Minutes of Nevada Department of Transportation
Board of Directors Construction Working Group Meeting
August 24, 2012

Chairman Len Savage	Kevin Lee
Controller Kim Wallin	Reid Kaiser
Member Frank Martin	Jeff Shapiro
Director Rudy Malfabon	Felicia Denney
Rick Nelson	Megan Sizelove
Dennis Gallagher	Bill Wellman
Thor Dyson	Lucy Koury

Savage: Good morning, everyone, and welcome to the Construction Working Group meeting on August 24, 2012. Can you hear us in Las Vegas?

Martin: Len, can you hear us?

Savage: Yes.

Martin: Okay. Perfect. Can't see us can you?

Savage: Good morning, can you hear us up in Reno -- or Carson City?

Wallin: We're in Carson City.

Savage: Can you hear us in Carson City? Yes. From Carson City.

Wallin: And Len's all excited because he got to drive on the new freeway today, so the excitement hasn't worn off yet.

Savage: Very, very special day for NDOT. Congratulations to NDOT and the State of Nevada. Very nice day. Anyway, to get started in Elko, can you hear us in Elko?

Lee: Yes. We can hear you in Elko. Thanks.

Savage: Thank you very much. With that being said, we'll get started with Agenda Item No. 1, public comment. Is there any public comment in Las Vegas?

Martin: There's no one here.

Savage: Elko?

Lee: No. There is no public comment, thanks.

Savage: And Carson City? Not at this time. Okay. Thank you. We'll move to Agenda Item No. 2, comments from the Construction Working Group at this stage. Any comments, Carson City, Las Vegas or Elko?

Martin: No.

Savage: Agenda Item No. 3, approval of the June 25, 2012 Nevada Department of Transportation Board of Directors Construction Working Group Meeting Minutes. Has everyone had a chance to review the meeting minutes? Las Vegas?

Martin: Yes.

Savage: With no questions, I'll take a motion.

Wallin: Move to approve.

Savage: Second?

Martin: Second.

Savage: Motion moved. We will move on to Agenda Item No. 4, discussion of the NDOT BDR Retention.

Nelson: Yeah, this item came up generally in response to some (inaudible) payment issues that had going on with FHWA. And Jeff Shapiro, our Chief Construction Engineer, is here to sort of discuss with us the evolution of this and some background. We've brought this up to the NDOT Construction Industry Liaison Group at one point in time, and there may be some public comment with respect to that a little later, but with that, Jeff, you want to give us a little background on where we are with the retent?

Shapiro: Basically, what the intention was -- Jeff Shapiro for NDOT, was FHWA notified us that we were not in compliance with the prompt payment clauses in Title 49, and there's basically three options in there, and they said you need to pick one. And so we did -- we picked one of the options, and -- but it's not necessarily -- the option that we picked is not necessarily in compliance with state law. Now, there is the supremacy clause issue. I'm not an attorney, but (inaudible). Well, on the three options? Okay. The three options in the federal regulations are -- and it's in a section under the Department of Transportation, discussing prime contractors and subcontractors. The three options are no retention to the prime, no retention to the sub, that's option number one. Option number two is no retention on the prime, retention on the sub, but payment on the retention to the sub within 30 days of substantial completion or -- I'm not sure of the exact word, but successful completion I believe is the wording.

Wellman: Want to read them?

Shapiro: I don't really want to read them. I've got them.

Wellman: You haven't gotten them right yet, so…

Shapiro: I haven't gotten them right yet and I printed them out. Okay. And the third one is we can hold retention on the prime, and we can hold -- and the prime can hold retention on the sub, but the retention has to be released within -- through incremental acceptance is what they use the term in the regulation. We have met with the industry, and to be quite honest, or be frank, I thought we had agreement on which one we were going with, number two, but apparently some discussions recently -- Rudy Malfabon, we need to maybe have -- discuss this again with them.

So what we did is we implemented option number two in our specs to comply with the federal requirements, which is no retention on the prime, the prime can hold retention on the sub, but must release it within 30 days after successful completion, and we actually define successful completion in the contract. It's, you know, payment -- submitting all your releases, paying the unions, union dues, all that kind of stuff, and acceptance by the owner too, of course, payment by the owner. So that's the option that we chose, and that's currently the one that we have in our contracts right now.

The intent of this bill draft request was to modify the law just slightly to bring us closer to compliance with the federal regulations, and it's literally we're changing a will to a may. But it's my understanding recently that industry might not be supportive of that change, so we need to discuss that with them a little bit, but that's just basically the gist of the bill draft request on retention.

Nelson: Now, when it comes to retention, how do we implement that retention currently?

Shapiro: Retention is kind of unique as far as I'm concerned, my opinion of course, with the way NDOT does it. We do not -- you know, the law says a five percent or $50,000 basically, it sets a maximum there. We actually do not withhold retention until the project -- the contract is 85 percent complete. Most agencies start withholding retention at the beginning of the project, and many in some cases actually start to release retention after a certain percentage, say like 50 percent or whatever, if the project is being successful or is progressing satisfactorily. In our case though, we don't really withhold retention until the job is 85 percent complete and that's in the contract as well, but it is in compliance with the NRS.

Savage: Okay. Thank you, Jeff. So at this time, do we hear from the public on their concern, or do we wait to the next public format?

Shapiro: It doesn't matter to me (inaudible).

Savage: So let's hear from the industry if we can at this time.

Shapiro: I didn't mean to steal your thunder there, Bill.

Wellman: I just assumed you could fix this right.

Savage: Please identify yourself.

Shapiro: We thought we had it fixed.

Wellman: I'm Bill Wellman with Las Vegas Paving, and also on this item, representing AGC South. We did take this -- Las Vegas Paving is one of the members of the industry liaison committee that Rick had spoke about a little bit earlier. That committee has been in existence for about four years I'm guessing. We meet quarterly. It's seven contractors at the initiation of this thing. It was the seven largest contractors doing business with NDOT at the time, and it was the top seven people from the director down that attended these meetings and they've been quite successful over the course of time. That's the little history on that.

With that, a year ago, year and a half ago, this issue came up that NDOT was not in compliance with Title 49. That was brought to our group. We worked on it. We had a task force that dealt with it. We battered it back and forth for an extended period of time. And we came up with what I understood was going to be item number three of the options and with that you hold retention, we then can hold retention, and then as incremental acceptance of completed work, then we could release retention on those, but also it released us from the obligation and the liabilities associated with subcontractors on a project.

With that, that was sent, in my understanding, in a letter to the feds. The feds in turn responded, I believe it was in September, that said, okay, this is great and wonderful. How it doesn't comply with Title 49 today I'm not sure. If we did with option number two, I think it's the same essentially. It doesn't have the incremental acceptance portion of the thing. And as we move forward, retention is critical to us in being able to hold retention on subcontractors and that is because we've got to make sure that they're paying their bills quite frankly. Until we can get some releases from them, that option is given to them. And maybe I'm speaking on behalf of Las Vegas Paving and how we can handle our subcontractors, but the industry has asked me on behalf of AGC South to come in and ask that -- or oppose any changes to this as it is today.

NDOT is the only one that holds the $50,000. It might not sound like a lot of money, and it probably really isn't, but in the big picture, it's something, and you have another Agenda item here to talk about, Project Closeout, and the issues of Project Closeout are tough enough as they are, but if you didn't hold any retention, it'd be even worse. So they kind of meld into each other a bit.

All the other public entities hold 10 percent up to 50 percent of completion. At 50 percent of completion, if it is being satisfactorily completed, they will start reducing it, so at the end of the project it's 5 percent. Why NDOT is different, I don't know, and we'd be okay with that if you followed the same suit just to make it clean and clear across the industry, but we do in fact need and desire that NDOT keep and hold retention as you have, and we've already tackled this once, and that's why we're not sure why it's becoming an issue if it will.

One of the things that is discussed in Title 49, we have to pay within 30 days of having been paid, however, NRS -- I'm not sure what section it is, but it was a prompt payment bill two sessions ago that was enacted that says 15 days. So frankly if we're out of compliance with Title 49, we're way out of compliance with NRS. So I think there's already a means of handling this internally. And like I said, it was my understanding that the feds were happy with what we worked on and what the results were almost a year ago. That's it.

Savage: Thank you, Mr. Wellman. Any questions from Board members for Mr. Wellman? Member Martin?

Martin: No, sir. One thing I did not understand, so you took -- Jeff, you took option number two which held retention on the subs, which I heard that industry was in favor of, and -- but did not hold retention on the prime until the policy has been you're 85 percent complete. Am I perfectly clear on that?

Shapiro: Yes, Member Martin. Well, the spec says we don't hold it until 85 percent, but the actual federal regulation says those, you know, the three options, two of the options say no retention on the prime period. You know, the only the third one allows retention. And then basically FHWA was agreeing that -- basically we were informing them that we picked one of the options which is what they asked us to do, and that's what they approve. We definitely need to go back to the drawing board and see where the disconnect here is on the communication aspect here on which one we picked, so…

Wallin: I guess I'm -- like Member Martin, I guess I'm still confused as to, you know, is option three something that you like or no, don't like or…

Wellman: We like -- both option two and three are workable, but I think option three helped facilitate NRS requirements (inaudible) as well.

Wallin: Yeah. I mean, to me that makes sense.

Shapiro: It's my understanding of the issue if I may is the concern from the prime contractors are if we don't withhold retention on them, they won't be able to hold retention on the prime -- or the subcontractors, and that wasn't the original intent, and this could be an issue of the little bit of inconsistencies between NRS 408 and NRS 338, which we weren't aware of at the time I put this thing together, to be frank, and that's something we definitely need to look into. Because that was never the intention. We don't want to restrict the prime's ability to withhold on the subs for the very same issues that Mr. Wellman was talking about, making sure they pay their suppliers and their employees and, you know, that kind of stuff, so…

Savage: Okay. And I think they're -- the council will also have to review the fact of the federal versus the state to see who takes the lead on that. So it's my understanding this will go back to a work session?

