

Minutes of Nevada Department of Transportation
Board of Directors Construction Working Group Meeting
March 10, 2014

Chairman Len Savage
Controller Kim Wallin
Frank Martin (Las Vegas)
Rick Nelson
Jeff Shapiro
Kevin Lee (Elko)
Jeff Freeman
Lisa Schettler
Reid Kaiser
Bill Wellman
John Terry
Thor Dyson
Pierre Gezelin

Savage: Good afternoon everyone. Welcome to the CWG Meeting on March 10, 2014. Can you hear us in Las Vegas?

Martin: Yes, sir, I can.

Savage: Thank you Member Martin. And Kevin in Elko, can you hear us?

Kevin: Yes, I can. Thanks.

Savage: Thank you for joining us today, Kevin. And thank you Member Martin. I'd like to call the meeting to order. The first item on the Agenda, is there any public comment in--here in Carson City--Carson City. Las Vegas?

Martin: None here, sir.

Savage: Elko?

Kevin: None in Elko as well. Thanks.

Savage: With that being said, we'll move on to Item No. 3, comments from the work group. Any open comments?

Wallin: I don't have any.

Martin: None here, sir.

Savage: None here as well. Moving on to Agenda Item --

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Nelson: Excuse me.

Savage: Yes.

Nelson: Mr. Chairman, Rick Nelson. For the record, I did want to bring up two meetings that are going to be occurring between now and the next construction working group. The resident engineer meeting is going to take place on the 25th through the 27th of March. It's going to be at the Henderson Convention Center. I know you had attended resident engineer meeting, and I -- and I think I saw Mr. Martin's name on the agenda for the Resident Engineer Meeting at Henderson. I hope that's correct. But we'll tidy that up.

The other is the Transportation Conference. It's going to be Tuesday, April 8th and April 9th at the Texas Station in Las Vegas. It's an opportunity to get together and talk about a variety of transportation topics relevant to Nevada. And, you know, we'd certainly like to extend invitations to the Construction Working Group to attend and participate in either of those meetings, if it fits within your schedule.

Wallin: I'm already there.

Martin: Thank you.

Wallin: They already...

Nelson: They already got (unintelligible).

Wallin: They already recruited me.

Savage: Well, thank you, Rick. We appreciate the dates there. Member Martin, are you able to make the engineer meeting March 25th?

Martin: Yes, sir. It's -- I'm on the schedule for Tuesday the 25th.

Savage: Fantastic. We appreciate you taking the time, Member Martin. And April 8th and 9th, we'll see if anyone can attend the transportation conference. Any other comments from any other individuals?

Wallin: Do you want to talk about the June date for the next CWG, because we said it's going to be June 9th, and the Board meeting is June 2nd?

Savage: Yes.

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- Wallin: Could we -- is there a reason why we can't do it on June 2nd?
- Savage: I'm not going to be able to make it, but as long as there's a quorum...
- Wallin: Yeah.
- Savage: ...we can certainly do that.
- Wallin: Member Martin, can you make the 2nd?
- Martin: 2nd of June, ma'am? Was it 2nd of June, Kim?
- Wallin: It was, mm-hmm.
- Martin: Okay, just a minute. Yes, ma'am, I can.
- Wallin: Okay. Then let's go ahead and just do it June 2nd, if that's okay rather than -- because I know about Member Martin have to make an extra trip and stuff. Just do it all in one day. Okay. And we want it to start 30 minutes after the end of the Board meeting.
- Savage: And that will be standard protocol from here on, is the Construction Work Group will meet 30 minutes after the completion of the Transportation Board meeting.
- Wallin: Okay.
- Savage: So the next meeting will be on June 2nd, following the Board meeting and the Construction Work Group. And I will not be able to make it to the prior commitment. But both Member Martin and Controller Wallin will be in attendance. Any other comments from anyone within the Working -- to Agenda Item No. 4. Has everyone had a chance to review the December 9, 2013 meeting minutes? Are there any corrections or changes?
- Dyson: (Inaudible - audio cutting in and out) Page 4 the individual's name is (unintelligible), K-U-Z-M-A-U-L.
- Savage: Thank you, Mr. (unintelligible) change. Any comments -- correction? (Unintelligible) question to approve the minutes as amended?
- Wallin: Move to approve.
- Martin: So moved.

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- Savage: We have a motion by Member Martin and a second by Controller Wallin. All in favor?
- Wallin: Aye.
- Savage: Aye.
- Martin: Aye. Chairman Savage, there's something wrong with your sound system. I'm getting about every third word -- or, I'm sorry, I'm getting about two out of four words. So there's something -- something wrong coming in from down -- up there. It was perfect when you all started.
- Savage: Okay.
- Wallin: We'll see if it gets better.
- Savage: Can you hear me now?
- Martin: I can hear you now.
- Savage: All three words?
- Martin: All three words.
- Wallin: You've got to say four words.
- Savage: Okay. Let's move on to Agenda Item No. 5, Report on the practical research of the Materials Division.
- Kaiser: Okay. How much time do I have? I heard we're on a limited schedule. Five minutes?
- Wallin: Talk fast.
- Kaiser: Okay. I'll make it really quick. The goal of the Materials Division is always to make a high-quality product that'll last a long time. And fortunately we've got to deal with what we have here in Nevada. We typically have three types of aggregates here in Nevada. In Southern Nevada, we have limestone which is a good dense material down there. Here in Northwest Nevada, we've got (unintelligible) which usually makes our plant mixer or hot mix paving aggs. In Northeast Nevada, they have limestone again, but it's really poor quality limestone integrated into it. There's a lot of gold which makes for poor paving aggs. So that's why they have a lot of gold up there. They get a lot of chemicals amongst their limestone.

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And then dealing with the climate, Southern Nevada, you know, it's always hot. Very rarely do you get much moisture. Very rarely do you get below freezing. So that's good roadway weather. Unfortunately, in Northern Nevada, you get a lot of freeze/thaw cycles, you occasionally get water and that those temperatures -- the cold weather temperatures cause a lot of freeze/thaw cycles and those cause our pavements to shrink in the winter time and expand in the summer time, which tears our roads apart.

So if it wasn't for research that we have through UNR, our roads would really not be where they're at today. And I'm just going to briefly go over some of the items that UNR has done for us and why we have them do the work they do for us. UNR is one of the five university systems in the nation that is an asphalt resource consortium group. And so they're one of the leading universities researching asphalt for us. We do a lot of work with them for that reason.

During the 1990's, the FHWA introduced something to try and get all the states on the same page into making asphalts. They call it superpave. That's a process to generate mix designs for our roads and also to classify our asphalts. And we are -- prior to superpave, we already had a good system here in Nevada that worked well for us. So we contracted with UNR and they created an asphalt system where we could all our asphalts similar to what the other states do, and it was in line with the superpave but it really worked for Nevada. So that's one area where UNR -- the UNR agreement really helped us out.

We also had problems in the '90's and late '80's with our aggregates graveling on our pavements. And that was due to a chemical imbalance we had with our asphalts adhering to our aggregates when it gets cold or when they get wet. So we added lime to our aggregates now and that solved that problem for us. We found that out through UNR. One thing they're currently doing for us right now is the FHWA again has changed the way we design our structural sections on our roads. And we used to an old thing -- our old design packet is called Darwin 93, and they've done away with that and don't support it anymore. And what they use now is the Mechanistic Empirical Pavement Design Guide or Darwin ME.

And that was put together by a whole bunch of PhDs who created long, long equations. And so what -- essentially what that has to do, what we have to do is we have to design our roads using material properties of aggregates we

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have here in Nevada, which is a good idea in concept, but you have to classify all your aggs statewide and your pavements and stuff like that. So UNR is actually putting together for us a big spreadsheet where we can actually do that.

