up a large issue. We bid about \$600,000 million per year in many states and we are also licensed in nine states and we learned from other bids so we had the bid tabs on a previous job in Hardin and we bid the exact same price as was bid there. Commissioner Griffith said that's apples and oranges because you can use recycled pavement. Mike White said recycled pavement doesn't change the extent of asphalt content. Commissioner Griffith said yes it does. Mike White said not to the level of the delta of the oil price. It's not half the amount of oil requirement when you do recycle; it takes off about 15% not half. So it's not that substantial.

I think the argument would be clear that if you do that, then we're going to have to object on the basis of many other bids where we were second and recently two weeks before with the exact same price on oil - \$350. Furthermore we've already received the Notice to Award; we've been required by the MDT to provide bonds which we've done, we've already permitted the gravel pit through DEQ, we've had on-site meetings, we're leaving this meeting to meet with the DEQ. So we would have substantial damages. We were ordered by the state to have all of our documents in no later than May 26<sup>th</sup> with our bonds etc., and we've already done that. So the material's bureau has gotten ahold of us and we've submitted all the documents that you require. We have had no evidence of any problem prior to this. Commissioner Griffith asked if they had a signed contract. Mike White said they have signed the contract and sent it back to the state of Montana. We do not have a signed contract from the state yet. We have a Notice to Proceed, we have a Notice of Award, and we have a lot of cost involved at this point to get to this juncture. We've met with the Weed Bureau. The day after the bid we went to the gravel permit area, we've got a lot of legal costs involved in that, we've had meetings in Butte with the land owner to secure the gravel. Generally when we do one of these bids it takes a minimum of two months to get a permit and another month to get the mix design process approved by the materials lab, so we're three months minimum from the day we get a Notice of Award. When we get a Notice of Award we're moving and we're going to make it happen. In past years Nelcon has served this Department on projects up to \$32 million dollars in Havre, we've also served on major projects and I've never been here in 30 years on a legal matter. We just aim to perform work; we bid the exact same as Riverside two weeks previous. It's not a material matter to the extent that you might claim. We're in the business of knowing how much it takes to do recycled asphalt and how much oil; that's what we're in the business of doing. I basically and

respectfully don't agree with that concept – it's the exact same unit price of oil that another contractor used. I started my business 11 years ago on a Home Equity Loan of \$50,000 and I bought Nelcon on a stock basis, so it would be very disheartening to me. My wife has been a public servant in public health for over 20 years and is the Director of the Flathead Community Health Department. It would be very disheartening to me to see other contractors of a larger stature than myself to be awarded jobs and me not be awarded this contract. Thank you.

***Mark Wessinger, Independent Contractor***

My name is Mark Wessinger. I'm an Independent Contractor and a Consultant Engineer representing Jim Gillman Inc. on this issue before you today. I have a copy of a document I'd like to hand out to the Commission. This is an excerpt from comments the Montana Contractor's Association made to proposed plant mix changes in February, 2013. This talks about recycling and current bid practices. Currently the most viable and truest method, based upon the way the contracts are set up now, for a contractor to bid the use of rap and the significant cost savings associated with it to the Department and the taxpayer is to adjust the asphalt price to take into account the reduced amount of asphalt that will be required to make the new plant mix. If you refer to the Q&A forum for both the Hardin project which Mr. White referred to and the Butte Elk Park Project you will see where the difference is and why Riverside bid this project the way they did at Hardin and did not bid it that way at Butte Elk Park. Specifically on the Hardin project in the Q&A Forum they asked if they would they be allowed to utilize rap in the making of plant mix. The response from the Department was the maximum amount allowed to be incorporated into the PMS will be available to the contractor. So that is why they bid the project the way they did on Hardin. They were bidding to incorporate the use of rap into the job. On Butte Elk Park they asked the same question and the Department's response was due to the project and sight specific concerns existing, rap materials will not be available to the contractor on this project.

On the Hardin project you can expect to see a final payment to Riverside reduced, if you assume a 1% reduction in the amount of asphalt required because of the use of rap; that final payment would be about \$357,000 less than the amount that you awarded to them. There would be no like reduction in payment to Nelcon on this project or on the Elk Park Project for that matter. Now on the Elk Park Project there are several ways in which the Nelcon bid could possibly be materially unbalanced and therefore not eligible for federal participation. First of all if there is a very significant decrease in the amount of asphalt cement needed to perform the work. The estimated planned quantity on this project is 5.7%. For every one tenth of a percent that the actual asphalt content use under-runs that, the payment to Gilman would be reduced by more than \$31,000 more than it would be reduced to Nelcon. If you had a reduced asphalt content and maximum incentives for density and volumetrics, under that scenario Nelcon, depending on how and when target limits are set, you can see a maximum incentive for Nelcon that would be approximately \$180,000 more than it could be for Gilman.

Another very significant reason that it could be materially unbalanced would be asphalt cement test failures. Under MDT's specification there is a graduated price reduction based upon test results of the asphalt cement. If there is a 10% price reduction, that reduces the payment by \$176,000 more than it would to Nelcon; a 25% price reduction would reduce the payment to Gilman by \$440,000 more than it would to Nelcon; and a 50% price reduction, which is allowed under the specs, would reduce the payment to Gilman by \$881,000 more than it would be to Nelcon. Now one of the things that happens, if there is price reduction on the asphalt cement, MDT and the taxpayer are not being compensated for the reduced service life that you would expect to see with asphalt failure. That scenario is one reason why, under subsection 102.08, the Commission has the discretion to reject not only materially unbalanced bids but mathematically unbalanced bids as well. You could have a

combination of several of these which could result in this bid being materially unbalanced.

To go back a little bit in history for some of the members of the Commission that may not have been around for some of the things that happened in the past. I'm sure Mr. Reardon will remember some of them all too well. Before the advent of electronic bidding and other significant changes to the competitive bid process, there was a great lack of integrity in the bid process. Difficult issues such as the one that we're here to discuss today were brought before the Commission on almost a monthly basis. Electronic bidding, standardized bid bond forms, and other changes to the process greatly reduced errors and significantly enhanced the integrity of the competitive bid process. There was, however, a significant problem that remained and that was problem of unbalanced bidding. In fact if you go back through MDT historical data you can see where MDT awarded contracts that turned out to be materially unbalanced if you look the finals for those jobs. Namely the final cost of the project is more than it would have been had the project been awarded to the second place bidder. It was this very problem that led directly to implementation of the Q&A Forum. Now there are similar processes that similar other contracting agencies have seen benefit this process and have adopted it or something very similar to it.