Shapiro: We're going to have to, yes.

Savage: At this stage.

Nelson: Right. And the way the BDR was drafted, like Jeff says, it just changed the will to obey, and so it doesn't preclude us from withholding the $50,000…

Shapiro: Well, it actually gives us more flexibility -- gives the director more flexibility to make that decision. And it's consistent with a lot of our neighbors. Very few states say, especially when it comes to federal aid stuff, you will. I know California does, but the rest of our neighbors, it's optional. The director has that discretion.

Savage: And for my -- does California hold ten percent or…

Shapiro: I think it's ten percent.

Savage: It's ten percent. And I heard that from industry, it's either a ten percent or 50,000, there's two options. Right now it's $50,000, I understand that.

Shapiro: It's $50,000 or five percent, but that's NRS 408. This is part of the difficulty. 338 allows -- is it five percent or ten percent?

Savage: Ten percent.

Shapiro: (Inaudible) numbers in there yet. Yeah.

Savage: So there's some conflict there I think that we have to go back and try to work out so that we're all on the same page. Yes, Mr….

Wellman: If I may, one more time. The only reason we don't like language in the BDR is it makes it very subjective, and using Jeff's term just now was being consistent, whereas if it's may, then if I'm the guy that is -- they're holding retention on me, I'll turn the tables on my example I used on Jeff earlier, hold the retention on me, but not on somebody else, and I may have issues with that, why are you picking on me and not this other guy. So if you leave it consistent, it is what it is.

And one more thing that you talk about that's maybe the value and the savings and the interest, I think that's very wrong. This money is supposed to be put into some kind of a CD as it is, all the other public entities do that. Some entities, like in California actually, we decide where that money goes from an investment standpoint. So the interest that you get is interest that's being made and being paid on the money that's put away, the $50,000 that's put away. So it really is -- there's no cost associated with…

Shapiro: The interest might be a wash, I have to acknowledge that too.

Wallin: Yeah. I mean, I can understand your point, because when he was talking about the word may, and lets the director have discretion, and I could see -- I could see issues there because then -- and if you withhold money from me, well, the time value of money, it costs me money as a contractor, whereas, you know, my competitor, he happens to have a better relationship with the director, and so I agree with you. I have a problem with the word may.

Nelson: I have to wonder though what -- if this would have any impact on the bidding environment that we have, if our contractors know now that instead of us withholding the $50,000 towards the end of the job, we're going to be holding ten percent through the life of the job, you know, you get into a situation where the, you know, the contractor is fronting some of the money associated with it because we're not paying them, we're withholding ten percent of everything we're giving them, if that might have some implication with respect to the bidding environment and prices that we're getting these days.

Shapiro: Yeah, yeah. No, I agree with you. I think if we increase it like you're talking about it, that would impact our bid prices adversely, or potentially could.

Nelson: You know, you go ten percent on a $50 million job or a $40 million job, that's quite a bit of money.

Savage: I think -- go ahead, Member Martin.

Martin: Just from my world, and Len, I think you members -- or Chairman Savage, I think you operate in the same world that I do. For us in the vertical world, ten percent is the standard norm, but there's also written into the NRS -- yeah, I'll get it wrong, about the -- when the project is 50 percent complete, you reduce the retention by 50 percent, so it becomes -- ends up being five percent. Mr. Wellman, I have a question. One of the reasons why this retention thing came up is this groups been examining the length of time that it takes to closeout projects, and it seems like the $50,000 is no motivation for anyone on the industry side to get the required paperwork, because we get a checklist provided by the staff and it looks like from the majority of the checklists, it's contractors not getting all their stuff in that is keeping these jobs open for months and sometimes years. We've got projects that are 18 to 20 months old.

And so one of the reasons the retention came up was the motivate somebody to get these things closed out. And in my industry, we're required by specification to have these things closed out 45 days, and you're talking about reams and reams of material on 40 or 50 subcontractors and on 600 products that go into a building. And when I take a look at some of the closeout requirements by NDOT, they're pretty doggone simple, and yet we've got jobs that are open for 18 months. That's where this retention conversation came up. How would you -- where would you see us going with this thing, sir?

Wellman: Well, we're culpable on a few of those projects.

Martin: I know.

Wellman: Obviously we've rolled -- kind of rolled into the other Agenda item I guess, but some of the times it's knowing that we need to get something else, and we don't always get that information. And I don't want to start throwing NDOT under the bus because they're the best entity we feel in the state to work for at this time. But, yeah, some of this -- some of this closeout stuff gets pretty difficult, maybe because it's the federal money, I don't know, but it also is subject to an audit at the end, and that's some of our other concerns why we feel that retention needs to be held, and even in the simplest form of $50,000, is we do get these audits, and final quantities that are sometimes months and years at end, and then there's credits asked back from NDOT because there isn't this many feet of guard -- you got paid for 100 feet of guardrail, but there's only 98 in reality. And if that guardrail -- if that was a subcontractor that was paid in full, we have no recourse essentially, and so, I mean, that's a burden on the general contractor itself. I think some of that timing is associated with a lot of that audit stuff.

And I just heard recently that our I-15 north design-build project was waiting on a certified payroll, and I just heard about this like a week ago, two weeks ago, so as soon as we heard about it, we're getting on it. So we'll find out what the issues is and resolve it, but the $50,000 still has some value, and even to us, as large as we are, it means something. So if you get rid of things like $50,000, or if you go to ten percent or five percent at the end of a project, I'm not necessarily opposed to that. If that's what it takes to make it right, that's what its, and contractors should be -- have the strength to live with this to a point. We do it every place else.

Martin: So what's your opinion of the concern by Rick and Jeff about the idea of it impacting the cost of the bid?

Wellman: Well, for Las Vegas Paving, we do not put any kind of a value on the cost of money on these projects, especially in this economy, and I've been there 32 years, and we never have. It's just a means of doing business, and it's the cost of doing business like everything else. Now, that's Las Vegas Paving. I can't speak on behalf of the rest of the industry.

Martin: That's pretty much the way it is in my industry too, guys.

Savage: I'll second that.

Martin: Okay. Thanks, Billy.

Wallin: And I think, you know, for NDOT to have the tool to go and get these closeouts faster, I mean, like you said, if we have nothing, what's the incentive to get it closed out?

Shapiro: There would be none.

Wallin: Yeah, exactly. And I kind of like the, you know, going to the industry standard, you know, the 10 percent, and then reducing by 50 percent, 50 percent through because -- and like you said, with the time value of money, if everybody's on the same page, you're not going to be looking at that, but if we have the clause that says may, you'd be looking at that. That would definitely impact it, because then people would say well, what if they decide to do retention. So I'm -- because I don't know if I'm going to be a retention person or not. I mean, so I like that.

And then you mentioned the auditors, and I don't know if this is the right time or not since we're kind of going into our closeout stuff too, I understand that NDOT has an outside audit firm that's been doing some of the audits, but I understand that they're no longer going to be doing it and we're all going to be doing it in-house. Does NDOT have the resources to continue to do it in-house since they, you know, you're saying it takes a long time to…

Shapiro: Well, I can answer part of that question because we have several different forms of auditing, but I don't -- within our own organization, the construction division, we have an administrative section that's the third party audit of the work that's done by the folks out in the field for the district engineers, the people that actually document the progress of the projects, put the quantities in the pay books, process the pay estimates. Those are the folks that work for the district engineers, our admin section when we closeout the project, we're the auditors. They're not professional trained auditors, but we're the people that go through the books and check that, those type of matters. We also have a division, internal audit it's called, which I'm not sure what their staff is. They work for Division of Administration or the…

Nelson: They work for the Deputy Director.

Shapiro: Deputy Director. They audit things like consultant agreements and I believe the design-build contracts. We're still trying to fine tune the closeout process on design-build contracts. And they audit those type of agreements or whatever, and I know they had been hiring consultants in the past to help them out. I don't know if they've got a new agreement or not, but I don't think they have a whole lot of folks.

Malfabon: (Inaudible) for the consultant agreements and the audits of those, I think that they have such a backlog that they still use outside auditors.

Nelson: But I think what Bill's talking about is the audit that Jeff's staff does.

Shapiro: I think for (inaudible) talking about, yeah.

Nelson: And we had brought up earlier our desire to -- in fact I think an RFP may be on the street…

Shapiro: It's not on the street. It's a draft.

Nelson: ...or close to going on the street, to hire a firm to develop an audit manual for us that we can use to do these audit books. You know, right now we're doing basically 100 percent audit, and there's auditing standards that we can apply.

Wallin: Yeah, it's called risk assessment.

Shapiro: Exactly, yeah.

Nelson: To move these things along, you know, 100 percent audit takes quite a bit of time, and there's really, you know, you spend a lot of money chasing a couple dollars in 100 percent audits.

Shapiro: And that is part of the problem, the reason why these things can take so long sometimes with our own internal procedures with the 100 percent audits. The one thing I've learned with working with LCB and their auditors and what not is, you know, they're professional auditors. They've been trained to do this, and USGAO standards, and that's something we need help in because we're not trained in that. And the intent would be to bring somebody in like that from the outside to help look at our procedures, help us closeout some jobs and give us some guidance as to implementing something more along that line, the risk…

Wallin: Risk assessment. Um-hum.

Savage: Okay.