So that's just kind of some of the reasons that I put together that UNR -- the UNR agreement has solved for us. And also as part of the attachments, I gave a whole list of items that they have done for us in the past. Are there any questions with regards to what I put together in that list?

Savage: Not by myself.

Kaiser: Okay. Okay. Then I'll jump away from UNR and update what we're doing with a project down on US 95 and 215. We're using Osterberg load cells in the development of our drill shafts. And what those are, they're not really a research item, but they are a -- like a ram. You stick -- you drill a drill shaft, say, 100 feet in the ground. You put this ram down there and you load it with -- what do they call it -- strain gauges all the way through this drill shaft, the reinforcing steel. You attach strain gauges to it and you put those strain gauges at the different soil types in that shaft and then you load that ram -- you pour your shaft full of concrete and then you load that ram and it'll actually push up and down on the shaft. And you can -- from those strain gauges you can measure the strength of the soils in that shaft.

And so we're using that technology on that interchange and that will hopefully reduce the cost -- the size of our shaft significantly, and we're hoping to -- that cost to do that, I think, is a couple hundred thousand dollars. And we're hoping to save upwards of a million dollars on the drill shafts using that technology. They did add up here on the RTC's project and saved a significant amount of money using that technology. This technology also measures the skin friction and bearing for the shaft.

And one other item I didn't list is -- that we are using is intelligent compaction. And what intelligent compaction is, it's a technology using GPS technology. You put that on your rollers and you'll actually, using GPS technology, you'll track the passes that the roller makes on a paving spread behind the paver. It helps with consistency for the pavers and compaction. And the roller operators actually have a computer screen in their roller and they can tell how many passes they've made behind the paver on the map, and they can coordinate that with our nuclear gauge

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testers to determine if three or four or five number of passes gives you the proper compaction that you need.

And it's really not something that we want to specify to require a contract or use -- we're hoping -- we have it on a project right now up in (unintelligible). We're hoping that the contractors will like this and will see this as a tool they can use to save time and money and fuel and those kinds of things on a paving spread. Maybe they'll realize that, you know, they don't need to have a roller operator sitting back there making five passes. Instead, he can reduce it down to three and get the required compaction. So we're looking at that also. And that was also forwarded on to us by the FHWA. That's it in a nutshell.

Savage: Well, that was very good, Mr. Kaiser (ph). And any questions from Las Vegas or here in --

Martin: I have one, sir.

Savage: Yes, Member Martin.

Martin: On this Osterberg load cell, have you already used that to design the shafts for the flyover, et cetera, at 215 and 95?

Kaiser: No, we haven't. I don't -- I don't think the contractor went out there and I don't (unintelligible) the (unintelligible).

Martin: Now I'm losing words again. Say that again.

Kaiser: Going to do it here shortly but, no, we haven't yet.

Martin: Okay. I would be interested to see what the definition or how -- what the -- what the delta is in the size of the shafts. I -- in the vertical world, I deal with drill piers all the time. This might be a new technology for me to try out. So if you could make sure I stay informed I would like -- I would like to witness it.

Kaiser: Yeah, sure (unintelligible). I'll contact our geotechnical engineers and find out when all that's going on and let you know.

Martin: Perfect. Thank you.

Kaiser: You bet.

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Nelson: For the record, Rick Nelson. On this (unintelligible) study that you're going to be doing, the Osterberg load cell work, actually drilling those shafts is going out to contractor, right, those drilling shafts?

Kaiser: Right. Mm-hmm.

Nelson: And I think the Board's actually going to see that contract next month or the month after; is that right?

Kaiser: Next month.

Unidentified Male: Next month.

Nelson: Hopefully next -- hopefully next month there'll be a contract in the Transportation Board packet that will call for drilling those two shafts that are going to be tested. And that's why we wanted to talk about that a little bit today, so when you see that for just those two shafts next month you'll sort of get a feel for what's up with that.

Savage: Okay. Thank you, Mr. Kaiser. Appreciate the presentation. Let's move on to Agenda Item No. 6, Discussion of potential changes to NDOT's dispute resolution process. And who's going to speak on behalf of--

Nelson: I'll get started. For the record, Rick Nelson. We wanted to bring this to the Construction Working Group as an item that sort of generates some discussion. There's a couple of different things in the works right now that sort of all tie together. One thing that's happening is we are in the process of updating and republishing our standard specifications; the Silver Book that we use that's a part of all of our contracts. In the Silver Book, there is a specific section that talks about disputes and how to handle disputes with contractors. It talks about the Claims Review Board and that sort of thing.

Since the last time the standard specifications were written, we've developed specifications for use with respect to partnering to establish some specifications associated with how we're going to implement the partnering program. Now, in resolving disputes there's -- there isn't one technique that's perfect for every case. And so there's -- it's more like a suite of techniques that we use, with partnering being a very frontend of the process to encourage discussion and problem solving at the lowest level.

If there happens to be an issue that isn't -- or maybe it's of more significance that can be solved through the partnering process and the escalation process

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associated with partnering. We've developed a specification for dispute resolution teams, and Lisa can talk a little bit more about those. But when a dispute can't be settled by partnering, it can be escalated to a dispute resolution team. And there's a specification that was written around how to implement that process.

In the standard plans, we talk about a Claims Review Board. And in the past, we used claims review boards to solve complicated and complex claims that were not able to be resolved during the process of the job. However, lately those claims review boards haven't been quite as effective as they had been in the past for a variety of reasons. And so what we're trying to do is come up with some technique on the very far end before you actually launch into litigation; an administrative way to resolve the dispute so that possibly we can get them included in the standard specifications. And we have some ideas that we'd like to talk a little bit about.

But really we wanted to generate some discussion particularly from CWG members that are -- that are in the construction industry to get a -- to get some feedback on how disputes are resolved in your world. Lisa -- or Jeff?

Shapiro: Well, Rick, if I may. Chairman Savage, Jeff Shapiro, a Chief Construction Engineer. I don't know if we've ever introduced Lisa Schettler. She's our new partnering program manager. You weren't here at the last meeting, were you?

Schettler: No.

Shapiro: No. Okay.

Nelson: No.

Shapiro: So I wanted to at least say that first before I let---

Schettler: Just so you know who I am.

Shapiro: Yes. Like who's Lisa?

Savage: My bad.

Shapiro: No, that's okay. Please feel free.

Schettler: Well, I'm not sure if everybody's familiar with the dispute resolution team, but it's a three-member team and one member is selected by the contractor

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or (unintelligible) by NDOT. And then those two members usually select a third person that chairs the team. So after a dispute goes through the dispute resolution ladder, which is part of the partnering process, and gets up into the director's office. If they can't come a resolution at that level, right now the spec has it go to a dispute resolution team.

We're investigating some other options such as a mediation step. I've been looking at what Cal Trans does and they have a couple of different options, like on smaller contracts instead of the dispute resolution team they have a dispute resolution advisor. So it's just kind of one person -- one person to make a recommendation. The dispute resolution team makes a recommendation, whereas if you add a mediation step in there it would be somebody that doesn't make a recommendation, but facilitates a discussion to make sure that -- well, for one thing, everybody is clear on what the other party thinks the real problem is, and just facilitate a discussion, not necessarily make a recommendation but help the parties come up to -- come up with their own solutions.

So we're looking at different steps like that, and Cal Trans has implemented a similar step. They call it -- instead of a mediator, a facilitator. And I can share Cal Trans's process with everybody, if you guys would like to see that. But -- so we're just -- we're looking at different options to help us resolve disputes before it gets to litigation.

Savage: Yeah, I think it's vitally important, you know, to minimize and mitigate everything on a construction project. So have you reached out to the industry at the liaison meetings and briefed the outside contractors as to what their input might be regarding DRT?