I'd like to refer to a Construction Memo, dated June 7, 2006, that talks about subsection 102.06 "Examination of Documents." The purpose of that Memo is to formally establish the notification processes required by 102.06 and how the Department's Q&A Forum and Addendum Process work in conjunction with the spec. Now the final two sentences of this memo says, "These processes have been helpful in restoring and preserving the integrity of the competitive bid process. In order to ensure that those benefits continue, the practices established must be followed." Now if you would please refer to subsection 102.06, seventh paragraph which says, "Do not take advantage of an apparent error, omission, or ambiguity in the bid package. Upon discovery immediately submit the discovery to the Department's Q&A Form found at [www.mdt.mt.gov](http://www.mdt.mt.gov) if an error, omission, or ambiguity exists and why it appears erroneous, omitted, or ambiguous."

It would appear, based on the bid that we saw from Nelcon in the Elk Park Project, that they believed there was an ambiguity in this. It goes on to say, "...advise bidders submitting a subcontract quotation of this obligation and clarify the responsibility to include this information with the subcontract quotation. The Department will clarify the error, omission, or ambiguity and if necessary and possible, issue an addendum to all perspective bidders before opening big packages." The next paragraph I believe is very significant to you here today. It says, "Do not submit a bid proposal or a subcontract quote without receiving clarification. Failure to provide written notification is a waiver of the error, omission, or ambiguity and additional compensation for contract time will not be allowed."

In the case of the Elk Park bid, should there be a change in the asphalt content or an increase in it or incentives, Nelcon will be receiving additional compensation. That is another reason why this body, the Commission, reserves the authority to reject materially unbalanced bids under 102.08 which says, "The Commission reserves the right to reject bid proposals, waive technicalities or advertise for new proposals." Then under the section it says, "If the unit prices contained in the proposal are mathematically and/or materially unbalanced, the Commission reserves the right based upon what it thinks is best and in the best interest of the taxpayer and the integrity of the bid process to reject this bid on that basis alone."

Now I will tell you in my discussions with Jim Gilman Excavating and other contractors, the contracting community will be watching the decision the Commission makes on this issue very closely. If you elect to waive the unbalanced bid by Nelcon as a technicality and award the project to them, you will be negating

the Q&A Notification Requirement in 102.06 and I believe you can be confident that you will see more of these kinds of issues before you. It won't be a precedent but rather a return to the bad old days. Now there is a precedent for rejecting all bids in an unbalanced bid situation and that was on the Shelby South Project. That was challenged in court as I understand it and the Department and FHWA's decisions regarding that were upheld.

There was however some very significant differences between that case and this case. First of all, in the Shelby South Project there was an obvious error. Also when the contractor, the low bidder on that project, brought it to the attention of the District Construction Supervisor, the District Construction Supervisor failed to notify the other bidders of that error or bring it to a higher level in the Department so there was no addendum issue. It was that very project which brought about the Q&A Forum. In this particular case, this is a solid bid package; there are no errors or omissions in it. You can look at the basis of planned quantities on the asphalt percentage; it's a little higher than some other areas. I have knowledge of that corridor and almost 34 years ago to the day I began my career working on Interstate construction. I worked on the stretch from Elk Park to Boulder. I'm familiar with a number of jobs in those areas. Typically the sources in that area do tend to have a slightly higher asphalt content requirement. Had I been in Kevin's position which I can relate to because I was at one time, I would not have had any question about that unless it had been brought up in the Q&A Forum which is a requirement, if Nelcon believed there was some ambiguity about that asphalt content.

I hate to say this but I believe, in this case, if you reject all bids you will be setting a precedent that could allow for possible manipulation of the competitive bid process into the future. Commissioner Griffith asked if he meant reject all bids. Mark Wessinger said yes, I do believe that's possible. For example, the way a contractor bids a job is dependent not only upon when the job is let but also what kind of resources they have available. Say you were an unscrupulous contractor and you don't have the resources available at the time a contract's bid, so you unbalance the bid and get all bids rejected and the Department re-advertises it and you get a second bite of the apple. I do believe in this case, if you reject the Nelcon bid and award to the lowest responsive and responsible bidder... I would like to point out that if you look at the Q&A Forum, both the second and third bidders on the Butte Elk Park project used the Q&A Forum to ask questions. Riverside asked a question about the use of rap and got a response from the Department. Jim Gilman Excavating asked the question about contract time and got a response from the Department and they bid accordingly. Nelcon did not ask any questions in the Q&A Forum.

I would say, first of all, if you use your authority to reject the Nelcon bid as non-responsive and award to the lowest responsive, responsible bidder, Jim Gilman Excavating, first of all you're enforcing specifications that are the result of many hard and difficult lessons learned by the Department but also just as important you're upholding the integrity of the competitive bid process and the processes the Department has in place. I'd be happy to answer any questions.

Commissioner Cobb said the issue was that we've already approved the bid and then we're coming back and saying maybe we made a mistake. I would open it up to everybody again. It's a little bit different than if we'd caught it at the very time we were bidding and the time we had to decide if it was imbalanced and then go the next responsive bid. This is after the fact. I'd open it up to everybody because we've already accepted the bid and now we're going back and rescinding that. I'd open it up. It just seems to me that it is after the fact, now it's come to our attention, and if the Commission wants to rescind it, then let's open it up to everybody. That's how I look at it. Commissioner Lambert said after we've awarded a bid how can you we change our mind and not give it to the contractor. Commissioner Howlett said it is covered because it was imbalanced. Commissioner Griffith said after the last meeting I asked the Department to not sign the contract until we had this meeting. So our

contract has not been signed. Tim Reardon said the contract has not been signed by the Department. Commissioner Howlett asked if there were any more comments.