Martin: I just have one more comment, folks. I agree with Madam Controller in the fact that when you put language in that says may that are subjective and language that's not objective, it's either shall or will in my world. And when you put in words like may, it does as Mr. Wellman open up a potential for liability, a potential for discrimination. And I don't think any build draft ought to have the words may. Again, it just leaves too much subjectively.

Savage: Thank you, Member Martin. Thank you, Madam Controller. Along the same lines, I would like to just add that I think the word consistency, as Mr. Wellman alluded to earlier, with the ten percent retention being reviewed, it gives the prime contractor along with the owner being NDOT a good tool to manage that unruly subcontractor. And I think it's important that everybody remain consistent moving towards the same goal. And there's troubled times when you get one or two different subcontractors that can be not cooperative with the project and the schedule. And this ten percent option I would advise and suggest that we look at it along with this other, because it's very common in the vertical side, and I know it's common with RTC, and some of the other horizontal entities as well. So I thank you for your time, and if there's no other questions, we'll close…

Malfabon: Chairman Savage, I wanted to make a comment. This is Rudy Malfabon. I checked with Sean Sever who's kind of managing our BDR's with the Governor's office on the status of this particular BDR. What the Governor's office had asked NDOT was to try to cut or consolidate some of our BDRs because they had 200 received from all of the agencies reporting to the Governor. They had to cut it to 100, so this one was a lower priority, and Sean Sever told me that in discussions with the Governor's liaison, the BDR for retention was cut. So it was a low priority to start with, but currently it's been cut from our list of BDRs that we submitted (inaudible) and that just happened just recently, like a few days ago.

Savage: Rudy, is there any possibility that a call can be made after this CWG group meeting to possibly reenact a discussion there?

Malfabon: Yes. We can talk with the liaison and the Governor about -- and also we have to talk about modifying the BDR as per the discussions that have occurred.

Wallin: Rudy, could you go and combine it with others? Because I only get two BDRs, but I put a whole bunch of stuff in those two, let me tell you, you know. I have the one that cleans up stuff, and then I have the kitchen sink one.

Nelson: If I could answer Rudy. This is Rick Nelson. In having some offline conversations with some of the legislatures, I know there's some desire by a few out there to make 408 more consistent with 338. And there may be opportunities to negotiate and amend some of those that I'm sure are going to pop up. You know, I don't know for certain it's going to happen, but I just have a feeling that there's going to be a drive to sort of merge some of these different construction related NRSs, and so there may be an opportunity to roll some of those things in if we want our own separate BDR.

Savage: Yes. And what's the timeline on a BDR?

Wallin: Like this week, next week. I mean, they start -- I have to have mine in by September 1, so time is of the essence. I mean, the only other way you can do it is the legislators have some. And actually one legislator called me and said they have two BDRs left and if I would like to use them, so that might be a possibility too. And they have until like even in session.

Savage: Yeah. I'm sure it's evolving as time goes on.

Martin: In the interest of keeping it simple, maybe the idea would be to tie the 408 language to the same language that the public works uses in vertical somehow or another when it comes to retention.

Savage: Yes, good point, Member Martin.

Wallin: Yeah, I like the consistency, not having different rules for different areas. That's how we make mistakes.

Savage: So even though right now, I would…

Malfabon: The Governor's office has the same deadline.

Martin: Okay. Has the same what?

Malfabon: September 1.

Savage: I'm sorry. We interrupted you.

Malfabon: Chairman Savage, that was -- this is Rudy Malfabon. I was just saying that the Governor's office has the same deadline to submit them to the legislature, to LCB, September 1.

Nelson: Well, I think even if we miss -- even if we miss the September 1 date, I don't think the door is closed on that. There's other avenues for us to continue to pursue this. I think we certainly would want to have -- at least have some dialogue with the industry, so when we do go over to the legislature, we're more arm in arm and they're not surprised.

Wellman: If I could, I would ask that maybe this be brought back to our industry liaison committee to let them have some input on it (inaudible) talk about it more specifically if need be. I'll make that happen because we need to talk about it anyways.

Savage: And I would suggest the sooner the better. We have a Board meeting on September 10, and I don't know when your next liaison meeting might be, but I believe it's in October.

Wellman: It was in September, and they're trying to move it until the first part of October, but I don't know if it's gotten moved. But a lot of the prework was done in basically subcommittees (inaudible), but we were meeting quite frequently, so we might have to do something like that again. Mr. Hoffman is the Chair, so…

Hoffman: Well, I'll be speaking about that in just a little while. But we were -- it was originally set for September 19. We're looking at September 26. There were several contractors that had conflicts. We still haven't nailed that time down, the time and date, but the latest date it seemed that was being considered was October 12. So that would be too late.

Nelson: But I think -- again, this is Rick Nelson. I think for the sake of getting ready for the legislature, we need to have to those discussions, and if an opportunity presents itself, we can get this included, you know, we can make that happen I think, or at least seize on an opportunity during the session.

Savage: Okay. Well, I think everyone understands the importance of this issue. And if there's no further questions, we can move on to Agenda Item No. 5. That would be bi-weekly versus the monthly payments to contractors.

Nelson: Yeah, this is Rick Nelson for the record. One of the things we had talked about as a Construction Working Group, on at least more than one occasion, has to do with NDOT's practice of making contractor payments every two weeks. And one of our priority items that was articulated in the creation of the Construction Working Group actually talked specifically about this bi-weekly payment issue. We had a situation come up a couple of months ago that sort of initiated a small study here within the department to see what kind of implications that might have for our cash flow. And Felicia Denney who's the Chief of Financial Management is here to make a brief presentation on the results of that study.

Denney: Thank you. As Rick mentioned, Felicia Denney with Financial Management Division at NDOT. And what we did is we looked at our current practice and then went back and looked at the last fiscal year, what our cash balances were, when our contractor payments were made, when our federal reimbursement was received, to figure out what the impact might be if we go back in time and had done it differently.

As Rick mentioned, the state law allows the director to make contractor payments at the end of each month. Currently we're paying every two weeks, and that has an impact on two months out of the year where we get three payments, as there are 26 two-week periods in a year. And so we'll have three -- or excuse me, two months with three payments per month. Currently we receive our federal reimbursement about four days after the payment is made. So if a payment is pushed off, the reimbursement is also pushed off.

Probably the biggest impact to our cash flow is that the DMV will deposit around 35 million a month into the highway fund. Seven million of that deposit is received the first half of the month. And around 28 million is the second half of the month. And the bulk of that 28 million is our gas tax and special fuel tax, and that totals about 22 million.

So in looking at the data, and here to my left is Mr. Gizachew Zewdu, and he's our cash flow analyst, and we looked at this data together. We determined that on average -- we looked at the week end payments, and we provided two graphs, one shows the week end payments -- or, excuse me, the week end cash balance in the highway fund, and the other graph shows the minimum balance in the highway fund every month. And we determined that on average, when we looked at the data for each week end, your cash balance was 17 million higher on average, and our minimum cash balance was around 12 million higher, primarily due to the impact of the smoothing that you no longer have the two months with three payments. That has a large impact. And the biggest impact was that we're not making a payment to a contractor until after we've received all of our DMV money.

Looking at the graphs too, it became kind of apparent to us that while there are a couple little blips where our prior data was a little bit higher, the different timing of paying contractors at month's end, you know, when you won, you won big. When it was smaller, it was much smaller. And so also looking at the data of the types of payments we make, in the winter months, of course, our contractor payments are smaller because things are shut down. So if any transition period is looked at to transition to a different type of payment timing, that would probably be the best time of year. It would have the least impact. And of course one thing that's missing from the study is the impact on contractors and others. We just looked strictly at highway fund cash flow. So if anyone has any questions.

Savage: Thank you, Felicia. Are there any questions from any of the members for the construction group?

Wallin: Have you ever had a time where, especially in these three payments in a month, where you've been really close the edge of being short?

Denney: Well, it depends on what short means.

Wallin: I mean, to go into like some emergency funding or…

Denney: We like to keep a certain balance, and we've gotten our balance below where we're comfortable with it, but we haven't run out of money yet, you know. We're watching our cash very closely, but our balance has gotten lower than we're comfortable with.

Nelson: You might just bring up the situation that occurred a couple of months ago with the authority.

Denney: Yeah, that was really a budget-timing issue where we had some federal reimbursement that we thought we would receive sooner due to settlements and things like that. And we had budget authority for receiving federal revenue, and we have a separate budget authority for our use of highway fund money. When we had used up our highway fund money, hadn't received our federal reimbursement yet, so we had to go back to IFC, and so that was uncomfortable.

Wallin: Yeah.

Denney: So timing is everything as you know in cash flow management, and so a change like this, you know, on average to have 12 million or -- did I say 12 -- 17 million or 12 million higher balances, does make a significant difference.

Wallin: And that would have probably prevented your having gone to IFC this last time?

Denney: It would have helped, yeah. It would have helped for sure.

Wallin: What does -- I mean, Bill, you're here, you want to comment for industry? Is this…

Wellman: I can't comment for industry because we haven't talked about this at all.

Wallin: Can you comment as you do Las Vegas Paving?

Wellman: I mean, certainly we like the payment process.

Wallin: Well, yeah. I know that, yeah.

Wellman: If this makes sense for you to go in single payments, I think there are some pluses to it in quantifying things rather than continuously quantifying the payments every two weeks, or frankly, it takes a week to do it, so -- and you're doing it twice a month, there might be some advantages for us. However, it is lots of money at times and when building bigger projects it's millions and millions of dollars. So, you know, for us, my comment before, we don't add any money in whether we get paid twice a month from NDOT or take money out because we get paid twice from NDOT different than we do for any other entity where we're getting paid once a month. It's the nature of the beast for our industry. We just deal with it.

Nelson: Well, right now our month -- or our bi-weekly contractor pay is running between 15 and 17 million.

Shapiro: Yeah, something like that.