Shapiro: Chairman Savage? Well, Jeff Shapiro, Chief Construction Engineer. I can answer that question. We have -- currently, the proposed version on the 2014 specifications has our old -- well, I shouldn't say old, but our -- the previous language for the DRT. And we've taken that language and replaced the claims board language in the -- in the 2001 spec with the DRT spec, and it's under review right now by industry. So there's -- and we have talked to them in the past about trying to implement this more regular on all our contracts on a regular basis. But as far as feedback coming back from industry we really haven't had anything come back from anybody yet, good or bad. They've been pretty silent.

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But it's my understanding the contractors are -- and nobody wants to go to claims board. Nobody wants to go to litigation. That's expensive and, you know, the claims board is always after the fact when you're trying to solve the problem and then the relationship is destroyed and the feelings are hurt. And the whole point of this alternative (inaudible) dispute resolution as you know is to try to work the issues as they go, not let them fester for years, and it gets really expensive. And I believe the industry is very supportive of what we're trying to do here.

Savage: It would be interesting, I think, to hear some of their bullet points and suggestions as to how we could minimize any dispute, whether it be -- and my own idea would be to increase retention to 10 percent. That puts the burden on the contractor to resolving issues that might be outstanding. And in fairness to the contractor, it gets the attention of the Department as well. And I think they're -- the partnering is a good avenue, and I would like to hear from Lisa as to some of the pros and cons of the partnering and what can be improved on some of the partnering that's been taking place over the last -- because there's a limit, I think.

I read in the -- in the manual that there was a monetary limit. It's suggested if it's under...

Schettler: \$10 million.

Savage: ...\$10 million and it's required if it's over \$10 million.

Schettler: It's required to be (inaudible)...

Shapiro: Correct.

Savage: Yes.

Schettler: ...if it's over \$10 million. It's highly encouraged over \$10 million. But, you know, I'm fairly new to the process because I've just been in this position since January, so I might have Jeff Freeman talk a little bit to this. But I think that we are starting to -- we are starting to put together some data so that we can start looking at when projects are partnered and when they're not. If we can see a difference in claims and how resolutions go and things like that. We're just starting that process of performance measures for this and trying to figure out how to come up with those performance measures.

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Savage: So I guess my question; is there 100 percent participation from the contractor in the partnering process on these projects?

Shapiro: Chairman Savage, Jeff Shapiro. I'll take a swing at that one. I would say it depends on the contractor and the people. Some are very sophisticated at it and do -- and we have really good working relationships and others are -- sit back, a little bit suspicious as to what partnering is about sometimes. So it really depends on the contractor.

Savage: And that makes sense.

Shapiro: And also -- that also -- you see that in our staff as well, too. I must admit that it kind of depends on the staff member.

Savage: And I guess that -- you know, there's a lot of thoughts that came to my mind when I was reading through this Agenda item. And one I guess I would defer to either Dennis or Pierre would be we had litigation on certain projects. We have contractors that are tied up in this litigation with the Department. Are these contractors -- currently they're allowed to bid future projects. Can we review -- and you don't have to answer it right now -- but can you review to see what possible -- what possible ideas and regulations, possibly, that might restrict the guys that have an issue with the Department and whether or not they could continue to bid projects openly? And I'm talking about each and every project that we have. So I'd appreciate it if you would look into that matter and see what we might have as far as other options.

Gezelin: So you're talking about (inaudible) -- you're talking about allowing them to continue to submit bids?

Savage: Yes.

Gezelin: Okay.

Savage: If they're in current litigation or default by the Department, would they have to post an additional bond, can they be restricted from bidding? There's a lot of different options. I think it's just something if you could kindly research and (inaudible) find out a little bit more on that.

Nelson: Rick Nelson for the record. I -- you know, when resolving disputes there's two avenues that a contractor could take. There's an administrative avenue that we've laid out for them with respect to partnering and DRTs and maybe

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it's mediation or some other administrative element. You know, there are also those judicial remedies that they can employ along the way. You know, I think given the cost of litigation, I guess, and this is just Rick Nelson speaking from the world behind his glasses, you know, it would seem to me that if we had a robust administrative process that could handle these disputes quickly that nobody would really want to -- nobody would really want to go to litigation.

I think there might be some concern if we -- I don't want to put words in the contractor's mouth -- but it would seem to be there might be some concern from their part that they would be punished if they didn't receive some, at least, fair hearing of their dispute that they -- that they had to go to litigation. You know what I'm saying? I think that might be kind of a dangerous path to go. But, you know, I think what we really want to try to achieve is the most robust administrative procedure that they can get a fair shake -- that they feel they can get a fair shake, a fair hearing of their dispute along the way that, you know, litigation would be like the absolute last resort. I don't know. Do you have anything that you'd like to add?

Martin: Len, when you get a chance --

Savage: Yes, Member Martin, go ahead.

Martin: Rick, you said a mouthful there and it's exactly what I've been saying for the last, what is this now, seven years or so I've been on this Board. I got served with a subpoena last year -- or no, Friday, and as a result of the case that was going on two years ago and it's still not done. And is it -- is it NDOT's fault? Is it the contractor's fault? I've been involved in three of these and you're absolutely right. There needs to be some kind of a robust -- I would say kick-ass, excuse the French, program on part of NDOT to get to the bottom of these things and get them solved.

I've seen so many dollars go out the backend of the pickup truck because these disputes go on and on and on and on, and they get larger and larger and larger. The biggest one, of course, is that 580 debacle where -- where the off-ramp is coming off in Washoe Valley. Somebody needs to get control when these disputes come up; get to the bottom of it. This partnering session, from a contractor that's participated in a hundred of those things or maybe more, it's all about the enforcement at the top to make sure that the people at the bottom -- because I take a look at your little table here

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-- step one, step two, step three, step four -- it's all about somebody in step four making sure the people in steps one, two and three are doing their job.

Otherwise partnering, all you're doing is spending a ton of money and everybody's time for nothing. And there needs to be a program in NDOT that gets to the bottom of these disputes in a hurry and gets them resolved. I mean take a look at what we spend on legal fees, guys. I can't see anything else that would be more -- as the governor was talking about this morning, save more money for the state, than to do that.

Savage: Thank you, Member Martin. Controller.

Wallin: And I think it was -- I think it was Jeff, or maybe it was you that was talking about even, you know, it's different with your staff. Not all staff, you know, not all contractors participate in this and not all staff are as informed or participate in it. So as Member Martin says, I mean you have to really -- this is going to be the culture here and this is what we're going to do, and make sure that it's applied consistently throughout all the different districts; that, you know, District 1 does it really well and District 3 does it partway. And so I think it's going to be a training, it's going to be a mindset and like Member Martin says, it's going to be from the top; that that person is following up to make sure that the people in one, two and three are doing it.

So I think it's good and you're -- Lisa, I think you're talking about getting some data on how many contractors have participated in this program and things like -- and what the results and stuff. Because I think that that would be good too, and plus as you do it look at, well, what districts are doing it more and in these different levels -- one, two, three and four -- breaking it down into that is -- this is the project superintendent in District 1. This individual doing it more than the project superintendent in District 3 or something. So I think it would be beneficial to get that data and then you could identify where you have the weaknesses.

Shapiro: Yeah. Madam Controller, Jeff Shapiro for the record. That's the intent is to get some data, some performance measure-type data so we can look for those kind of things and try to make a little bit more consistent process.

Wallin: And then, you know, get some feedback from your contractors as to...

Shapiro: Yes, ma'am.

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Wallin: ...what their experience was and how it could have been better, so -- because I agree. We spend way too much on legal here.

Savage: Mm-hmm.

Wellman: It's over. Everybody else is done.

Savage: Go ahead.