Jim White said that Nelcon is saving the state and the taxpayers \$442,000. By any mathematics you come up with, volumetrics or densities, the maximum amount we could receive by a difference between bidders is \$142,000. So the state in any event would still benefit by \$300,000. If the quantities were to go up because the oil is cheaper, the state is saving more money. So there are two sides to this argument. Commissioner Howlett said there is but there is still the potential for the problem to be materially imbalanced. Nelcon said if you award it to the second bidder, it is about 6.3% more than the Engineer's Estimate as well.

Commissioner Griffith said he was worried about the precedent and the intent of my motion is to not only fix this contract but to fix future ones from the standpoint of especially the oil price – it can't be less than what market value is. Maybe we can separate rap into two different ... there's got to be an answer for this not to happen again. My motion is to cancel the award based on mathematical imbalance and the potential to be materially imbalanced and re-bid the project in entirety – reject all bids. Commissioner Cobb asked Tim Reardon is that was the correct motion.

Tim Reardon said the way the specification reads, 103.04 says, "That the award of the contract may be cancelled at any time before execution of the contract by all parties without liability against the Department." We have half the contract executed by the contractor but not by the Department. That is the specification that would apply. That doesn't mean somebody won't try to make a claim. The motion should be two-fold: first cancel the contract, and a second motion to rebid it, re-advertise, and start over.

Commissioner Griffith moved to cancel the Elk Park Contract based on mathematical imbalance and the potential for material imbalance. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Commissioner Griffith moved to reject all bids and re-advertise the Elk Park Project. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 5: Speed Zone US 93 Kalispell South**

Dwane Kailey presented the Speed Zone, US 93 Kalispell South to the Commission. This is in conjunction with the construction of the Kalispell Bypass. We set a temporary speed zone because of the construction. We've gone back and evaluated that interim speed zone. At this time we are recommending a 55 mph speed limit beginning at station 118+80, continuing south an approximate distance of 1,100 feet south of the US 93 Alternative Route an approximate distance of 1.65 miles. We have presented that to the city of Kalispell and their letter of support is attached. This would be a permanent speed.

Commissioner Lambert moved to approve the Speed Zone, US 93 Kalispell South. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Informational Item – Speed Study Information**

Dwane Kailey presented information on speed studies requested by the Commission. Quite some time ago you asked us to look into getting citation data relative to speed studies. It has taken us some time and a lot of energy and elbow grease but we have worked out an agreement with the Department of Justice and we are now receiving that information. We received it a little bit late so none of the speed studies presented to you today include that. I'm handing you one of the speed studies in your packet – it's an example of what we will be providing you in the future. From an engineering standpoint I'm extremely excited to get this information; it is going to help us tremendously, not only with the speed studies but also in our safety review. There is some very good information in this data we're receiving now and it will help guide us as to what some of the issue are out there on the road. I want to present this as an informational item. It is associated with the speed study I'm about to discuss. Hopefully this will meet your needs and your intent. If not please let us know.

### **Agenda Item No. 6: Speed Zone**

#### **Old US 10 (P-91) – Big Timber East & West**

Dwane Kailey presented the Speed Zone, Old US 10 (P-91) – Big Timber East & West to the Commission. Essentially they asked us to look at extending the reduced speed limit further out of town. In particular they were asking about the boundaries of the 25 mph zone. We have reviewed the traveling speeds, the accident history in the area, and we are presenting to you the following recommendation. A 45 mph speed limit beginning at station 1729+00, 550 feet west of the I-90 crossroads and continuing east an approximate distance of 3,400 feet. Then transitioning to a 35 mph speed limit and traveling an approximate distance of 1,200 feet. Then transitioning to 25 mph continuing for about 3,800 feet and transitioning back to 35 mph for a distance of 1,650 feet. Then transitioning to 45 mph an approximate distance of 1,900 feet. There is a map showing this as well. This has been presented to the city of Big Timber and Sweet Grass County and both support the recommendation.

Commissioner Lambert moved to approve the Speed Zone, Old US 10 (P-91) – Big Timber East & West. Commissioner Griffith seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 7: Speed Zone**

#### **Secondary 238 – Lewistown Southeast**

Dwane Kailey presented the Speed Zone, Secondary 238 - Lewistown Southeast to the Commission discussed earlier by Mr. Cripps. As mentioned earlier there was an interim speed established on this route in September, 2012, by the Commission. We have been back, reviewed the accident history, the traveling speeds, and based on that we are presenting the following recommendation. A 60 mph speed limit beginning at milepost 3.5 continuing southeast to milepost 8.6 an approximate distance of 5.1 miles, then transitioning to a 55 mph speed limit and continuing an approximate distance of 1.1 miles to milepost 9.7 and then transitioning to 45 mph and continuing an approximate distance of 1.4 miles. One thing I will mention on this is the county, while we didn't participate, the county does appear to have gone to at least two public forums where this was discussed. It is included in their letter and in essence they do support this recommendation by the Department.

Commissioner Lambert said the gentleman stated it was a one-day speed study, is that correct? Dwane Kailey said that is correct. We go out, we set out tubes and collect

data for 24 hours. Now one thing I will add is we have automatic traffic recorders state-wide. We use those automated recorders to help guide us. We use the data out of the automated recorders because they collect 24-7-365 and that gives us mathematical equations to help modify that 24-hour collection and help broaden that and extend it out for the entire year.

Commissioner Howlett said I do not understand why we have to get the 85<sup>th</sup> percentile and disregard wildlife, bicycles, and pedestrians, tractors, 4-wheelers, and I don't think I'll ever understand that. Tell me why. Dwane Kailey said we don't disregard those issues; we do take them into account if we see a pattern, either an accident history or other issues. Commissioner Howlett said what I'm hearing from someone who lives there, four times people crashed into his barn or his fence and he's never reported it. He lives there and he knows what goes on – if you go out and fix fence four times then he wonders if he should take the fence down because he's tired of fixing it. Dwane Kailey said you are hitting that issue right on the head. We have no mechanism of recording that information if it isn't recorded by an accident report. If an officer is not called and they don't fill out an accident report, we have no way to document it. Commissioner Howlett said then it didn't happen. Dwane Kailey said unfortunately if it is not recorded then we have no way to address that in our speed study.