Nelson: Something like that. So if we went to a monthly pay -- of course, those payments would be much higher, but, you know, I think in this time where Felicia indicated, you know, the highway fund balance, it becomes a bit uncomfortable, you know, watching the inflow and the outflow becomes even more important. The situation that we ran into, there was the AIMS settlement, there was some uncertainty whether FHWA was going to participate in reimbursing us for that. We finally received their ruling on that, and we did get reimbursed for it, but there was a lot of uncertainty with respect to those settlement payments and that sort of thing.

Denney: And there have been months in past years where the DMV for whatever reason wasn't able to deposit any money until early the following month. Although, I will say that their staff has been fantastic. Marty Radu at the DMV has processed payments probably earlier than anyone else in my, you know, seven years with NDOT. So we've been really happy with them. But sometimes as we all know there's a glitch or a problem, and so this would also provide a little more breathing room for things like that happening.

Nelson: So our plan is to take this study to the industry, and through the liaison meeting, and we probably will end up creating a small task force -- a small administrative task force to take a look at this and get feedback from the industry. And, of course, you know, the way the NRS is written, it doesn't require us to make bi-monthly payments. So if we did choose to make some modification, you know, we certainly would want to get some formal comment from the industry, but we don't -- it doesn't require any legislation for us to implement this.

Wallin: Yeah, Nevada is one of the states that they pay very quickly. My counterparts in other states, and I'm not talking just, you know, transportation, but, you know, all vendors, the rest of the vendors, the average is 60 days. And, you know, so they're making deals with vendors saying, hey, we'll pay you in 45 days if you speed it up. But Nevada is not that way. I mean, we're just like we get the bill, we pay it, which is not very smart on Nevada's part and stuff, so I applaud you for that. For Member Martin and Chairman Savage, in your industry, what's the standard?

Savage: Member Martin.

Martin: For us it's 30-day -- usually a 30-day, but most likely it works into a 45-day turnaround on pay. State public works right now is probably -- in the last projects that we did for them was probably running somewhere in the neighborhood of 25 to 35 days. Clark County School District in the last few projects we've done for them has improved their process. They're 15 to 20 days. However, our payment -- I was just talking to Mary, and the pay request process in the vertical world is much different. Chairman Savage, we need to talk probably offline or something or other about the process that's used for the pay request within NDOT. I'm not looking to change everything, don't get me wrong guys, so don't panic, but it is diametrically different than the pay request world that you and I exist in. I mean, so different just from a five minute conversation here with Mary, I was astonished at the difference in the process.

Savage: I would suggest we put that on the Agenda possibly for the next CWG meeting.

Martin: I agree.

Mary: And if you're curious as to what I'd said, basically as the work is going on, we have inspectors that are doing pay notes and recording what's done, and we correlate those to the certification and any testing that's necessary. So it's the DOT that basically prepares those pay estimates and -- as opposed to responding to invoices.

Savage: And I got to believe that doing this every two weeks takes a large amount of time, both from your staff as well as the field staff, in order to determine what quantities are correct. So I think it's something we can all look forward to discussing in depth, and I think understanding that the other state entities, school districts, counties, pay once a month.

Martin: Yes, sir.

Savage: Any questions from anybody else CWG?

Martin: None from me, sir.

Savage: With that being said, we'll move on to Item No. 6 -- Agenda No. 6.

Nelson: Well, as it was mentioned a couple of times before, NDOT and the construction industry have formed a liaison group, and Mr. Wellman gave a pretty good snapshot of the membership of that, and Bill Hoffman, who is our Assistant Director for Engineering has been chairing that over the last year. We do rotate the chairs every year, and there is -- it's a situation where there are co-chairs.

There's a co-chair from NDOT, and a co-chair from the industry, and they collaborate on the Agenda and the progress of the liaison group.

During our first meeting we brought this up, and the Construction Working Group expressed an interest to be kept informed and abreast of what's happening in that forum, so we can leverage those discussions and make sure we don't cover -- plow the same ground over and over again. So there was recently a meeting and we've invited Bill to come and give us a briefing of what transpired at that meeting. So it's all yours, Bill.

Hoffman: Thank you, Rick. Chairman Savage, good morning. Bill Hoffman, as Rick said, Director for Engineering. I do think that Billy gave a very good history of the liaison committee. I think four or five years we've been in existence, so I'll just give you guys a quick history lesson on this group that meets. You did mention seven contractors. Seven contractors that NDOT works with, the largest contractors in terms of dollar amounts, that's for sure. On the NDOT side, it's the executive staff that goes in and meets with these regional managers or presidents of these construction companies, and that includes the director, the two deputy directors and four assistant directors.

Two task forces have spun out of this industry meeting. Mr. Wellman and I chair the -- or co-chair the design-build task force. That's been going on for probably about year and a half, Billy, about that? And then also there's the CMAR, Construction Manager At Risk task force, and in both cases, much more so recently, but we've held quite a few CMAR industry meetings, so we just wanted input from the industry procurement, how to put, you know, these RFPs out so that that's gone very well. We've gotten very good input there.

The design-build task force, we held a meeting back in June and September of 2011. We talked about -- really it focused on procurement and alternative technical concepts, scoring of proposals, evaluation of proposals, and those went very well. Now that our design-build construction projects are starting to wrap up, Billy and I are working on putting together a meeting in October, so then now we can go back, revisit those procurement issues or tasks that we needed to continue to work on, and then also look at the construction aspects of those design-build contracts, trying to make things better, take in feedback and do the best we can on those projects. So that's really kind of a high-level viewpoint.

I can just -- I believe you guys have the Agenda that we used for that June 20th meeting. So I can just kind of step you through very quickly. We did talk about NDOT staff changes, so just after Scott Rawlins had left we held this industry meeting, so we informed the contractors of Scott Rawlins, the Deputy Director leaving NDOT. We talked briefly about the Director's selection process that would come before the Transportation Board, walked through that just a little bit. So those were the NDOT staff changes that we talked about.

Transportation funding, at that time, that was back in June, we talked about the possibility of the new federal transportation bill, MAP-21, kind of what impacts it would have on NDOT and the contractors. Since then the MAP-21 bill was passed. There's a lot of performance based measurements and tracking out of that bill that we're excited about. Also the bill shrunk down several of the program areas. I don't even know how many. Thank goodness I have Felicia here if you guys have any specific questions on funding the bill. But there was a major consolidation of all the different funding categories.

Back in June gas tax was down about five percent, diesel tax, these are tax revenues, was down about two-and-a-half percent. Now it's -- I talked to Felicia this morning. It's flat now, or at least the trend is flat. We always like to include and try to be on the same page with the contractors in terms of, you know, legislation session conditions, and I like to walk in step with them. So that was when John Madole shared with us that they were considering -- the agency was considering a three percent gas tax and diesel tax, that they were going to bring that up in the legislative session -- this upcoming legislative session.

And I think we also talked about the RTC of Southern Nevada possibility of them moving forward with the gas indexing system similar to what Washoe County has. Construction management risk -- going to Item Six on your Agenda, I'm sorry. I'm kind of blowing through this. Stop me at any time if you guys have any questions. So the construction manager at risk we just updated all the projects and the status of those projects. And just for this group's information, we do plan on bringing our GMP before the Transportation Board on September 10th for the Moana Diverging Diamond interchange. We'll be seeking approval for that GMP.

We talked about the -- there's a Tahoe Bike Trail project that we're working with -- it's a joint project between Tahoe Transportation District and NDOT. That will be a CMAR project that we're working on. We're hoping to come before the Board in October to get approval to move forward with the procurement documents for that.

We'll move on, Item 7 is pretty easy. Rick just briefed that group on the CWG group. Item 8 that we talked about NDOT's status of closing out construction projects. Of the 95 million at that time back in June that was outstanding that needed to be closed out, they had closed out 88 million; is that accurate, Rick?

Nelson: I think that's about right. That's a standing item on the Agenda for the liaison group is project closeouts, as is partnering. Partnering -- we always talk about partnering as well.

Hoffman: Thank you. Good for that segue. So we just talked about how important partnering is. Any feedback from industry on how we can do that better, any ideas, feedback, things like that. Update on Design-Build Task Force, pretty much I just gave you an update of what we updated them on, but it is a standing task force, and we do plan on holding another workshop in October.

DBE requirements -- actually I skipped over contractor (inaudible) traffic control. There's two ways NDOT does traffic control on projects. That's lump sum where if we have, you know, if we're very comfortable, if it's out in a rural area then we just -- we rely on the contractor to use our standard plans to design or actually lay out the traffic control. Or urban area highly complex project, NDOT will actually put together those plans and actually go through the planning phasing stages of the traffic control.

Everybody was happy with the way we were doing that. There seemed to be an issue on the front end with where that is applied, you know. You start getting out to the far reaches -- not far reaches, just outside of the Las Vegas urban areas, is that rural or urban, how should we be doing that. We all concluded that that really wasn't that big of an issue, that the way we were doing it was just fine. So they asked to have that removed from the Agenda, and that was a task that we could check off our list.

DBE requirements, there was discussions about small business element of the DBE. And I believe Mr. Sisco was trying to work out a solution for how the DBE goals were entered into the electronic bidding system; is that right, Rick?

Nelson: Mm-hmm.

Hoffman: Okay.

Nelson: And in fact, that was an agreement that came before the Board a few months back and there was some discussion about that, and I think that's been resolved.

Hoffman: Right. Right. And then Rudy Malfabon spoke about the Title 6 requirements, that's the civil rights mandate from the federal highway administration with USDOT and how we communicate with the public, how information goes in and out of the department. Rudy, if you have any details to add, you can jump in on that. Rudy's the guru on (inaudible).