Wellman: Bill Wellman, Las Vegas Paving, for the record. I want to maybe just touch on a bunch of things. I was just writing down a bunch of notes. First, I -- we didn't -- we talked about this at our industry meeting four years ago, we brought it up. And it was the same time it was brought up with partnering and we took that challenge on. And we set it aside because we really needed to do one step at a time and partnering was the first step. So that's done and I think it's really good. So now it's probably time to look at something else. So -- but I haven't seen it in the industry yet. I mean I haven't seen it. If it's gotten to one of our other guys it probably needs to be shared with the industry liaison group, because that's what that was formed for and then it can be disseminated, you know, through our organizations as well as, you know, however we get it to everybody AGC. But we haven't seen anything back on the DRT stuff yet.

But, you know, a couple of different options. And one thing about partnering, it is an attitude. That's the very first thing that we try to sell is an attitude. And it does depend on the contractor. We mandated that as (unintelligible). That came from the industry group to mandate the \$10 million threshold and whether you had to or you didn't have to. And it's because we do, repetitiously, a lot of projects with you folks or my guys will do that and there's not necessarily a need to go through the formality on each and every project, you know, because we're doing the same project, the same people participate. They understand how to get the (unintelligible). We did it at \$10 million just because it's starting to be big enough. There is potential for claims or disputes in excess of just normal quantities, I guess, if you must. So that's kind of why we've done that.

So I thin overall it's probably been pretty good. So if you take our organization, you had a \$1 to \$5 million job, assuming we're not doing very many of them depending on who the RE is and depending on our project superintendent is (unintelligible) and that's okay. That's not -- that's not a bad thing, if you will. So -- but if you've got other contractors that you're

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not familiar with then you should be, because that's part of the rule was both parties had to agree either not to do them -- or not to do them below \$10 million. It's required, but below \$10 million both parties had to agree they didn't have to do it or do it for them, okay. And you guys have an internal process for -- or facilitate that too.

Another option that's out there is a project neutral. And it was touched on briefly in a different forum. SNWA for years -- they don't do any work anymore unfortunately -- but used a project neutral. They brought in a project neutral that we both agreed on the contractor and their organization did -- we just kind of sat through the weekly progress meetings, got familiarized with the plans and specs and just kind of stood behind the scenes and just watched what was going on. And if there was issues of that kind of just helped give their professional opinion, if you will, as to what they're seeing, you know, or who's at risk. And that was kind of a good thing, because from a legal standpoint we want to know what our -- what our chances are in prevailing, and first and foremost on either side. So having somebody else do that, you know, or having that third party to simply look in. And that was kind of an affordable way to do it.

DRTs, I've done many of them in California. I don't think I've ever done one in Nevada. I don't even know if our organization has ever dealt with Nevada. DRTs are -- you've got it written out here pretty well, and I'll cruise through it pretty quick. And this is just exactly how we've done in the past. They're great if you think you need them, but they've got to be on a bigger project because they're expensive and they're time consuming. So that's a bigger part of the expense. And what we have to do as a contractor, you have to do as an owner, facilitate having a DRT, a dispute resolution team sitting in. Usually it's quarterly. And if issues arise, they meet a little bit more often.

A couple of things I noticed, and the one thing here you had who the DRT members are, and you have NDOT contract claims review board. That shouldn't be at all. It's third party. It's -- nobody's associated with NDOT. Nobody's associated with the contractor directly. That not -- should not even be an option. As for allocation of cost, the biggest thing that we always see on how you -- how you pay for a DRT is the owner wants to put in a \$50,000 budget for their half. Now, what are we supposed to do with that on our half? Are we supposed to put \$50,000 into this proposal some place, and if we do (unintelligible) it's not reimbursable to the district. So

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what we push and been successful with all the owners that we've dealt with in the past with DRTs in California anyway is put it in as a force account item. We're going to put it in one or the other. We have to -- we have to cover the direct cost. And direct cost is for them to show up the meetings, and typically you've got to pay all their expenses, because normally they're not in the town that you're -- that you're in, okay. They're coming from someplace else; Carson City to Vegas, Vegas to Carson City -- whatever the case may be.

And making that very simple and not compromising the (unintelligible) bidding process with us having to (unintelligible) put numbers into it. Put \$50,000 in to match yours, which we may never use. And then if so then you just expend it and the additional \$50,000 or a portion is not reimbursable. So just make it fair. If we get to the point where we actually need to call them in for a dispute then that goes separately, okay. Then we're onboard ourselves for that. But for the day in and day out stuff that they do, showing up to get a fixed fee for it in the first place and they get expenses, that should be shared and the owner is going to pay for it (unintelligible).

Savage: Excuse me, Bill. Right there. Is that third party an individual with construction experience? Is it a consultant? Who is that person that you're referring to?

Wellman: Well, what --

Savage: What company?

Wellman: And it's pretty -- it's laid out here very well. It's we pick somebody to be -- to represent Las Vegas Pavement on the contractor's side. The owner, NDOT in this case, picks somebody to represent their side. Those two then they're outside -- they're inside the industry, but they're outside either one of the entities. Then those two pick the third member, which will typically serve as the chair for them and (unintelligible). And we get to approve both sides. We get to approve NDOT's; NDOT gets to approve ours. And sometimes we go back and forth. And a lot of that is because of potential conflicts of interest on other projects. But really it hasn't been too challenging.

I like the way that it was written in here. If you go to California, they want you to use this arbitrator, these selected firms. And you actually have a list

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of a few of them in here. Dispute Resolution Board Foundation, American Arbitration Association. They're in business of doing that. I think they become biased, with all due respect, which we like being able to go outside and demonstrate that we've got somebody that's in the business, like Frank. It might be a Frank Martin, if you will, a building contractor, but he's been in the business long enough to understand construction and contracts and can represent our side of this, even though it might be a road paving project, if you will. And then whoever -- you guys might pick somebody from the engineering side. I don't know.

But they do need to meet regularly. That's the key with DRTs and that's where the expense is. And when you hold meetings regularly, kind of like this is to the Transportation Board meeting. You might have your progress meeting, but then subsequent to that then we would hold a DRT meeting that's very formal and talk about all the stuff, what's going on, the progress and processes, what people are liking and not liking, what are we seeing, what are we anticipating to be a problem or not be a problem and just write these things out, and then visiting the site itself. And all of that, you know, takes several hours to a day depending on the project, to do that and be (unintelligible). That's where it gets expensive, so it needs to be on the right projects.

But at the same time the end result is they're looking at it and they're making a recommendation back that says contractor, you know, you're wrong. You know, you should have picked up on this. You should've had it right or, you know, the opposite. NDOT, you know, how would they have responsibly known that you wanted this included or this needed to be included? So it's a great thing, one of these -- one of these process.

But since you're asking for legal counsel's opinion on how you can maybe penalize contractors, because I agree with that that it can continually cause you problems. Another one SNWA did for years was pre-award meetings. And they were super successful in it. Probably Mark Jenson (ph) at SNWA would be the guy to talk to there.

Savage: What's the acronym SNWA?

Wellman: Southern Nevada Water Authority.

Savage: Okay.