Commissioner Howlett said I remember the discussion well with those people; I remember it well. I remember the gentleman who came here that was the County Commissioner driving the big Lincoln. He was the only one who objected to lowering the speed limit. He was the only one in the entire group of 15-20 people from Lewistown that live on that stretch of road. I don't know why we don't keep it where it's at. Dwane Kailey said if you look at the county's letter, they specifically give you names and addresses of the individuals who supported the increase in speed and those who supported a reduction in speed. Commissioner Howlett said what was presented to us were petitions signed by the people there and petitions signed by people who travel through that don't live there. There is a significant difference. Dwane said the last thing I will say is the 85<sup>th</sup> percentile represents the individuals driving that road on a regular basis. That's the speed they are choosing to drive on that road absent enforcement. It is absolutely your authority to set the speed how you see fit.

Commissioner Skelton said she would like to move to leave the speed limit where it is instead of raising it to 60 mph. I've driven that road; I know that road. It's dangerous and there's lots of wildlife on it. Now with the Allied group with the shift changes it's more dangerous.

David Cripps said right now it is 50 mph starting at milepost 8.6 to 9.7. That is what passes the Red Barn and the most dangerous intersection. Commissioner Howlett asked what the interim speed limit covers. Dwane said the interim, established as it is today, is 55 mph from milepost 3.5 to right before 9.0. David Cripps said it is to milepost 8.8; it's right where the road narrows down by two feet. Going from 55 mph to 50 mph is just not a big enough break; it has to go to at least 45 mph for normal speed from there to Allied Steel. Commissioner Howlett said we're trying to compromise with you. You rejected 65 mph, and now you want to reject 55 mph. David Cripps said I would really like it on the record that I anticipate... if you look at slides from milepost 3.4 where it's 45 mph, it's a wide road with 12-foot lanes, and a dotted line where you can pass and then look at milepost 8.6 it narrows by two feet, it has steep banks and there are no shoulders at all. Commissioner Howlett said the proper thing for you to say to Barb is thank you because she made the motion to do that. I think we've exhausted this discussion, not just today but previously. I'm calling for the question.

Commissioner Skelton moved to retain the interim speed limit on Secondary 238 – Lewistown Southeast. Commissioner Griffith seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 8: Speed Zone**

***Sidney Truck Route – 14<sup>th</sup> Street SE (U10402)***

Dwane Kailey presented the Speed Zone, Sidney Truck Route - 14<sup>th</sup> Street SE (U10402) to the Commission. Based on our review our recommendation at this time is a 35 mph speed limit beginning with the intersection of MT 16 and Central Avenue and continuing east to the intersection with 9<sup>th</sup> Avenue SE, an approximate distance of 3,500 feet. We've submitted that to the local officials, they concur with some caveats. We've gone back to the city to clarify those caveats and they are standing behind their comments. I'll let you read the letter rather than read it to you. Commissioner Howlett asked if it was premature to bring it in front of the Commission if we don't have the studies done. Dwane Kailey said the study is done. The city is saying they will live with the 35 mph, however, they'd like a different speed. Commissioner Lambert said she went up there with the Shane.

Commissioner Lambert moved to approve the Speed Zone, Sidney Truck Route – 14<sup>th</sup> Street SE (U10402). Commissioner Griffith seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 9: Speed Zone**

***Sidney Holly Street – (U10408)***

Dwane Kailey presented the Speed Zone, Sidney Holly Street (U10408) to the Commission. This is the third leg of the truck route. We've gone through the speed study, we've looked at the accident history and we are recommending a 35 mph speed limit from Central Avenue continuing east and encompassing the intersection with 9<sup>th</sup> Avenue NE, an approximate distance of 3,300 feet. We have the same exact letter attached essentially concurring with comments.

Commissioner Lambert moved to approve the Speed Zone, Sidney Holly Street – (U10408). Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 10: Speed Zone**

***US 2 – Intersection w/MT 40 to West Glacier***

Dwane Kailey presented the Speed Zone, US 2 - Intersection w/MT 40 to West Glacier to the Commission. This is broken out in segments as we go through the corridor. We've looked at the traveling speeds, the accident history through the segments. Commissioner Howlett said the seasons up there are quite different as you know. There is a lot less traffic in the winter and very heavily congested in the summer with traffic going to the Park. Has that been taken into consideration as you talk about speed limits because in some cases we post seasonal limits? It really gets to be nightmarish driving that road in the summertime. Dwane said they took that into consideration and at this time we are actually recommending removing the seasonal limit and setting the speed at 60 mph throughout the year. The local government is concurring. We are recommending the following:

MT 40 to Columbia Falls, this is a continuation of 60 mph speed limit approved for MT 40. The next segment is Columbia Falls to Hungry Horse to Coram and we are not recommending a change in this speed limit. Currently it is 55 mph and we did find the traveling speeds in there were consistent with that.

At Hungry Horse are we are validating the 45 mph speed limit zone posted. We have a recommendation of a 45 mph speed limit beginning at station 118+00, project RF 1-2(10) (350' east of the Flathead River Bridge) and continuing east to station 191+00 (600' east of the Hungry Horse Dam Road), an approximate distance of 7,300 feet.

At Coram we looked at the existing 50 mph speed limit and we are validating that as well. We are recommending a 50 mph speed limit beginning at station 312+00 (500' west of Selville Road) and continuing east to station 338+00, an approximate distance of 2,600 feet.

At Coram to West Glacier we are recommending a 60 mph speed limit beginning at station 598+00, project F-1(2) (200 feet west of Strawberry Mountain Drive) and continuing east to station 670+00, an approximate distance of 1.36 miles.

Furthermore we are recommending a 45 mph speed limit beginning at station 670+00, (as posted 1,100 feet west of the intersection with the Going to the Sun Highway) and continuing east to station 704+00, an approximate distance of 3,400 feet. So it will be 60 mph coming into the town of West Glacier and then 45 mph through the town of West Glacier in conjunction with the Going to the Sun Road.