Malfabon: Rudy Malfabon. It was along the lines of what Bill Hoffman had mentioned. Title 6 is very comprehensive as far as documenting what measures that the department takes to ensure that we're not discriminating against any protected classes or any ethnic groups. We also have a responsibility to review the contractor's -- his hiring practices to see that there's no discrimination occurring in those hiring practices, so we do audits of the contractor's -- the makeup of his workforce. And when there are hiring opportunities, we look to see how they fill those positions, and just talked about some of those things.

But in general, we work with our contractors, as Bill mentioned on the previous one, the DBE requirements, having a new requirement for a small business element in our DBE program. We need to actually work with our industry to develop the specs that will go into our contracts to address that requirement, but our small business element, our framework for that was approved by the Federal Highway Administration, and it goes all the way to Washington D.C. for that approval. We're one of the few statements that got our SBE program approved, so now we just have to work out the details with our contractors, but that's kind of in a nutshell what we do on those DBE and Title 6 issues with our contractors.

Hoffman: Okay. Thank you, Rudy. So on the Agenda you have, we'll jump to 14. That's bidding on chip seal contracts. Outsourcing chip seal contracts is still pretty new, fairly new. I think we're probably within our second summer, Rick, of outsourcing the chip seal contract.

Nelson: Yeah, we…

Hoffman: So they're just -- we're just trying to work through some issues, things that NDOT can do better looking more closely at the quantities, maybe some specification changes to try to give the contractors a better idea of what the true quantities are and try to work through some of the bidding challenges that have been brought up. And we feel very confident. I'm sure that Rick's already talked to Anita Bush who's the division head over the Maintenance and Asset Management Division that oversees and puts (inaudible).

Wallin: Could we go on our next Agenda, because my understanding is that we're getting a lot of (inaudible) balance bids especially in the rurals.

Hoffman: Yes.

Wallin: Could we go and talk about that at our next meeting on what's going on and what can we, you know, what do we need to do address that?

Hoffman: Sure. So, Controller Wallin, you were talking about the next CWG meeting?

Wallin: Mm-hmm.

Hoffman: Okay. Sure.

Savage: That's a good idea. And along those same lines, on that Item No. 4, roughly, Mr. Hoffman, what percentage are done with outside contractors versus internal NDOT? Maybe that's something you can review for the next meeting.

Hoffman: Are we talking about chip seals?

Savage: Chip seals only at this stage.

Nelson: It's about 50/50.

Savage: 50/50?

Nelson: Yeah, and that was the commitment that we had made to the industry and to the legislature when this whole outsourcing of maintenance came up three sessions ago, I think, two sessions ago.

Savage: Thank you.

Hoffman: And then the last item, we just talked about the I-580 grand opening which is -- it was a nice drive in this morning, I will say.

Unidentified: Was it?

Hoffman: Yeah, saved about six or seven minutes.

Savage: I'll second that at this time. I think I would be remiss in not mentioning to thank all the people at NDOT, the staff, the sacrifices, the time that it took to build that beautiful highway. It was a pleasant drive.

Hoffman: It was very nice. And actually we had a very nice event I think just two or three weeks ago. There was a bike and run event that we had up there. I don't have a total count on the total number of people that took advantage of that, but it was in the thousands I'm sure. There were several folks at NDOT who just worked their tails off, did a lot of volunteer work to try to pull that off. It was a very good event, and today we're driving on it. Hopefully by Monday we'll go in the other direction.

Savage: It's a good day today.

Hoffman: With that, I believe the…

Wallin: Except you have to wait until tomorrow before you can drive back. You got to spend the night in Carson.

Hoffman: So we are planning on holding the next meeting, I believe, is October 12, the next NDOT Industry Liaison meeting, but again, that's -- we're still trying to set that because of people's schedules. And with that, if I can answer any…

Savage: If there are no questions, we'll move on to…

Nelson: Now, I think -- excuse me, Mr. Chairman. But I think you guys have copies of the minutes. Lucy's been posting copies of these minutes when they become available on to the FTP site that you get, so…

Savage: And I think it's very beneficial that you continue on with these liaison meetings quarterly.

Nelson: Yeah.

Savage: Very, very informative to collaborate together.

Nelson: Very, very, very good feedback.

Savage: Okay. If there's nothing else on Agenda 6, we'll move on to Agenda Item No. 7.

Nelson: Yeah, Agenda Item No. 7 is kind of a new item for us. And the intent of this, and our desire is to make this a standing item for every Construction Working Group meeting, and there's an awful lot of material to go through here this first go round, but I think as everyone becomes more familiar with the projects and their status and so on that it -- we should be able to progress through these with a little more speed.

But the intent of this item is to sort of work backwards if you will from the semi-annual report that we make to the Board with respect to projects that have been closed out and the total cost, and through the close-out process and the status of the active contracts. So for Item A, this brief spreadsheet that was included in your packet, and I believe that we provided as an Excel spreadsheet, is the same report that we presented to you during the last meeting, and we presented to the Board with the addition of a resident engineer and designer. That was a data element that you wanted to see on there, so this data has not changed since it was presented to you last, with the exception of including the designer. So unless you have any questions about this or would like to see the form changed -- the format changed a little bit, we can do that, we can proceed on with the project closeouts.

Savage: Any questions, Member Martin?

Martin: None from me, sir.

Savage: Madam Controller?

Wallin: I think I'm good on it, except for I just, you know, I'm looking at, you know, our contracts closed out. I guess I'm still looking to see, you know, we've got quantity adjustments and stuff. I guess I'd like to see the change, you know, broken out into the change orders, you know, not just quantity adjustments and stuff like that and…

Nelson: Well, the change order amount is listed here. The three amounts that we have are the original bid.

Wallin: Mm-hmm.

Nelson: That's based on the estimated…

Wallin: Okay. And CCOs and…

Nelson: …quantities -- the estimated quantities at bid time. The change order amount…

Wallin: Okay. That's the CCO?

Nelson: Right.

Wallin: Okay.

Nelson: Those are -- that's the dollar amount that was added by change order.

Wallin: Okay. All right.

Nelson: And the total paid, of course, is…

Wallin: Right.

Nelson: …is the total paid. So what happens is, if an item wasn't covered under a change order, because we pay by the unit price -- by the actual units that were included, the original bid is based on an estimate, the total paid is based on what actually was accomplished, and so the difference between the original bid plus change orders and the total amount paid are those -- is that variability in the total quantities.

Wallin: Right. Okay. My other question that I'd like to see, because like on the project number 3391, that had, you know, percentage of change orders as 43 percent. And if I remember right, that was one that there's some additional stuff that hadn't been planned that, you know, it was more value adding. Is there a way that we can show are these change orders something that were out of -- especially when we're going over that ten percent amount. It's like that's 43 percent to me, if I was just looking at it thinking what happened there, you know, to have some type of explanation to say, you know, this was a value add that, you know, they did some additional work that added value to the project or something. I mean, to kind of break out change orders from being these are just change orders that people just are doing because sometimes you get low bid and come in and figure, well, I'll make it up on the change orders, versus the change orders that are something that we benefit from that we've asked them to do.

Nelson: We can certainly do that, particularly for this project. We can give you an explanation of that. However, with respect to this particular report, when we go and we talk about the status of the current contracts, the long spreadsheet, I think the desire for us is to keep you abreast of what's happening with these projects…

Wallin: Mm-hmm.

Nelson: …sort of on a monthly process. So what I'm hoping is that, you know, when we see these come out this end, we'll have already plowed that ground several times…

Wallin: Talked about it. Okay.

Nelson: …on the other end, so…

Wallin: But I think since we're just now starting this, we don't have that history of information and stuff, and it should be part of it anyways as people look at it and…

Nelson: Just to resolve 3391, the U.S. 95 MLK Boulevard was a landscaping job.

Shapiro: Correct.

Nelson: Can you just address that?

Shapiro: Madam Controller, you're close. Your memory's pretty good. There was basically an earthwork bust on the job, a significant one to the tune of like $800,000. It's work that we would have had to do, but it wasn't included in the original contract, and so it wasn't truly a value-added type situation, it was work that had to be done. And when we found out about it, it wasn't included in the contract, they wrote a change order to compensate the contractor. And that's where most of it is.

Nelson: And as I recall, this had to -- this project had the aesthetic treatments…

Shapiro: That's all it is, landscaping.

Nelson: It was a landscaping job and there was some issues with fill when…

Shapiro: Well, in the interchanges where we were putting these aesthetic treatments or these sculptures or whatever, the plans required them to excavate to get them in, but there was no mechanism to pay for the contractor for that excavation. That's really what the issue was. And we always pay for that kind of work, so…

Savage: So did that go back to the E&O policy against designer Parsons, or was that picked up by NDOT?

Shapiro: Well, we did not pursue anything, or we haven't yet to my knowledge. Whether that was an errors and omission on the designers aspect, you know, I don't know.

Wallin: I mean, to me that's kind of substantial.

Savage: So it's something, I think, we're…

Shapiro: I mean, it's something we can certainly discuss. I don't know if we have in the…

Unidentified: We've gone after designers in the past.

Nelson: I can tell you we haven't on this particular one, but that is becoming a topic of discussion every time we see one of these substantial change orders, we look to see who's the designer of record and how did it come to be that this item got missed. I can tell you in pursuing a couple of other consultant design firms, when we start talking about the legal definition of errors and omissions and gross negligence, and, Dennis, maybe you can talk about that. It gets to be very difficult in slicing and dicing when an E&O becomes, you know, a gross error. But we are putting them on notice to say look, we have to negotiate this change order, it was because of a design error, you need to be at the table with us while we're working through that.