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- Shapiro: Mr. Wellman, say that name again, please. Mark?
- Wellman: Mark Jenson.
- Shapiro: Mark Jenson.
- Wellman: He's the head engineer -- head engineer. Pre-award meetings, what they did -- what they -- depending on the type of project, you know, I think it was every project, because we did many of them. The minimum -- the two bidders -- the two low bidders and sometimes the three low bidders, they would then interview us in reverse order. So if they were using three they would take the third bidder and we'd go in for an interview. And they'd have set questions about the contract itself and then means and methods and approach. And then we had the opportunity after those questions -- this is a recorded meeting, okay, on the record. And then at that point we were able to talk about what we seen in the -- report the issues on the projects.
- Savage: This is after the pricing has been turned in?
- Wellman: Correct. This is -- this is after the --
- Savage: Post-bid?
- Wellman: Post-bid, okay, and after everything's been checked out and the calculations, and we know monetarily who's low and all the paperwork has been (unintelligible). But prior to award, and they called it that, pre-award meetings. And at that point we could tell them about the project and why our price is what it was on certain things. And a lot of their projects were very technically challenging, kind of like NDOT projects, okay. It's not just as simple as paving a road, I mean we're building pump stations and building pipelines that are very, very deep and you're doing tunnels and that out underneath the lake.
- So what they do is you start with the third bidder and then they'd go to the second bidder and do the same thing. But what happened in talking to the third bidder it gave them some understanding about the process of what we go through bidding the project; what we're seeing. And they were able to ask the questions; did you include this; did you not include that at the next step. And then they would ultimately go to the low bidder or the first bidder, if you will. And they have all this, I don't want to say ammunition, but this information to take to make sure that the low bidder did, in fact, include all of these other things and looked at it appropriately for the price

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there was. I mean kind of like Member Martin asked today about Q&D's price being 30 percent low. They're all the time, you know. It's probably because Q&D is a great contractor.

Not, you know -- so on the surface it may appear that they left a lot of money; what did they leave out. Chances are they didn't, they just know how to do it better than the other people that were on that particular list. But -- so it's okay. But that's what you're looking for. If the low bidder -- and I've seen this many times -- says, no, we didn't do this, we didn't have this, we don't read it this way. The simple answer was is this is our intent, this is how we wrote it, this is what we meant, this is what we expect. If they didn't like it, they gave the contractor the option to walk either doing it or walking away with no harm, no foul. There's not taking the bond. There's no penalty of any sort. It's just (unintelligible).

And that was highly successful. Building this other Nevada Water Authority's infrastructure there in Southern Nevada many, many years. So I don't know whether you can do it. They were able to do it, but it's something you should consider. Not on every project, but bigger projects.

Savage: Because timing is so critical with the -- with the low funding that we have, and getting the shovel-ready projects ready to go. I mean we wouldn't want to delay any type, but the more information that we have to use I think is a good suggestion. So I think it would be something that the Department ought to look into and evaluate to see if any other NDOTs are incorporating this measure. Let's take a look.

Wellman: The only place I've ever seen it used is SNWA. And like I said, they probably still would today, but they haven't had a project out for many years, so...

Shapiro: And Chairman Savage, Jeff Shapiro again. The 408 that does tell us what we can and can't do for awards and bids, so we'd have to look at, you know, we'd have to get the AG's office to help us out with that.

Savage: Mm-hmm.

Shapiro: It's -- ideas sound great for bigger projects. Unfortunately, some of the projects we're going to talk about in closed session are pretty small and they seem to be -- cause our biggest problems sometimes in regard, you know, regard to litigation and whatnot.

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Wellman: Bill Wellman again. Those go hand in hand with DRT-type projects.

Shapiro: Correct. Yeah.

Wellman: Okay. You don't want those -- you don't want that expense (unintelligible).

Shapiro: The other thing I'd like to offer, in actually support of what Mr. Wellman is saying, he's absolutely right. This is an attitude. Partnering is an attitude. It doesn't -- there shouldn't be a dollar threshold as to when you do it or when you don't do it. But definitely, right now, the current spec that we have written is if it's over \$10 million it's required to be professionally facilitated, so that's the only difference there. But still it should -- whether it's a \$60,000 job or a -- or a \$400 million job, everybody -- we encourage everybody and promote the partner in every aspect that we do.

As far as -- Mr. Wellman talked about the project neutral. That's the dispute resolution advisor that Cal Trans is using. That's, you know, somebody to bounce ideas off of. That's something else that we want to take a look at, because that's a great idea. Somebody that's neutral that you can talk to.

And the one thing -- the other thing I think Cal Trans has done recently -- our partnering spec and our DRT spec is modeled fairly closely to what they used to do, and \$10 million was a threshold that they were using for a while there. I believe they're using working days now, contract durations as the thresholds as to when you professionally facilitate something, which actually makes more sense when you think about it; because some of this stuff it's -- if you've got a small, little job that's over in a month, you can't get the DRT or the DRA up and running in time and the project, you know, you blink and the project's done already. So we're taking a look at that as well.

Savage: Good. And when is the next liaison meeting?

Freeman: (Unintelligible) June.

Savage: But whenever it is, I think it's important again we reach out and have that as one of the Agenda items with the industry.

Nelson: I'd like -- Rick Nelson for the record. There's two comments I'd like to make, and the first has to do with cost. And I've heard from a lot of people that this stuff costs a lot of money, just today. But, you know, if you stop and you think about it, if you're -- if you've got a \$10 to \$20 million job and

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you go way overboard and spend \$100,000 on a \$10 or \$20 million job that's fractions of a percent. And if that \$100,000 invested can save you from a claim or save you from mediation or litigation that's money well spent. And one of the things that Mr. Wellman mentioned about the DRT has to be formed at the beginning of the job and they have to meet through the job is absolutely correct. Their value comes from being familiar with the job and the players that are there.

You can't bring a DRT in at the end of the job and expect them to skillfully resolve a dispute. So, you know, yes it costs some money, but you really need to look at it as an investment.

Savage: Mm-hmm.

Nelson: And if you can get through the process without any significant claims or disputes that's really money well spent. One of the things, I think, that -- the reason we mention the DRBF is, you know, we've had some good experiences with DRTs and some not so good experiences with DRTs. And I think, in my opinion, some of the more challenging DRTs have been those that haven't actually had some training and some past experience in being a DRT member. You know, just because you hire a retired NDOT employee that's got 30 years of construction experience or a 40-year veteran of the construction industry doesn't necessarily make them good DRT members.

Both Jeff and I have been through the DRBF training on how to be a DRT member. And there's really a lot of good things that come out of that. So the reference to the DRBF was more from a training point of view that we want members to be trained in dispute resolution. I think that -- those are really the two comments I wanted to make. It's really encouraging to hear some different alternatives here, and I think it gives us some things to think about. And we'll certainly go to the industry and initiate that discussion with them.

Savage: And I think it's important too, to keep this on the CWG task list, because of the expenses and the timing. I think if we work towards that, just like we have done with project closeout. I see this dispute resolution as important as project closeout, changer orders; everything else that we discuss. I think it's important that we keep it on a consistent basis for conversation between industry and NDOT.

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So with that being said, are there any other comments for Agenda Item No. 6?

Martin:

One of the things to follow on Mr. Wellman's statement, I've seen these DRTs work and then not work. And one of them was on a project -- a vertical project down here and was a big, big, big job and it worked really well for a period of time. And then there was a trend of the DRT towards a certain -- the way -- in other words, the side that they took every single time, and then all of a sudden the owner of that project, who was a government entity, decided this wasn't such a good idea anymore.

And -- but the DRT, I think in order for them to be effective, you talked about an ex-NDOT employee. Those kind of people should be excluded from that process. This is, as Mr. Wellman said, this is about people in the industry that understands contracts, understands requirements, understand plans and specifications. Having ex-NDOT employees or having somebody that's an ex-employee of Las Vegas Paving or in aggregate industries or Q&D, what you're doing is you're setting yourself up with the same bunch of good ol' boys, and any effective DRT that I've seen is outside of that box, if that makes sense.

It would be -- Len, you're in the plumbing, heating and air conditioning business. And if you had a DRT team on your -- let's say you were a prime contractor for one of the casinos and you had an ex-casino employee and an ex-air conditioning employee; how effective would that team be? But if you had somebody that was outside of that industry, outside -- in other words, a general contractor or a -- but outside of the box, outside of the industry; still had an understanding of plan specification requirements, you'd be more effective because there would be a tendency of ex-NDOT employees to go one way, or an ex-LVP employee to always go one way.

And sometimes some of the best minds in these DRTs are the people that's got nothing to gain or nothing to lose in their decision. It's totally straight down the line.