The county has reviewed this and their letter of support is included. I have included a map that shows the changes. Commissioner Howlett said I don't understand why we don't have some uniform reasonable speed limit in that corridor. It is like an accordion; you never know what speed you're supposed to be going. Use the 25 mph in town and the rest of it 55 mph limit. Dwane said the engineering study is based on what we see the public comfortable driving road. If the Commission goes there, while the Chief Engineering won't recommend it, the Commission has the authority to do that. However, I would advise that you have a discussion with the County Commissioners because it would be contrary to what they are concurring with. Commissioner Howlett said I think 60 mph in the summertime is ridiculous. I drive it and I know. It's not very sane to do it in the wintertime either; there's a lot of snow on that road. I think we should have a discussion with the county and see if we can agree on some uniform speed limit through that corridor. Commissioner Howlett said we want the same thing – for the traffic to move through as quickly as it can and as safely as it can and factor in all the things that go on in that corridor.

Commissioner Skelton moved to postpone the Speed Zone, US 2 – Intersection w/MT 40 to West Glacier and to ask the Flathead County Commissioners to come in and discuss it. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 11: Speed Zone US 2 – East Glacier**

Dwane Kailey presented the Speed Zone, US 2 - East Glacier to the Commission. We were asked to take a look at this area. We have looked at it and at the accident history as well. At this time we are recommending:

A 45 mph speed limit beginning at station 575+00, project F 260(7) (1,200 feet west of milepost 209.0) and continuing east to station 587+00, an approximate distance of 1,200 feet.

A 35 mph speed limit beginning at station 587+00, project F 260(7) (700 feet west of the Midvale Creek Bridge) and continuing east to station 597+50, an approximate distance of 1,050 feet.

Statutory 25 mph speed limit beginning at station 597+50 (250' west of Montana Avenue) and continuing east to station 13+50, project F 1-3(8) an approximate distance of 1,600 feet.

A 35 mph speed limit beginning at station 13+50, project F 1-3(8) (300' east of Blackfoot Ave.) and continuing east to station 21+00, an approximate distance of 750 feet.

A 45 mph speed limit beginning at station 21+00, project F 1-3(8) (1,100 east of Blackfoot Ave.) and continuing east to station 30+00, an approximate distance of 900 feet.

We have submitted this to the County and they have approved it. I will tell you I was a little concerned when I didn't see concurrence from the Tribe. We reached out to the County and they forwarded the information to the Tribe and at this time we haven't received anything back from the Tribe. This was requested in light of summer activity in this area. I was hesitant not to bring it to the Commission because of that instance, however, I fully recognize that we don't have any written comments from the Tribe at this time. So I'm recommending approval but if the Commission wishes to go a different direction I'll understand. Commissioner Howlett said he did not want to act without some comment from the Tribe. Commissioner Lambert asked if this was the same road they had just acted on. Commissioner Howlett said it was the other side of the Park.

Commissioner Cobb asked if they could act on it before the Tribe sent a letter of concurrence. Can we get this thing going or do we have to wait. Dwane Kailey said he would defer to legal counsel. Are you recommending a motion to adopt this dependent upon receiving written comments from the Tribe? The motion would be dependent on concurrence from the Tribe. If they concur with something different, we'll bring it back. Commissioner Howlett said he was okay with that. Tim Reardon said a letter from the Tribal Chair, the Public Works Authority, or a co-signed letter concurring in the recommendation would be sufficient.

Commissioner Griffith moved to approve the Speed Zone, US 2 – East Glacier pending concurrence of the Tribe. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Agenda Item No. 12: Speed Zone US 93 Evaro Area**

Dwane Kailey presented the Speed Zone, US 93 Evaro Area to the Commission. We were requested on behalf of the Evaro Finley O'Keefe Community Council in Missoula County to look at the traveling speeds and the speed zone up there. We have reviewed the traveling speeds, accident history and at this time we are not recommending a change. We have presented that to the Confederated Salish and Kootenai Tribe and they concur in that recommendation. We also presented it to Missoula County and their letter references a letter from the Evaro Finley O'Keefe

Community Council which requests a reduction in the speed to 65 mph. Commissioner Howlett asked Dwane to postpone this one as well because the Department has submitted to the Tribes to do a safety study in that corridor and it would be premature to start talking about adjusting the speed limits until that safety study is done.

Director Tooley said they had talked about that safety corridor. Commissioner Howlett said this area only goes to the Casino. Part of the Tribe's concerns were that it goes down through development on both sides as it comes up through the slide area. So we need to look at this on a bigger picture. Dwane said in talking with Ed on the Road Safety Audit we had proposed a date for the Audit of July 15-17. Based on comments back from the Tribe and concerns with conflicts especially in the Vinson area, they are recommending postponing that until September. I want to make sure that in postponing this relative to the Road Safety Audit, we are essentially postponing this until this fall or early winter. Commissioner Howlett said you weren't recommending any changes anyway. Dwane said that was correct and just wanted to make sure that you are aware of the dates. Commissioner Howlett said when we get the result of the Steed Study then we can look at other things. Tim Reardon said since this is an Agenda Item you can make a motion to postpone consideration until the completion of the Safety Audit.

Commissioner Griffith moved to postpone action on the Speed Zone, US 2 Evaro Area until completion of the Road Safety Audit. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 13a: Design Build Projects Flowing Wells Rest Area**

Dwane Kailey presented the Design Build Projects - Flowing Wells Rest Area and D1 Slope Stability to the Commission. I'm passing this item off to our Construction Engineer. There are two design build projects before the Commission for your consideration. This one is the Flowing Wells Rest Area between Jordan and Brockway. You have a handout that shows you the project. We have one contractor for the project. We did short-list two firms on this project – Jackson Contracting Group and Land Star Development. Prior to the Technical Proposal submittal Land Star Development informed us they were unable to obtain bidding so they couldn't participate in the process any longer. We consulted with our legal department and determined it was safe to move forward and the Department had enough mechanisms in place to protect it. So we did. Jackson Contracting Group did submit a responsive Technical Proposal for the Rest Area. Yesterday they submitted their Bid Price Proposal and it is within our guidelines and very close to the Engineer's Estimate. So staff is recommending Jackson Contractor Group be awarded the stipend payment and be awarded the project. Commissioner Howlett asked about the price. Their bid was \$2,981,400. Our estimate was \$2,816,625.