Gallagher: Mr. Chairman, a point of order. For purposes of the record, especially the minutes, it's very important that a speaker identify themselves, and that only one person talk at a time, other than the Board members whose voices are very distinguishable.

Wallin: Especially mine.

Gallagher: Absolutely. But I think, you know, it's very important for, again, creating the minutes, and, of course, Dennis Gallagher of the Attorney General's office, who doesn't follow what advice he just gives everybody else. But we're most happy to look at any potential claim, and we'll evaluate it along with the folks at NDOT and make a recommendation whether or not it's worth pursuing or not.

Savage: Thank you, Dennis. And I believe it's the times that we're in regarding accountability is the overall message. I think that we need to send from A to Z and that starts with some of the designers. And in the designer column, that leads to one of my questions. I don't see company names, I see individual names, except for a couple line items. And those individual names, are those NDOT personnel? Yes. Somebody's shaking their head.

Shapiro: Chairman, Jeff Shapiro, for the record, and I'm one of the worst offenders of that too, by the way. If they are in-house designs, the person's name in there would be the NDOT person that was either the project manager or the coordinator for that particular project.

Savage: Okay.

Shapiro: And then if it was a consultant design, then the firm name is listed there.

Savage: So it goes to say that if there's only a single name, there are no outside consultants?

Shapiro: There should not be any outside consultants, that's correct.

Savage: Thank you, Jeff.

Shapiro: I would like to add, again, to the landscaping job on 3391, with the way we structure our contracts, this is work that we would have paid for normally on a normal project. Unfortunately we just omitted the bid item and the quantity to create the mechanism or to allow the contractor to be paid for that work. So what the change order effectively did was put that mechanism, that line item back in the contract so we could pay for it, because we normally would have. There normally would have been a bid item for this.

Wallin: But, you know, if we have designers omitting key elements, that's a problem.

Shapiro: Agreed.

Wallin: I mean, because then if you go in and you think you have the money to do this project, now all of a sudden you have to come up with another 800,000 or $1 million, and with our funding being so short, where you gonna get the money?

Shapiro: Right.

Wallin: I mean, so that can be a problem. And I have a question on the 3411, that has Manhard Consulting and Ken, so that was an NDOT project and an outside consultant project for the design? How did that work?

Shapiro: Jeff Shapiro again. I might have to refer to my staff that's here from the construction division, Sharon Foerschler, Todd Montgomery, our Assistant Construction Engineers, and Megan Sizelove who's the Consultant Program Manager. But sometimes we do have sub-consultants helping with us on these projects. I'm not sure if that's the case -- even though it's an in-house design, I'm not sure if that's the case on this or…

Hoffman: Chairman Savage, Bill Hoffman…

Unidentified: This is one of the stimulus projects, and so it was a consultant design (inaudible).

Shapiro: Okay. So Ken's just basically the in-house project manager.

Unidentified: He's the in-house coordinator.

Shapiro: Or coordinator, yeah.

Savage: Yes, Mr. Hoffman?

Hoffman: Dennis, well, you kind of gave me away there, but Bill Hoffman, for the record. I'd be more than happy to help try to clarify that so we have a project manager on the list. The project manager, whether it was in-house or outsourced and who that consulting firm was, I mean, we can fix that real easy for you if you want.

Nelson: Rick Nelson. We're in the growing pains of trying to -- this data's coming in from lots of different places evolving. But it's easy to do. It's easy to do.

Savage: And this, again, we remind ourselves, this is work in progress, so every month -- every two months we're going to get a little bit better. So I thank you for listening to our suggestions. And I also want to make a comment on the -- again, the large, large change order. It's nice to have a competitive bid with a large amount of $800,000 and have an additional phase, and I know NDOT staff realizes that because it's an exception to the rule where something like this would occur, and I know everyone (inaudible) so, I thank you, Jeff.

Nelson: So the next report as we march our way through the status of our contracts is the closeout process. And (inaudible) come on up here and talk about the status of our project closeouts. One of the things that -- one of the tools that we use is this spreadsheet, it's Attachment B in your folder, and we're providing that to you every meeting. And every month Megan, who works in the administrative section of the construction division, holds a meeting with each district individually to go over the status of their projects that have closed out. And we recently completed a round of those, and I think -- are you ready to talk a little bit about what's transpired with respect to closeouts since the last period?

Sizelove: Since the last…

Nelson: (Inaudible) who you are.

Sizelove: Megan Sizelove, Admin Supervisor for the construction division. Since the last Construction Working Group we've closed out 11 contracts, and I have the contract numbers if that -- and then so you'll see that in reviewing this closeout status log, those 11 contracts, as soon as we close them out, they are removed from the spreadsheet. And then we've also -- three have been added. They're district contracts, so within the last 2 months, 11 have been closed out and then 2 additional ones have been added.

Wallin: We're making headway.

Sizelove: Yes, very exciting.

Nelson: Now, one of the things that happens, and it's sort of a transition that occurs between the active contracts and this closeout list, is when a contract is about 85 percent complete, that's when that contract will be added to this list, the closeout list. And so you'll see some overlap if you were comparing this closeout list versus the status of the active contracts. You'll see them listed in two places and that's because there's still active construction going on, but this practice of beginning the closeout and beginning to talk about the closeout and what's needed actually starts before the project is done. So you'll see some overlap that occurs there. I can't remember -- and you did get a copy of the recent notes from those three meetings with the three districts. So I don't know if you have any questions regarding this closeout list or the process or a particular contract, Megan would be happy to answer them for you.

Sizelove: I'll do my best.

Savage: Any questions, Member Martin?

Martin: Yes, sir. Rick, you and I talked about this, 95 widening and schedule, can somebody give me an update on what that is?

Nelson: Which contract number is that, Member Martin?

Martin: Oh, let's see. It is 3409.

Nelson: Thank you. If it would be okay with you, Member Martin and Member Savage, if we could defer that discussion until Item No…

Savage: Nine.

Nelson: …9, that would be good for us.

Martin: Okay. Thank you.

Savage: Madam Controller?

Wallin: I don't have any questions.

Nelson: No. We're good? I guess a question I would have is if you see value in these closeout notes. It is fairly in the weeds, and some fair detail, but we could continue to provide those to you if you find value, or if not, we can just sort of hold back.

Wallin: I like them to be quite honest.

Savage: I'm in favor of the notes. I think the comments are very advantageous, and if any of the members have a question, we can address it during the CWG. I think that they're very informative.

Nelson: Okay. Great.

Savage: And I had one of the questions. And it goes along with some of the comments as far as the crew has not addressed the items, and who would the crew be defined as?

Sizelove: The actual construction crew that's working on the contract.

Savage: The NDOT…

Sizelove: So the NDOT crew, or in the -- we have a few that are full administrative oversights being provided by the consultants. And so whenever it alludes to the crew, it's in the third column here you'll be able to see which crew specifically it is, with the associated resident engineer is also listed in the fourth column.

Shapiro: Jeff Shapiro, for the record. Crew is NDOT slang for the folks out in the field basically. That's what we -- the inspectors and the testers and the resident engineers, they form a construction crew.

Savage: But am I right in hearing what Megan said, the crew can also be (inaudible).

Shapiro: Correct.

Savage: Does it involve contractors?

Shapiro: No.

Savage: No. Okay. Thank you. Mr. Nelson?

Nelson: No, you're right. When we saw crew in this third column here, that's the NDOT construction management crew.

Sizelove: Regarding the administrative (inaudible).

Nelson: So in the strictest definition of the term contractor, if it's a full administrative oversight and we have a consultant performing the construction management activities for that particular project, you know, they're not NDOT staff, but they're a consultant representing NDOT. So, for example, on the second page, Contract 3460, it's listed as CMW, that would be the consultant that's performing those construction management activities on that project.

Wallin: So if it has a number, that's NDOT, and if it has initials that's the consultant. Okay.

Shapiro: But even an NDOT crew could be augmented with consultants too. Not to confuse us anymore than we already are.

Nelson: But if it's an augmentation, the crew is still being run by an NDOT (inaudible).

Shapiro: Absolutely. Absolutely. Absolutely.

Savage: Okay.

Wallin: Okay. Is there -- okay. I have to go through now and see, but for those where it's -- because I haven't checked that, where it's a consultant, and you're waiting to get information from them, are you like holding up their payment until they get you the information so you can do your job? Do you want to tell them you don't get us your information you don't get paid until…

Sizelove: Certainly there is termination dates established within the agreements that we have with them, and so they have identified timeframes that they can respond to within the closeout. And usually we give them some, you know, a reasonable amount of time (inaudible) and that the anticipated construction completion date until we anticipate for them to have the project closed out, and that date is identified within their agreement.

Wallin: How much is the date usually? How many days?

Sizelove: Four to six months to be honest with you.

Wallin: Four to six months.

Sizelove: And that is established at the very beginning of the project, and so I think we also -- I don't know if you…

Shapiro: No, Megan's doing fine. This is Jeff Shapiro again. Consultants, we don't pay them for -- until they do the work. So as far as, you know, if they haven't completed their closeout, they won't get paid for it. But there are -- I believe we do establish in their agreements when they're -- contractually when they're supposed to have their closeouts done. For the most part, I think they're fairly timely in getting them done, because that's all they're working on.

Wallin: That just seems -- to give them four to six months to do the closeout just seems like an awful long time, I mean, because if they're watching this job as it goes along, they should be keeping the paperwork up every week.

Shapiro: Madam Controller, I agree with you. The closeout process has a lot of moving parts.

Wallin: Right.

Shapiro: NDOT people, consultants, contractors, and there is definitely room for improvement, you know, paper documentation versus electronic documentation, and you're right, it can get better, and that's something we are striving for.

Wallin: Thank you.

Nelson: But I think as I scan through this list, the consultants that are providing full oversight, they've been very timely in getting things submitted and closed out and that sort of thing.