Savage:

Absolutely, Frank. I can't agree with you more. And I also think it might be a good idea to reach out to some of the engineering consultants, some of the people that design the projects for you guys to get their (unintelligible).

Martin:

Exactly. As long as they don't work for NDOT and think that they're going to make somebody mad.

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- Savage: Thank you, Frank. Any other comments from anyone? We'll move to Agenda Item No. 7, old business construction working list.
- Nelson: For the record, Rick Nelson. In making a pass through the list, I think we've checked everything off except Item 5, which is the FHWA DBE process review. And I'm sorry that I have nothing to report on the progress that that's -- that's been made in that so far. We'll add this dispute resolution process to the task list. Hopefully, I haven't missed anything...
- Savage: I think --
- Nelson: ...from the last meeting.
- Shapiro: Other than -- Jeff Shapiro, for the record. Rick, as far as DBEs go, we -- I believe the Deputy Director has got a meeting scheduled with industry on the 24th, and FHWA to try to work through some of that stuff. So there are - - there is -- are things going on...
- Savage: Progress.
- Shapiro: ...not behind the scenes. There's progress being made, but we've got a lot work to go.
- Savage: And also a comment, when I was reading through the meeting minutes, this one Agenda item that's on the task list was the contractor overpayment. And you had made mention, Jeff, that you were going to meet with Controller Wallin and Member Martin.
- Shapiro: Yes, sir.
- Savage: I don't know if you'd had a chance to do that on an individual basis or not.
- Shapiro: We have not -- as an organization, Chairman Savage, we have not been able to schedule a meeting yet, but I know the director's office is working on that diligently.
- Savage: Okay.
- Shapiro: I would -- I would like to report, as long as we're on that subject, some of the bigger overpayments that we were talking about, one was for \$150,000 on a -- on a contract up here in District 2. I was personally handed that check and I turned it over to the accounting division, so they've cleared the bill on that deal. And I know the Save ROW's (ph) Parkway Project down

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south, Aggregate Industries, I believe as of last week accounting had that check. That was about \$600,000. So their amounts due have been cleared.

So everybody has been, you know, it's still an embarrassing situation to be in, I think, from an owner, but everybody has been taking care of that and we have been clearing the books and closing these jobs out.

Savage: Absolutely. It's very transparent. I know it's a tough pill to swallow, but we're moving on so that's good.

Wallin: That's good.

Nelson: We'll take care of that.

Savage: Let's move to Agenda Item No. 8, briefing on the status of projects.

Nelson: For the record, Rick Nelson. This has been a standing item on the Agenda ever since the Construction Working Group started, and that was to have a briefing on the status of open projects. What we've done this month and will continue to do for every CWG hereafter is to include a briefing from John Terry, who's our assistant director for engineering on the internal resourcing, the five-year plan of upcoming projects.

And just as a matter of introduction, I think what this will do for the Construction Working Group is to provide an update or a snapshot, if you will, of all of the projects that we have in the system from those that are on the development side through bidding, through a delivery with respect to construction. So you'll be able to see the full (unintelligible) of the road projects, the highway projects that we -- that we have on the books that we're contemplating.

So in order to get started with number -- or letter A, John, if you want to go ahead and talk about the five-year plan and...

Terry: Well, John Terry, Assistant Director for Engineering. I guess to start, the five-year plan is kind of what we summarized in the memo. It's not to replace the planning process. It's not to override. We have our internal project scheduling and management system that tracks all our projects that we go on. It's more to summarize, in one page, what we think we need to get ready to go out for the various fiscal years, almost entirely to spend our federal obligation. And that's why a couple of caveats is it is over allocated. It's intentionally over allocated, because things happen to projects late, and

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we've got to have enough to go out because the last thing we want to have happen is federal dollars aren't obligated.

Now, we have a separate process where we sort of count down every single federal category and make sure that we're going to spend in the various federal categories. That's another kind of complicated process. The five-year plan was originally done because simply relying on the STIP, as you've seen in various meetings, it takes time to modify the STIP. We have to go to the local agencies and they have to get approval, and then it has to wait and has to get on our agenda and it has to get on our Board and it has to get done.

And to simply use the STIP as a planning document for the jobs that we need to get out this year on these dates just wasn't -- it wasn't accurate and it was too complicated. And so that -- this list is simply to try to track what we're going to put out in these various fiscal years in a very simplified format so they'd be working on the right things. It has other benefits, too, I think. Construction knows what's coming out. They can assign their residents to these projects. They have to understand that it's over allocated; that some of them won't make the cut and will end up not going out.

Another problem we had was we were designing too many projects. Projects don't sit on the shelf very well, you know. In other words, you finish them right up to done and then you don't have the money to put them out, and then they sit and you think, well, a year later you'll put them out. Well, that's not that simple. You usually have to spend a significant amount of man hours and time getting them back ready to go out. Specs change. The pavement conditions deteriorate, et cetera.

So while we're over allocating, we don't want to over allocate too much. And so that's kind of the game we play. And by having it all on one spreadsheet, it's a little bit easier to do that.

I'd like to add one more thing, and that is Director Malfabon has really asked us to more specifically break out some of these -- I'll call them relatively new categories. And they are have some money allocated to ADA, because we've talked quite a bit. We're concerned about being sued by the Department of Justice; that we're behind on our ADA; that we have to do certain measures. Allocate some money to storm water so that we show a clear commitment to storm water, not just on the projects that we're already doing that we have to incorporate storm water measures within

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those, but have a separate pot of money that's shown and allocated that we're going to commit to storm water to sort of make that commitment to the EPA and others that we're doing that.

We have found that this process can't do that in '14. '14 is too committed. But '15 and beyond. And I'm mostly talking about federal fiscal years here. In other words, starting in October 1st. So '15 and beyond to start allocating to those various groups. Again, probably over allocating and then we have to make some tough decisions on what to cut. And by those -- the other one that I throw in there is our bridge program in that it used to be our bridge program had a separate breakout, but when Map 21 came in they no longer have separate dedicated federal funds towards bridge. Bridge is now part of our two biggest funding categories in each EP and STP statewide. So we have made a commitment to continue improving bridges in the future, but we have to do it on our own. It isn't a separate dedicated federal source.

So those are the kind of things we're trying to break out as we move forward, and this list that's in front of you will expand a little bit to show more specific breakouts within those categories. And that's why I say even though it's a five-year plan, it's kind of a three-year plan because really years four and five aren't as filled in as we'd like them to be.

So with that, if I could answer any questions. This is available to everybody. It's on -- it's on our internal website. It is not on our external website, although we do share it with like DRTCs and other agencies. So it's not, you know, that formal document like our stip documents.

Savage: Mm-hmm.

Terry: With that, if I could kind of answer any questions. Oh, one of the other (unintelligible) is traffic operations. Again, traffic operations has sort of been out there. We funded the (unintelligible) system with sort of leftover CMAC funds in the past. We trying to show some dedicated money towards it. That's another one of those categories that Director said to (unintelligible). And safety is a little bit different. Safety gets a specific amount of federal money every year that must be spent on safety. And so that we track sort of separately, because it's its own category. I know it's kind of complicated, but we try to make it a one-page -- and you can see we're struggling to keep it on one page anymore. We've go to 11 x 17 front and back, and I think we're going to have trouble beyond this.

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So with that, if I can answer any questions about how we use it or...

Savage: You might want to talk about consultants, because that's what has driven this (unintelligible).

Terry: Oh yeah, it helps (unintelligible) consultants as well. In other words, we use this and we look at our workload. We use our PSAMs as well to help make some of the decisions of what jobs to consult out. We haven't done much consulting out lately. We do have some ideas. We (unintelligible) of jobs. We're probably going to send out to RFP, because in order to deliver our program we, you know, we've never really designed everything all ourselves. So some of this will consult out. Frankly, we're a little bit behind on consulting out because our project management division is down (unintelligible) personnel right now.