Commissioner Griffith moved to approve the Design Build Projects - Flowing Wells Rest Area. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 13b: Design Build Projects D1 Slope Stability**

The Construction Engineer presented the Design Build Projects - D1 Slope Stability to the Commission. The second design build project is the D1 Slope Stability

project. It is to address 10 slides in the Missoula District. Most of those are located in Lincoln County. I did have a chance to look at some of them this last week. On this project we had a lot of competition; four firms were short listed. All four firms submitted responsive Technical Proposals. The firm with the highest Technical Proposal score also had the lowest bid which is the most ideal scenario for design build projects. Geo Stabilization International bid \$3,293,637.21. The Engineer's Estimate was \$3,474,996.00. Geo Stabilization represents the best overall value to the Department. Staff would recommend that firm be awarded the project and that all four firms that submitted Technical Proposals receive the stipend.

Commissioner Lambert moved to approve the Design Build Projects - D1 Slope Stability. Commissioner Griffith seconded the motion. All Commissioners voted aye.

The motion passed unanimous.

#### ***Agenda Item No. 14: Certificates of Completion February & March 2014***

Dwane Kailey presented the Certificates of Completion for February and March 2014 to the Commission. They are submitted for your review and approval. If you have any questions please feel free to ask. The Department recommends approval.

Commissioner Griffith moved to approve the Certificates of Completion for February and March 2014. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimous.

#### ***Agenda Item No. 15: Project Change Orders February & March 2014***

Dwane Kailey presented the Project Change Orders for February and March 2014 to the Commission. They are submitted for review and approval. If you have any questions please feel free to ask. The Department recommends approval.

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

The motion passed unanimous.

#### ***Agenda Item 16: Liquidated Damages Stillwater Excavating***

This Agenda Item for Liquidated Damages for Stillwater Excavating to the Commission was presented to the Commission earlier in the meeting. Liquidated Damages were waived for Stillwater Excavating (see earlier discussion).

#### ***Agenda Item 17: Liquidated Damages MA Deatley Construction – NH 61-3(25)84***

Dwane Kailey presented the Liquidated Damages for MA Deatley Construction to the Commission. This is US 191 Slide South of Moberge. The contractor was MA Deatley Construction Inc. They are not disputing the liquidated damages of four days. The amount is \$11,056.00. You need take no action and the liquidated damages stand.

Liquidated Damages Stand. No action needed

### **Agenda Item 17: Letting Lists**

Dwane Kailey presented the Letting Lists for the months of April through October to the Commission. They are submitted for your review and approval.

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

The motion passed unanimous.

### **Director Discussion & Follow-up**

Director Tooley presented these items to the Commission.

#### *CTEP – Transportation Alternatives*

Recently there's been a change between what was CTEP and now is Transportation Alternatives. With that there was some concern from the consulting community that MDT would bring those projects in house and design them here. There's considerable concern about that. Out of the 25 projects selected for TA, MDT is only designing four of those. So the total dollar amount of all those projects 93.9% of those still go to the consultant community and 6.1% of the funding is being used for design in house. If you hear concerns in your Districts from the consulting community they are pretty much unfounded. We are still doing what we've always done with the exception of some very minor projects that happen to be out our back door in Bozeman so it made sense to do it. So we will continue to do that.

#### *Spec Book*

You received an email regarding the Spec Book and you will be asked to approve that on the June 3<sup>rd</sup> Conference Call. We've had a lot of discussion about specs today and I think Mark Wessinger's comment that this is a combination of a lot of hard and difficult lessons was correct. When you read it, if you have any questions please ask the Department. We are pretty confident that the spec book, as sent to you, is a good guide. I encourage your approval.

Dwane Kailey said this is the process we follow for developing specifications – probably 99% of the Spec Book new edition and with each contract that goes out we include supplemental specs. They are specifications that are addressing issues that have come up and we include them in the contract. Since it's been so long since we've updated the Spec Book, this is the entirety of the contract. This portion right here is the supplemental specs. The majority of what we're doing with the Spec Book is putting these Supplementals into the Spec Book. I believe you received an email from Kevin Christensen yesterday and this is the majority of the work that is going out. These have been included in contracts for a number of years now and we're just adding them into the Spec Book. If you have additional questions, let us know. We do intend to include the new Spec Book in the September Letting which is a small letting at this point in time so time is of the essence. If there are bigger issues, we will work with you in resolving those issues.

Commissioner Howlett said it is kind of hard when you hand us a big thick document and you ask us to sign off on it. Sometimes when we read it questions come up and we need to be able to talk to somebody about it. I'm wondering if this is something we need to fully understand as a Commission rather than a phone call approving it when we really don't know what's in it. Conference Calls are necessary but they are very impersonal in dealing with issues that, as a Commission, we'd like to be on the

same page. The DBE thing was good example. We would have never had the discussion on the phone that we had today.

Commissioner Griffith said we wanted to talk about award of contracts and that fits in good with the new specifications and changing those up. Kevin Christensen asked me a couple of weeks ago about what we were looking for. This last bid opening had to be coincidental to the issues. I know the Department really appreciates the work the Commission does but at some point in time the contractors think that everything they do gets approved. Sometimes we have to take a hard look at things like we did today. Those are things that rarely get to the Commission. I bring this up because under previous Directors we've not had the opportunity and the flexibility but I appreciate you allowing Kevin Christensen and I to have a frank discussion about the issue of Elk Park. Kevin was absolutely the epitome of an excellent department staff – he was kind and sensitive to me and still held the department's position. I appreciate that and I thank you for that.

The other thing is, even though we acted on the liquidated damages, I don't think I've ever voted to give anybody back 41 days. I went into the discussion thinking I'd throw the book at him. In no part of that discussion did I think the department did anything wrong. A whole bunch of things happened at the end to make my plan fall apart. I want to let you guys know you did a great job on that and I do appreciate the work. Your leadership allowed them to interact with us without having to go through you and I appreciate that.

Commissioner Griffith said I feel a short meeting to talk about this before our July meeting would be in order. Commissioner Howlett said maybe we could meet on June 24<sup>th</sup> rather than having a Conference Call and we could come into town and meet. Let's plan on that.