Sizelove: It hasn't been my experience -- well, I would say in my experience, the consultants want to do a good job and want to have a timely closeout so that they can hopefully get another job. So in my experience, consultants are very timely in their responses.

Wallin: Okay.

Savage: I believe it's everyone's objectives that, you know, closeout actually begins on day one of construction. With that message being sent, everybody understands that the 17 month average that we have today is unacceptable, and can definitely be improved, and I think that's on the radar. Everyone's well aware of it, and it has to be taken from top to bottom, right down to the shell. So I thank you. Any other questions on Attachment B?

Martin: I have one. On Contract 3339, I see a note all the way over here to the right, pick up started 9-14-11, which is a year and two months after the job -- after the Director accepted the project the way it looks to me. And then on 10-03-11, items were given back to the crew 10-03-11 to be addressed. As of 8-14-12, crew has not addressed items. Ten months later?

Shapiro: Member Martin, Jeff Shapiro. That particular crew, 926, is the one that's currently administering the U.S. 95 project. That is an old contract that actually that resident engineer inherited from his predecessor. You know, I acknowledge that it's taken forever and a day to get that thing wrapped up, but those are part of the circumstances around that right now. And so they have been working on it, they've just got a lot of things going on.

Martin: Okay.

Shapiro: But I agree with you, it's not acceptable either.

Savage: Anything else, Member Martin?

Martin: No, sir. Thank you.

Dyson: Chairman Savage? For the record, Thor Dyson, District Engineer. One quick comment regarding consultant REs and NDOT REs for consult administration out of contracts. They typically a lot of times just have one contract where an NDOT construction crew or NDOT RE will have multiple contracts. So a small job, you know, several hundred thousand dollars, can a lot of times generated a lot of paperwork as a large job worth several million dollars. So that kind of needs to be taken into the equation and thought about a little bit.

Savage: I think that's a point well made, Mr. Dyson, is that the smaller jobs do take as much paperwork as the larger jobs, and I think that's something that everyone has to be aware of when we're looking at these different summaries.

Dyson: And again, Thor Dyson, District Engineer, I agree with Jeff Shapiro that, you know, there's always room for improvement with my staff, but I just want to make a key point that a lot of the construction management by NDOT resident engineers certainly have multiple projects, and some of them are coming onboard and they still haven't even finished -- closed out, you know, a previous job. In an ideal world you go from one job to the next. You closeout one job and then you go to the next one. That hasn't happened and can certainly cause some distraction to closing out a job.

Savage: That's the world of construction.

Martin: Thank you, sir. That's exactly what I was going to say (inaudible).

Savage: I appreciate your comments, Mr. Dyson.

Nelson: So moving on from project closeouts to the active contracts that we have, Attachment C, we provided to you a spreadsheet that contains every project that's being carried on our active roster. And you'll see that many of them in the description are listed construction completed, closeout and process, and there you'll see some overlap between the previous report and this one. What we've done is try to provide you with a status report or a snapshot of where these contracts lie with respect to their progress.

So on the contract number, you'll see that they've been color coded green, yellow, and red, and those color codes are applied by the -- or determined by Jeff Shapiro's staff who are monitoring the progress of these projects. Obviously green projects, we believe -- and this is a subjective analysis if you will. Green projects, we believe, are progressing along fine, on schedule, on budget. Yellow projects are those that we believe we need to watch. We may be pushing up on the budget, or we may be pushing on the schedule. Red projects are those that we have concern about. It could be that there's a request for equitable adjustment been requested that needs to be resolved. It could be we're in trouble with respect to the schedule, or it could mean we're in trouble with respect to the budget. But anyway, it gives us a snapshot to look at those.

I think there's some 78 projects that are listed here in various states. We've included the contract bid amount, the adjusted bid amount, and again, that's adjusted by change order, and the total paid to date. The percent work is just a mathematical calculation based on the adjusted contract versus paid to date, and the percent time is based on the number of working days. Occasionally you may see one that shows up in the percent (inaudible) column with a zero. Those projects are milestone projects or have a definite delivery date and not a working date -- not a working day project, so it's a little tough to see exactly where we are, and that's just an anomaly with respect to the data and where we're pulling this information from.

The resident engineer and project manager are identified. Again, we made an attempt to, in the resident engineer column, if it's a full administration by a consultant to identify the firm that's providing that service for us. Likewise on the project manager page, if it's a consultant design, we wanted to identify the consultant that's doing that. We have a few glitches in there. There's a few missing data points where we identified a project manager instead of the consulting firm, but that will be cleaned up for the next printing.

So we're ready to answer any questions that you might have with respect to this list in general, or projects specifically. I would like to defer any questions regarding litigation and potential litigation to the Attorney General's office in an item farther on the Agenda. But with that, I think we've assembled all the staff that we possibly can to answer any question that you might possibly have. Jeff?

Shapiro: Chairman Savage, for the record, Jeff Shapiro. I'd like to point out in the remarks column there are two typos on two contracts, 3415 and 3417. The comments say lawsuit pending. There is no such lawsuit pending on either of those contracts. That's a typographical error and we'll make sure that's addressed next time.

Savage: Thank you. So at this time are there any questions from any of the members?

Martin: 3409, sir.

Nelson: Coming up.

Savage: I have a question myself. I don't seem to understand how the paid to date can be more than the adjusted contract amount.

Wallin: That was my question too.

Nelson: Okay. As we mentioned, our contracts are unit-priced contracts. The bid amount is based on the estimated quantity of each of the items that make up the project. So it's based on estimated quantities. And those quantities are generated based on assumptions and theoretical values. When we actually get into building the contract, it could be that there isn't as much quantity as we estimated to be built, or there is more quantity than we estimated to be built.

So there's -- we don't adjust the contract by change order until we reach 125 percent of the bid item. The specs allow for a renegotiation of price if the amount of quantity exceeds 125 percent. So it could be just based on the amount of quantities, for example, excavation or borrow or paving, that we actually exceeded the estimated amount of quantity. So that's how get a higher paid to date than we had adjusted, and it is based on the application of the unit price bid versus the number of units we actually acknowledge.

Savage: Thank you. I understand the theory, but I think it would be very difficult for accounting to be able to reconcile some of those numbers without having information.

Nelson: Well, and that isn't reconciled until the end of the job when we actually go through and do the audit to see how many, you know, units did we actually put in. The other thing that can happen during the course of a job, it could be that there are elements of work that need to be added, and will ultimately be added by change order. We have a mechanism called a prior authorization to proceed, where if there is an element of work that needs to be done, we don't know exactly how much it's going to be, what the final unit count is going to be or the lump sum. It may be that we're paying off (inaudible) account, time and materials.

What we'll do is we'll issue a prior authorization to proceed. Now, that doesn't become a modification to the contract until that prior turns into a change order, which will happen after the work is completed. So we'll be paying the contractor based on those units or whatever. And as soon as that activity is done and we know it's complete and we know what the final count will be, that we'll go and issue the change to the contract, but they're still working off of that prior authorization. So what this does is it gives us, the resident engineer and the contractor, the ability to continue to proceed with that work as we're counting the units and that sort of thing.

Savage: Okay.

Nelson: So until the final end of the project, when all the accounting is done and the change orders are written, that will be reconciled for the auditors.

Savage: Thank you, Mr. Nelson.

Hoffman: And Chairman Savage, Bill Hoffman, for the record. I just want to say that we're aware of these quantity fluctuations or differences, and we've put together -- Reid Kaiser, Jeff Shapiro and our design engineer, Paul Frost, and we're trying to work through these issues. It's very complicated when you're talking densities and weights of asphalt and soil, how saturated is it, the mechanisms that we weigh and pave for items. I know it probably -- it's pretty complicated. So what we're trying to do is hook up construction, our materials division and our design staff, and we're trying to work on solutions to get closer on the quantities.

Savage: Good. Good.

Shapiro: Chairman Savage, Jeff Shapiro. This might become a little bit more clearer when we talk about our payment processes on the next meeting that we have when we talk about the bi-weekly, and all the effort that goes through in documenting all these quantities, because there's a lot of documentation that goes with this, a lot of line items. I think the U.S. 95 contract there's 25 pages of line items. And our contracts are structured -- this is very common in the DOT -- in our industry, they're structured for the contractors to get paid for the work they actually do. And like Mr. Wellman said earlier, if you only put in 98 feet of guardrail, that's all he gets paid. They're not lump sum not to exceed type contracts. They're paid for the work they actually do. But I think that might -- it might be -- when we talk about how we pay at the next meeting, that might shed more light on that whole process and how it actually works.

Wallin: And maybe when we talk about the unbalanced bids and things like that…

Shapiro: Absolutely. Absolutely.

Wallin: …just, you know, because I know that I've been looking at some of the things and it's like, wait a minute, they're only charging a penny for this, and an estimate is 100 or something per unit. So maybe that, you know, that might help us too, so you can have the group talk about the issues and stuff. Because I know for myself looking at this and I guess not knowing, you know, we've got one here that, okay, the job -- the first one on the list here, it's completed in closeout process, and we're already at 108 percent over. Okay. 108.9 percent over. And I think looking at this, and I don't know about you, Chairman Savage, but if we don't have some of the quantity adjustments, I mean, looking at this, then I'd say, okay, it was all due to quantity adjustments. But then, Rick, you're saying that there's some other elements of work.

Nelson: Yes. And, for example, on the very first contract, the contract has been adjusted to $15 million by change order and we paid 16.3.

Wallin: An original bid of 14.2.