Savage: John, I'd like to start off just by saying, you know, commend yourself and your staff and I know this is quite a task here. And I just think it's a real important tool that the Department can rely on day in and day out. And I just want to thank you sincerely for the effort and the time. And it's a road map that you guys can use and all be on the same page from different department to different department to different department. And I think that's vitally important to have this source available to different internal departments within NDOT, to ensure that everybody knows what the left hand and the right hand are doing.

So I really compliment the time and effort that everyone's put into this five-year plan and I know it's moving, but I think you guys -- I know myself, I have the confidence in the NDOT team and they continue to do a great job. And this even makes it more streamlined and more focused. So I appreciate it, John.

Terry: Maybe just to show an example, I mean we talked today at the Transportation Board meeting what happens at Boulder City Bypass, which has \$40 million and it's really more than that because we cancelled the other contract and federal funds moves into fiscal year '15. And then you can see we take that \$40 million and we switch it to '15 and we bring up these other projects which we've already brought up in order to say we would move those projects up and they're on this list in the next year, when we pull them forward in order to get them ready. And so it does help us do that (unintelligible) the interchange.

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- Kaiser: Isn't the \$40 million right to below Boulder City?
- Terry: Yeah, there it is. We already pulled it up, you can see. In other words, we want our staff to get it ready regardless. So -- but you see -- oh, there it is. Boulder City's \$50 million. We pull up a \$40 million. And, again, this is only the federal allocation portion of those. And then we feel we have to pull up one more, so we pull up one of the 3R jobs. That's a backup project if Boulder City slips, is the note off to the right.
- Savage: Mm-hmm.
- Terry: So that's the kind of thing we're trying to do. It's over allocated, but these are what we're telling our staff they have to have ready just in case.
- Wallin: That's good.
- Savage: Controller or Member Martin, any comments?
- Martin: None from here.
- Terry: Thanks.
- Savage: Okay. We'll move to Agenda Item No. 8-B.
- Shapiro: Okay. Chairman Savage, Jeff Shapiro, Chief Construction Engineer, for the record. The memo and the attachments going to the memo basically tell the story of where we are on construction projects. So we're tracking closeout on 49 projects. As of for the calendar year 2014, we've processed contractor pavements roughly in a little bit excess of \$9.6 million. We've got 19 projects so far that we're tracking that might exceed the construction budgets in our performance -- or our performance measurement-type analysis, which is the program (unintelligible) agreement estimate.
- On some of the significant projects, I just want to make a note. The (unintelligible), Item No. 6 on the significant issues -- or project with significant issues. That US 50 Cave Rock project, that's probably -- that's my bad. I shouldn't include -- we talked about that extensively last meeting, so I just -- I should -- it shouldn't even really be on here. So there's nothing new there.
- But what we are trying to do is be a little bit more descriptive on some of these issues here. For example, the 3409, the US 95 widening. You know,

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we're currently reviewing a \$4.7 million request for equitable compensation for some highway electrical work. And then in regards to...

Martin: Excuse me, Jeff.

Shapiro: Yes, sir.

Martin: That \$4.7 is on top of what, a \$2.3 you've already settled with Capriati on?

Shapiro: That is correct, sir.

Martin: So it's a total of \$7 million? In that -- in those two...

Shapiro: It's a total of \$7 million. Member Martin, one of the things we're trying to weed out on this -- on this request for equitable compensation is some of this is the prime contractor's responsibility. A late payment on change order work that this particular subcontractor did. So we're trying to weed that out. All the subcontractor knows, and maybe this comes up more in closed session, that they haven't been paid. So not all of it's our responsibility, but the total amount that their asking for is \$4.7 million.

Martin: Yes, sir. And that's -- and I understand that it's still muddy and it's still being -- and it's still being worked on, Jeff. Okay. Where I was going at that, let's just take the \$4.7 at face value and let's say it becomes \$2.7, but we already paid out \$2.3. That's still \$5 million. The DRT seems a little cheap at that point in time, doesn't it?

Shapiro: Correct, Member Martin. Yeah.

Martin: Okay. Thank you.

Shapiro: So as far as attachments 8-C goes, we've only closed out one contract this calendar year, so the details are on that. And we have an open construction status, which is 8-D, I believe. In the description -- in the spreadsheet over on the right-hand side, the description there we're trying to be a little bit more descriptive on what issues are out there. You know, some of these have already occurred (unintelligible), you know, we're just closing out the contracts so we still have them listed there. But there's some other utility delays in the 3500 series contracts that are -- we're trying to, you know, be more -- like I said, be more descriptive. Part of it is so we -- if we need to talk about change orders or adjusting change orders or adjusting amounts that's going to be issued or that we're considering that we're a little bit more

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transparent with the Construction Working Group, so that you all have a better understanding of where we're going with this stuff.

But other than that, if there's any questions (unintelligible).

Savage: Well, I'd like to start off again, Jeff. I just want to -- again, another addition as far as a nice summary up front (unintelligible) look. I think that helps everybody. That's the first time I've seen that, so that I think is Page 1 of 2 there.

Shapiro: Mm-hmm.

Savage: That's very beneficial. And so we'll continue to do that, because it's a quick picture. Then one question I saw on Attachment D, on your Page 1 of 3, I was noticing on the descriptions. Again, the format is great. The dollars are there. These are easy to read. Everybody's accountable. I noticed that these utility delays -- it's the first time I've noticed them, and maybe they continue to be there. But these utility delays on different projects, for example, this 3471 SR 28 roundabout and this 3516 US 395 and this other one near Dunphy, Contract 3525. How do we get utilities moving and held accountable so it won't delay one of our projects?

Nelson: John's had an easy day so far.

Wallin: It's his turn.

Savage: Is that a bad...

Terry: We could -- John Terry, Assistant Director for Engineering. Boy, if we could solve that one. It is -- especially some of the utilities here we struggle with. I believe one of the things we're doing is trying to keep up, whether you want to call them SUE, underground utilities or potholing. It's trying to do more potholing earlier. It's one of the advantages of trying to plan our projects a little bit further in advance and get our design further along, as sometimes these utilities that we run into we don't identify early enough to get the relocations done, because -- and I can tell you certain ones that are quite slow. But we have some utilities that are pretty slow to get going. If you're not way ahead of the game, you're not going to get them relocated in advance.

We try not to have too much or any, if possible, concurrent utility work going on in our contracts, but it's difficult not to. So now I'm talking about,

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okay, we've potholed. We know where the utilities are. Even when we know where they are, we try not to put them in our contracts. In other words, work by others in the middle of our construction, you know, we tear up the road and wait for the gas company to come in and do the gas line and then come back. But sometimes we have to. We try our best not to. But utilities are a very difficult problem. And you're right, they're a significant percentage of our changes on our -- on our contracts. And I don't think we're alone, especially the agencies down in Southern Nevada all struggle with the utility issue.

Savage: So is there -- is there a collaboration group between the different agencies that can meet quarterly, kind of like the construction liaison?

Terry: There is a utilities group that meets. How often do they meet?

Shapiro: They meet all the time. Chairman Savage, Jeff Shapiro for the record. A lot of this has to do with the prior rights issue and (unintelligible) there first and who's paying the bill to relocate. It also depends on the utility. Some utilities like the water lines, Las Vegas Valley Water Authority or Southern Nevada Water Authority. If we move the lines for them, we can do that work. Our contractors can do that work. They're easier to get out of the way than the other ones, like the gas companies or the power companies that don't want us touching their stuff. They want their contractors moving it. And then, of course, it's who's paying the bill. And we always seem to run into the problems where the utilities are footing the bill. And some of these utilities aren't very big, and that's a big expense for them.

So it's planning. It's a lot of moving parts there, but I know they get together. Your Right of Way Division, John, does get together with these guys, but it can be tough sometimes.