Kevin Christensen said in regard to the Spec Book, there is a lot of coordination that has to be conducted between construction, materials, design, contract plans and so forth. Is there anything we can do for the Commission with respect to the Spec Book that would address your concerns and not appear to be just "rubber stamping" something. The vast majority of everything is already in effect and has been vetted through our process. In the email I sent I highlighted the two big changes we have. One is the concrete spec and that's the probably the biggest change. That is simply because the concrete industry has evolved over the years and we did work with the concrete industry and FHWA and the MCA. That is the technical part. The administrative big change is our finalization process and that came about through legislation. We were having some issues getting projects finalled out and in some cases there was a negative estimate and the contracting community took action and had some legislation passed. So we have a spec in place now that has a pretty tight time frame on getting things finalled out. Those are the two biggest changes in the Spec Book.

Commissioner Howlett said none of us take the position that we're going to be knowledgeable about what's in the Spec Book. We're not Engineers and you have put it together but I think it's important that we understand the concept of how things are developed, why they are spec'd the way they are. I have to rely that process is being followed and specs are applied uniformly to each contract. As far as the technical aspects of a specific specification that we have some confidence in it. I had no idea about this material weakness and mathematical weakness; I just have to assume that you're giving me everything and had it not been for some people looking into it and really understanding, it would have blown right by me.

### *Speed Limits*

Commissioner Howlett said there is one thing I want to talk about. I don't enjoy harassing Dwane over speed limits so I want that on the record. I did have a

conversation with Kevin McLaury and I think he's concerned legitimately so that sometimes it has the appearance that we're bypassing the scientific obligations of a study and doing it because we want to address wildlife or pedestrians or turtles or whatever and that may be. But I would like to see instead of just the 85<sup>th</sup> percentile, which is what the study tries to get to, I would like to see some thought given to some sort of weighted formula that gives weight to population density, wildlife, residential, etc. So there's not just a throw-back that we're rejecting what you have to say because we think that other things ought to be considered so that when we do object we can say "go back and consider these things" instead of just outwardly rejecting what you're doing. I just think that would be better for us as a Commission because we are going to raise those issues. I know you say you consider other things but there is really no way for us to know how you weight those things. As Engineer's maybe you can figure out how to do that.

Dwane Kailey said part of that is my failure. At times that is included in these studies but I don't highlight that. We talk about the roadway culture, the access points, etc., and I don't highlight that very much. Part of that is brevity and trying to get through things a little bit quicker. We can highlight those a little more. We are challenged somewhat because of the statute and the reference to a speed study which is defined by the MEPCE; we are hamstrung in our Engineering. Let me work with staff and have that discussion and see what we can do. I do think this citation information is going to help. I'm very impressed with it. I'll be honest with you, I didn't plan on giving you all the information we have because some of it is not necessarily sensitive but I wouldn't want it released publically either. I'm real reluctant to give it to you. Commissioner Howlett said don't give it to us if you don't want it to go public. Dwane said he would use it as additional information for us to consider. We can do a little bit better job and I can do a better job of pointing out some of the other items that we do review when making a speed study. Commissioner Cobb said you do everything just fine it's just that we have considerations at the local level to consider. You may think we reject your recommendation when we're not rejecting what you recommend, we just needed to do something different. So I think it's important that the Department doesn't think it was their fault that we didn't approve something, we just looked at the local situation and weighed that in.

Dwane Kailey said we have initiated a research study. As Engineers and as members of the public, intuitively we know that speed differential is a concerning issue. What we struggle with is how concerning that issue is. There's been a number of studies out there where they have looked at speed differentials but it's been predominately on multi-lane facilities. We are initiating a research study to look at it on two-lane facilities. Another thing we're tying into that study is what is the appropriate level of enforcement? We've said numerous times that if we're going set the speed limit below the 85<sup>th</sup> percentile, we know we're not going to get that great of compliance without some level of enforcement. So we're going to look at what the reasonable level of enforcement is and can we reasonably anticipate or expect that to take place. When we get into some of these remote areas, it's likely not going to happen. St. Ignatius is very well patrolled; it's a major corridor and in amongst some very heavily populated areas and very well patrolled. You have high compliance even though our speed study shows that the 45 mph isn't necessarily justified but you have good compliance because that enforcement is there. I want you to be aware that we are working on a research project that will help guide the Engineers as well as the Commission on these speed studies for the future. Commissioner Howlett said we all want to be responsive to the people who live in those communities and those corridors. We just need to be able to factor in those concerns and issues.

Commissioner Lambert said that is going to be hard to do because we have so many huge areas where our traffic count has increased and our dollars to have Highway Patrolman haven't. So it's just not possible to cover that many miles and how do you put that into a speed study? Commissioner Howlett said they might slow down with a sign and maybe not but it doesn't hurt to try. Commissioner Griffith said Rocker is

a prime example of speed differential at its worst because you have extremes on both sides. We have good history of adjusting that speed limit and reducing the accident rate by half. It didn't come from county recommendations, it came from the Commission who said we ought to do it and we did it and it worked and we've had three good years of low accident rates to justify five years in a row of being the highest crash corridor. So I'm a big fan of knowing that speed differentials kill people. I couldn't push harder for a project than I do for the Rocker Climbing Hill. That being said, I think the Commission is the weighted average. I love the work that you guys do to prepare the Engineering side of this but we are the social side and we are the interface between the constituents and the Department. I want to move traffic, that's my goal in life is to keep traffic flowing but sometimes I get bogged down with trying to be compassionate for people's situations and rightly so. I do think there are two different sides to this – the Engineering side and maybe there is something you can do to make the Engineering fit those wildlife and pedestrian issues. Commissioner Howlett said I don't discount the level of work and the statutory requirements but we just represent different things out in the communities.