Nelson: On an original bid of 14.2. So, you know, this is one where we go and, you know, obviously there are some significant change orders that came through as a part of this project. Now, when it comes to budget, and, Jeff, maybe you want to talk about this in a little more detail, but the -- when we program a job, we build some contingencies into that programming amount, and, Felicia, you may even be able to talk about this as well, but the bid amount isn't necessarily the budget for the project.

Shapiro: No, you're correct.

Denney: Felicia Denney. Yes, that's true.

Nelson: Sorry I set you guys up in my inflection, but…

Shapiro: Well, Rick says I confuse everybody when I talk about it.

Nelson: But there are contingency amounts based on the complexity of the job. So I think there's two contingency rates that we applied based on the complexity of the job. And of course the smaller the job, the less contingency, but, you know, one little stubbed toe ends up making a big percentage difference because the dollar value of the job was…

Shapiro: Rick, Jeff Shapiro. I can answer that question. For every project we create we create what's call an agreement estimate, and that's based on the contractor's bid, plus a contingency which is usually three to seven percent, something like that. There's also some line items for escalation. If we have incentives, there might be a line item for that. If we have partnering, there'd be a line item for that. And it comes up with a total number and that's what financial management would program into the system. That's what we would get approval for from FHWA to spend. It's not exactly the same thing as the contractor's bid, and some of these numbers where you see bid amount, adjusted bid and all -- because the bid amount versus adjusted bid is that we're adding the change orders into the bid. The agreement estimate is what I like to call the budget, and that includes these contingencies and whatnot. And that's basically our budget, but still we pay on what the contractor does, so there are some cases where if they did, you know, 102 feet of guard rail instead of the 98 they were supposed to, we will pay for the

102, and technically we overran that bid item by four feet, but that's common in our industry. We pay them for the work they did.

Nelson: And to follow on with that, when we start approaching that agreement estimate amount, that's when we go back through the project manager, and we…

Shapiro: And Felicia's people.

Nelson: And Felicia's people to readjust that agreement amount. So it's not that she gets surprised at the end of the day when we blow our budget. When we start hitting that value, those discussions are initiated with financial management to make sure that we have money in the bank to pay the job.

Shapiro: And actually, Jeff Shapiro again, our admin section talks to financial management quite a bit about those type of issues, if we are exceeding things, then we got to let them know so they can get the proper approvals from FHWA so that we can proceed.

Savage: Very good. Very good. Thank you, Mr. Shapiro, Mr. Nelson, Mr. Hoffman. If there's no other questions or comments on Agenda Item No. 7, we'll move to Agenda Item No. 8, meeting discussion.

Nelson: I've asked our chief counsel, Dennis Gallagher, to have a brief discussion about the open meeting law. We do have an item on the Agenda that's going to follow, and this item is to provide some background and some rules, if you will, for how we're going to approach this.

Gallagher: Mr. Chairman, Dennis Gallagher at the Attorney General's office. Since this body is relatively new, I wanted to take just a couple of minutes to discuss first that this body will encounter momentarily, and that is closing otherwise a public meeting for purposes to have a discussion with counsel regarding claims or litigation or potential claims, or potential litigation. The vehicle by which -- by way of background, that concept of having that discussion with counsel, the legislature has made an exception to the public meeting laws. In essence it's a non-meeting, if you will, or at least a non-public meeting. There will be minutes taken. The minutes will remain with the agency. The minutes, like the meeting however, will not be public. For purposes of this, going from an open meeting to a closed meeting, I would encourage one of the Board members, if so inclined, to make a motion to close the meeting for the purpose stated on the Agenda, take a few minutes to allow individuals who are members of the public or non-essential staff to leave the room. We'll want to make sure that while we have the connection with Las Vegas so we can be in contact with Member Martin, that we're not feeding a live stream on the internet.

Wallin: Oops.

Gallagher: And then after the discussion takes place with counsel regarding the potential claims, actual claims and litigation, I would offer that a Board member would then make a motion to reopen the meeting at which time we can invite anybody back in who's interested for the remainder of the meeting.

Savage: Thank you, Dennis. So at this time I would take a motion from a Member for a closed session to be held here at the CWG meeting for Agenda Item No. 9. Do I have a motion?

Wallin: I move…

Martin: Chairman Savage, I would make a motion to close the meeting for Agenda Item No. 9 to discuss potential or existing litigation.

Wallin: Second.

Savage: Thank you, Member Martin. Thank you, Madam Controller. So we'll take a short break and readjourn in about five to ten minutes. Thank you.

Martin: Are we back in session?

Savage: We're back in open meeting.

Martin: Okay. Is it too early for me to move for an adjournment?

Savage: Yes. We have -- we're back to the public meeting, and we have Agenda Item No. 10, old business.

Nelson: In a few meetings back, there was a request, and it might have even come from the controller regarding the pavement management system. Since she's not here, we can either have Reid give a very brief discussion about this, or we can hold this over until the Controller is with us since she asked the question.

Savage: Let's hold it over since she did ask the question. I think it'd be a good idea. Unless it's going to make a difference today.

Kaiser: Doesn't matter. We can hold it.

Nelson: So if we want to continue on to review of the action items, what I came out of this meeting with this time were three action items, and those were Agenda items for the next meeting.

Savage: Excuse me, Mr. Nelson. We still have B, spec changes.

Nelson: Oh, the spec changes. Do we have an item in here for spec changes?

Savage: Yes. Attachment…

Nelson: We are in the process of rewriting our standard specifications, the infamous silver book. We do it about every ten years or so. And what happens is as soon as we publish the standard specifications, we start amending them by a special provision to address issues that pop up. So about every ten years or so, many of those special provisions in fact have become a standard that are included in every single contract. So there's a process or an evolution that we go through to review all of those items that are in the special provisions against all of the items in the standard specifications to reconcile them and come up with a new set of standard specifications.

So what we have here in Item 10, and this is just for your information, is a very brief one sentence discussion about those changes that are going to take place, specifically with respect to the construction division, the materials division and some of those, so these have all been part of regular construction projects by virtue of special provision. They're adjustments that have gone into the republishing of the new version of the standard specifications which should be done within…

Kaiser: I think it was October.

Nelson: …a couple of months.

Kaiser: If I make it by Christmas, we'll be doing good.

Nelson: Well, we were waiting until we have a new Director to put a new Director on the tougher…

Savage: Has to read the spec.

Nelson: Yeah. We don't want them to be out of date as soon as we publish it.

Unidentified: That's the silver bible.

Kaiser: Yeah, they got to compile all the changes and then they got to resubmit it out to all the divisions for them to review.

Savage: It's a huge deal. So it's done every ten years?

Kaiser: Every inspector, every contractor that is in the business with NDOT has that book.

Savage: So are there any addendums issued throughout those ten years or just the specs are the specs?

Nelson: The standards are the standards, and what we do is we create what we call a pull sheet, which is a special verbiage that deals with a particular issue that we either include or take out of the special provisions.

Shapiro: For that contract.

Savage: For that contract. Okay.

Nelson: So when we see that every single contract has the same pull sheet all the time, then either we change the silver book to put it in, or we adjust the silver book to take out whatever offending language there may be.

Savage: So my only question would be on the Buy America. Is it currently Buy America?

Shapiro: Yeah, it has been for a while.

Kaiser: We've got Buy American and Buy America, but we (inaudible) so we have both of them.

Savage: But strictly all materials…

Shapiro: All federally funded, Buy America.

Kaiser: On federally-funded projects. They've got to comply in Buy America on state funded.

Savage: You do -- now this is a state spec. I didn't quite hear that.

Kaiser: No. We don't require the contractors to comply with Buy America on state-funded projects.

Savage: Just federal.

Kaiser: Just federal.

Shapiro: But that book gets used for both, Chairman Savage, so state or federal, but that just applies to federal aid, and it has for quite a while.

Savage: Right. That's what I thought, but I just want to be clear on that. Any questions from Las Vegas?

Martin: No, sir, none from me.

Nelson: Okay. So to recap the action items, there were three that I recorded, and they're to do with items for the next Agenda. One is a discussion of the pay request process. The second is a discussion about unbalanced bids. And the third will be this holdover on payment management system discussion. Were there any that I missed with respect to action items?

Kaiser: Say those again, Rick.

Nelson: The items for the next Agenda, pay request process, unbalanced bids were number two, and this PMS -- this payment management system discussion which was A of the old business.

Kaiser: I thought we were also going to the BDR in greater detail.

Savage: Yes. On the BDR retention.

Nelson: So there's four items.

Savage: But our next meeting is not until October.

Nelson: October. And by my calculations, I don't have my iPad to know the actual date of the next Board meeting, I think it's the 8th of October; is that right? Second Monday.

Koury: Sorry, just a moment. Looks like it will be the 8th tentatively. That date was set a while ago, so it may change when we get closer depending on the Governor's schedule, but as of right now, the 8th is the date.

Nelson: And I guess the question I would have for you, Chairman Savage, is do you want to immediately proceed -- or immediately follow the Board meeting, or do you want to come back at say 1:00 or 1:30 to have the meeting here?

Savage: I think it would be a good idea to take a lunch break, if they have lunch in Carson City. We haven't had one in the last -- three meetings we haven't had lunch. I think it'd be a good idea, Mr. Nelson. And if we could adjourn for an hour maybe.

Kaiser: We can all eat Thor's lunch. He brings enough for about five of us.

Nelson: Okay. That's…

Savage: Okay. With that being said, we'll look for -- that's not an action item, so excuse me here. Last Agenda Item No. 12. If there's any public comment in Las Vegas?

Martin: None here, sir.

Savage: No public comment here in Reno. How about Elko?

Lee: No public comment in Elko. Thanks.

Savage: Thank you very much. Then we'll take a motion to adjourn the meeting.

Martin: Move for adjournment, sir.

Savage: I'll second. Meeting adjourned. Thank you, everybody.

Representative