Savage: Should we invite them to the meeting?

Shapiro: Well, I know some states Mr. Terry (unintelligible) to this, some...

Savage: (Unintelligible) to resolve it and expedite it, to -- I don't know.

Shapiro: Some -- a lot states have this problem, especially with the prior rights and if they're paying the bill. I know FHWA has looked into paying the -- participating in funding regardless of who owns it. That was part of everyday accounts we talked to a long -- talked about a long time ago. I know some states have literally enacted legislation, where if you're not out

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of the way you're on the hook for the delays. So it is it -- it is -- but we don't have any such legislation or laws in our state, and I don't know if we want to go there or not. But it's not -- this is not something that just happens in Nevada. It happens everywhere.

Dyson: Right. Member Savage, Thor Dyson, District Engineer. You know, it's pretty obvious (unintelligible) utilities in the roadways, because where are the utilities going to be placed? They're going to be placed in the path of least resistance. It's much easier to use the NDOT right-of-way than it is to go through private residences or multiple residences. So that's a fact of life. When construction design projects, they're going to deal with utilities.

Some utility companies are on their game, like we stated earlier. Other utility companies are playing a different game. And a lot of times, I've seen it on some recent jobs, where the contractor is being delayed and through no fault of their own. The contractor is being delayed because the utility relocate hasn't been performed. NDOT -- I mean like Jeff Shapiro stated, if we can move it and we've got the contractor on line and it's all lined out up front, that's very smooth. The resident engineer out in the district can move that utility with the contractor and it goes well.

If that's not the case and the contractor -- or the utility company is going to move that utility, there are times where we've had to do a change order to pay the contractor and they were rightfully owed that money to move the utility, because the utility company caused delays.

Savage: So I probably know the answer, but I'm going to ask the question, Mr. Dyson. Were you reimbursed by the utility company for that change order?

Dyson: I'm not sure I'm qualified to -- or should say I don't know 100 percent. But I do know that the Department has paid the contractor for delays. Has the utility company paid the Department delays? I would say in some cases, yes. I know in some cases, no.

Savage: And that's the thing, you know, it's a lot of conversation, a lot of discussion. It's not going to be fixed today.

Dyson: I think long-term...

Savage: I didn't realize...

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- Dyson: ...Member Savage...
- Savage: ...I didn't realize (unintelligible).
- Dyson: ...long-term if there is such legislation to...
- Savage: Make them accountable.
- Dyson: ...Shapiro was -- Jeff Shapiro was stating, I think that would certainly save the taxpayers a lot of money and a lot of grief to the people out on the road; contractors, NDOT personnel, utility personnel.
- Savage: Mm-hmm. Okay. Well, I didn't realize that was such a hot issue.
- Nelson: No, we've had some...
- Unidentified Male: It can be.
- Nelson: ...you can tell we've had some internal discussion.
- Savage: Yes.
- Wallin: Let me ask this question; who would make that decision if we're going to make the utility company pay or not?
- Terry: John Terry again. Well, our right-of-way section does the right-of-way research in cooperation with utilities. In other words, we make them prove that they have prior rights. We use the term prior rights. So if they were there before we built the road, if we want to widen the road we've got to pay to move their utility versus if our road was there and they came through and got a permit from us, all our permits are -- not all, but most of our permits are revocable encroachment permits that we can say you've got to move, because we want to improve our facility and you're in our road.
- That sounds easy, but sometimes there's a lot of research goes into who has prior rights. And if we go firing off with a new alignment outside of our existing right-of-way, it might be we had prior rights for where we are, but we don't out there, it get complicated. But our right-of-way section works extensively and researches, you know, with the utility who pays. The trouble is once we say who pays, getting them to pay and getting them to relocate, getting them under agreement, getting them to relocate, getting the work done is a pretty difficult process, you know, and time consuming. And that's why they don't want to relocate their things twice, for instance. They

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want us to have our design far enough along so that they know if they relocate it...

Savage: Mm-hmm.

Terry: ...they'll relocate it where we'll miss it. But if we wait until we're 90 percent done with our plans for them to relocate it and then it takes them six months to do it that would hold up our -- so there's a lot of issues. But in terms of who pays, we have a pretty thorough process of determining whose responsibility it is. Getting payment, agreeing on payment, it's like we'll put in our contracts a breakout, a separate area for the utilities and we'll make them pay the actual cost. If we physically put the utility in our contract, but then sometimes we struggle with them to get the pay -- the actual cost that that utility relocation costs, because they'll argue with us about it.

There's a myriad of examples of what's happened with utilities over the years. And, again, these were utilities that were known. The even worse case is when we run into a utility that we didn't know was there in the middle of a job. That is very difficult and why we want to get more upfront information. And that's why we want to do potholes. You would think pipes would go straight from one manhole to the next manhole. They don't. And that's why we have to do potholes to find out where they are. So it's very -- it's not only costly, it's time consuming and it does -- very much does delay projects.

Dyson: And Member Savage and Wallin, it's also the timeliness, you know. Some utility companies, they're on their game and no problem. They move it. And others are not.

Savage: So I guess my suggestion would be for those others that are not, we would invite them to these meetings to discuss on an open item to how we can collaborate to make everybody's life a little bit better. Just throw it out there...

Wallin: Mm-hmm.

Savage: ...if it's worth it.

Dyson: It can't hurt.

Savage: It can't hurt.

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Shapiro: No. No.

Savage: That's my point.

Wallin: Yeah.

Savage: Okay. Either discussion or comments on Agenda Item No. 8?

Nelson: One thing I'd like to add, another new feature that we've added at the end of Attachment D is a two-year running tally of the total biweekly contractor payments. You know, last year we had some discussion about monthly payments versus biweekly payments and there was a lot of discussion about our cash flow and that sort of thing. And so to sort of keep tabs on how that's playing out in the future, we've put these biweekly contractor payments just in a graphical form across the bottom. You can see the ramp-up through the course of the summer, when the -- when the biweekly payment are high, and then sort of the lull in the winter when they're low.

So this just sort of gives a snapshot of what the payments to our contractors look like. We'll demark this by CWG meeting, and you noticed in -- Mr. Shapiro was making is introductory report, he talked about how much money had gone out to the contractors since the -- since the first of the year. So that'll be sort of a regular feature so you can sort of get a flavor for what the construction program looks like monetarily.

I know we report on the total amount, the total bid amount and what's been paid to the contractors in total. But this sort of gives a snapshot of what today looks like.

Savage: Yeah, it's great because to me it was like 95 percent has been paid out and the 5 percent yet is to be paid out. So you can -- it's a great snapshot for us and I compliment you both for bringing this up. Any other questions or comments on Agenda Item No. 8? If not, we'll go to Agenda Item No. 9. Any public comment?

Martin: Nobody's here.

Savage: Okay. So moving on to Agenda Item No. 10. I would then entertain a motion to go to closed session.

Nelson: Mr. Savage, for the sake of time, not too terribly much has happened since the last CW meeting with respect to litigation. If it's the Board's pleasure,

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we can go into a closed session, but I look to our counsel. Do you think it's necessary to provide a briefing at this time?

Gezelin: No, there really isn't. There hasn't been much change at all since the last report. There's been some, but not really enough (unintelligible) time.

Savage: Okay. Well, that'll be -- that's good for now and then maybe we can approach it at the next CWG meeting. So there's no reason to entertain a motion to go to closed session. So I'll entertain a motion for adjournment.

Wallin: I move to adjourn.

Martin: Second.

Savage: Second. All in favor. Aye.

Martin: Aye.

Savage: The meeting is adjourned. Thank you everyone. We appreciate your input.

Martin: Thanks, Chairman Savage. Good job.

Savage: Thank you, Frank Martin.

Wallin: You're doing this next month -- or next time, Frank, since Len won't be here.



Representative