### *Funding*

Director Tooley said both Houses are moving bills forward. The House Appropriations Committee has approved a Draft Appropriations Bill for DOT and HUD for fiscal year 2015 and leaves the funding level the same as before. Of course there is no cash attached to that yet; they'll still have to find a way to make a General Fund Transfer. Meanwhile in the Senate they are pushing for a \$265 billion six-year bill. Again no cash attached to that; it's just the framework for eventually getting work done. Commissioner Howlett asked if that was an infrastructure bill not just highways. Director Tooley said they have some in there for expanded infrastructure, also safety, rail, and transit. There is a lot more going on in that one. The House Transportation Infrastructure are still holding hearings so their bill hasn't come out but we expect something will and it will be current level. Of course, you saw the President's proposal for "Grow America" and that's pretty ambitious but there's no indication that anybody expects that to survive in its current form which would be really good for Montana.

So where's the money coming from? No one has really said for sure but two ideas being floated are (1) Repatriation of American corporate profits from overseas and (2) the other one that I do not know how they get there but cancel Saturday mail delivery and take the savings from that and transfer that into highway trust fund. So they are working on it. I keep in touch with people in DC almost daily and he is starting to see some things move and we're pretty confident this is going to work out. In the meantime we do have contingency plans here at the Department in case we get proportionally reimbursed at a lower rate than 100%, say they go to 80%, we're ready for that. We could complete this construction year. We will continue the lettings but if there is a big job that normally we would advance and construct at the end of the year, we may just defer that to the next fiscal year and fill it with some smaller jobs. It's not panic time yet.

### *Highway Trust Fund, Kevin McLaury – FHWA*

Mike pretty well summed everything up. Obviously Grow America is the bill the Administration put forward. There's a 22% increase for highways in that bill which the infrastructure people are really looking for. How they pay for this – a \$150 billion one-time pro-growth tax initiative is what they are looking at. There's a number of elements that are a part of the legislation. It basically continues MAP21 so the guts of the bill stays pretty much the same from a policy standpoint. A few things that were added are the Ladders of Opportunity that the President talked about. It's something similar to the DBE Program and is a program to try to help those who might need a hand to pull themselves up. That's one of the elements. There is \$13.4 billion in critical investments attached to the bill that targets Interstate bridges,

seismic safety. There is \$4 billion in new fix and accelerated transportation program, \$5 billion over four years for the TIGER program, and a number of other elements. Federal Funding for Federal Highway is a two-step thing – we’ve got contract authority as well as the appropriations side.

MAP21 runs out the end of September. That’s really concerning. If Congress doesn’t do something to give us the authority to spend, even though the appropriators say you have the money to spend without the authority to spend, we’re stuck. So both pieces have to happen. From the authorization side, the Senate is broken up into three pieces – the EPW is for us, Banking is transit, and Commerce is safety. So those three combined make up the authorizing committee’s for the Senate side. The House T&I has all those in one. Nothing is coming out of the House on T&I yet. EPW is currently in mark-up; they are marking up the bill so they are moving some things forward. So a lot of things have to happen fairly quickly. So there’s some real concern whether we’ll be able to get the authorization and the appropriation money to continue to move us forward.

The Director mentioned payments. To bring you up to speed with the Highway Trust Fund. At the end of April there was \$8.6 billion in the Highway Trust Fund. When it hits \$4 billion, it starts sending up red flags and the Department can go to a slower payment process. Right now typically when a bill hits us we kick it over to Treasury and we get paid in a day or two at the most. The Prompt Pay Act is 14 days. So what may happen to try and stretch things is that payments will come slower and at a reduced rate. All estimates are saying August or September we may be hitting reduced payments or even potentially being close to the zero mark on the Highway Trust Fund, it just depends on how the bills come in. We’re hitting the high point of construction so lots of bill are popping.

#### *Ronan Project Update*

Dwane said they had a very good discussion with the Mayor of Ronan about two weeks ago. Shortly after that we got a letter from the Park Board again requesting additional mitigation items that we simply cannot provide. I went to a City Council Meeting last night and planned to present the information and get a vote out of the City Council, unfortunately they didn’t have a quorum. Ed was supposed to get an email from Dan this morning explaining what transpired. The highlight is that if we can get Ronan on board here very soon, we have the potential still to deliver some part of Ronan Urban in 2018. Even if they don’t get on board very soon, we’re still going to move forward with at least some segment of it – most likely the northern segment of Ronan. It would be from the Dairy Queen North to where we’ve rebuilt with the plan of that being in 2018. Mickey talked to me this morning and we’ve got everything ironed out with the consultant and we just need to sign the documents on the Post Creek Hill Project. So at this point in time we’re going to hit the ground running as hard as we can on that with the idea of delivering that in 2019. I will forewarn you a little bit, the estimate on that is high. We’ve seen substantial cost growth from their initial estimate on most of those projects. It may not grow but most of them always have. Commissioner Howlett asked how long we dance with Ronan. Dwane said I don’t want to give up. We’re going to prioritize based on the information we have today. It appears they may have another City Council Meeting Monday and they could potentially resolve the issue. Commissioner Howlett said it seems we’ve set deadlines and we don’t mean it. Dwane said it is a struggle without a doubt. We’re still going to prioritize and work on Post Creek as expeditiously as we can. Commissioner Howlett said I’m not comfortable setting a deadline and then not meeting it then why set it. We said we wanted an answer and they announced in their paper they were having a City Council Meeting to discuss it. Commissioner Lambert said it wasn’t Dwane’s fault they didn’t have a quorum. Commissioner Griffith said the 24<sup>th</sup> is our deadline. I think we’re going to make a decision on the 24<sup>th</sup>. I’m frustrated for you guys to have to deal with that and to keep everything else up in the

air while they make the decision. I'm compelled as one of the board members to make a decision. We've fooled with this long enough. You're going back in the rotation. Commissioner Howlett said he would entertain a motion to set the deadline for Ronan for the 24<sup>th</sup>.

Commissioner Griffith moved to set the deadline for the Ronan Project as June 24<sup>th</sup>. Commissioner Lambert seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

### **Next Commission Meeting**

The next Conference Calls were scheduled for June 3<sup>rd</sup>, June 24<sup>th</sup>, and July 22<sup>nd</sup>. The next Commission Meeting was scheduled for July 31<sup>st</sup>.

### **Adjourned**

Meeting Adjourned

Commissioner Howlett, Chairman  
Montana Transportation Commission

Mike Tooley, Director  
Montana Department of Transportation

Lori K. Ryan, Secretary  
Montana Transportation Commission