

**MINUTES OF THE
STATE TRANSPORTATION BOARD MEETING
9:00 a.m., Friday, July 17, 2009
Town of Payson
303 N. Beeline Highway
Payson, AZ 85541**

PLEDGE

The Pledge of Allegiance led by Chairman Householder

ROLL CALL

All board members present. Si Schorr and Bobbie Lundstrom via telephone.

OPENING REMARKS

CHAIRMAN HOUSEHOLDER: I really appreciate Payson for inviting us and taking care of us while we're up here. I would like to call first on Mike Vogel, Vice Mayor.

VICE MAYOR VOGEL: Before we get started, I think we have some other council people and I'd like to have them stand up. Here's Ed. I saw Rick someplace. We have a Mayor, Mike Hughes and I know he's here.

CHAIRMAN HOUSEHOLDER: Mike, the Mayor told me he wanted you to take charge and he had another meeting he had to go to.

VICE MAYOR VOGEL: Also present, our Town Manager, Debra Galbraith, Sam Streichman. We all know that there's a tight budget. And if you've been here earlier you'd seen me helping to get the water jugs filled and making coffee. But I hope you all enjoyed yourself last night. We enjoyed talking to all of you. I don't relish your job, but we'll get through it and things will be better. But you're welcome to Payson anytime. Have a good day.

CHAIRMAN HOUSEHOLDER: Thank you, Mike. Councilman Ed Blaine?

ED BLAINE: I am the former Vice Mayor and I want to say just please and thank you. Thank you as you look at this map of the Payson area construction. You have done a wonderful job for us in this area making it safer in the process. As you look around this town and you see the one constructed roundabout already and the next one to be and you look up to the airport, you folks have done a great job for us. I know it's not feasible to construct it at this time, but we desperately need this corridor around Payson and Star Valley so that the people that come from the Valley and other parts can get to their destination without being bottlenecked and clogged at the Junction of 260 and 87. So I hope that you'll put that in your planning and then when the money comes, then we can do it. Thank you.

CHAIRMAN HOUSEHOLDER: Thank you, Ed. Charlie Cassens.

CHARLIE CASSENS: Good morning, Mr. Chairman, Board Members. I'm Charlie Cassens. I'm from Lake Havasu City. I work in the City Manager's Office. Maybe you know me as kind of a transportation board groupie. But my colleagues in Kingman, Bullhead City and in Lake Havasu City

want to thank you for the attention that you've given Northwestern Arizona and the Arizona west coast communities in improving our transportation corridors, particularly in the I-40 area of Kingman US 93 and in the SR 95 area of Lake Havasu City. Our landscaping project on SR 95 between Mesquite and Swanson is coming along in the city. On behalf of the entire community we want to say thank you for that. That's a few hundred feet of a several mile long project that's taken us about six years to get to. I would hope that if any further enhancement funds are made available that you would consider continuing that project because I just the other day I spoke with the contractor on this site. Several members of the community have mentioned that he's taken his time, getting this job done. And I talked to him about that. He said, "Well, he doesn't have any other jobs to do." So if any of those enhancement funds are made available in the future, we would appreciate your consideration and continuing that project because it means a lot to our community. Thank you, and on behalf of Arizona's west coast, I bring you good tidings and hope we can get you back there someday.

CHAIRMAN HOUSEHOLDER: Thank you, Charlie. Joe Husband.

JOE HUSBAND: Good morning, Mr. Chairman and Members of the Transportation Board, Mr. Director. I represent the Arizona Airport Association and all of the state's airports. Thank you for the opportunity to keep the Board informed about what's going on in the airport issues that are out there happening in the state. We have had some success this year and our efforts do seem to be paying off.

First I mentioned the Grant Cap statute change, the 10% of State Aviation Fund for maximum for grants for any one airport versus 10% of the annualized revenue over three years, the later being what we were seeking due to the significant reduction in the fund balance. That was enacted recently in Senate Bill 1320 which sort was the comprehensive ADOT bill. We had it going up in a couple bills in both Houses and, ultimately, it wound up into just being incorporated into some bill language. And it has been enacted and we're very pleased. We want to thank any of you who may have assisted certainly ADOT with their assistance with getting that through.

The budget issue is not certainly a settled deal at the legislature. The most recent information that we have is sort of a continuation of last year's budget at about a \$1M sweep from the State Aviation Fund. Now, that's wonderful compared to over \$18M in the last two years. We do think that it's been the result of many of us letting this legislature know that continued sweeps of the fund really can cause some difficulty for airports especially in these tough economic times.

We had about \$27M to airports specifically in the Stimulus Program. That's six airports in all corners of the state. The projects are all on target and underway by enlarge and maybe one that's just finishing up some bidding or possibly two. It should translate into hundreds of jobs all over the State of Arizona. I mentioned at the last meeting we briefed Congressman Mitchell just after the last Transportation Board meeting and he has been a champion for transportation infrastructure and seemed pleased with the airport's situation and stimulus. Our economic situation, certainly the airport industry is struggling just like everyone else. Commercial litigation is down about 15%, some months more. Both fuel sales and uses are down. The economy is certainly compounding the normal summer slow down.

I mentioned the State Grant Program, the Federal, State, local with the small sweeps. The Federal match components that they do are looking good. We're hoping with the light sweeps that we're able

to actual reduce some of the deferrals that the aeronautics have to incorporate because of the last sweeps and maybe we can get a State Grant Program back on track.

Finally, as always, I want you to attend our Arizona Airport Association Fall Conference October 21 - 22 in Mesa. The Cooper State Fly In is in Casa Grande October 22 - 25. The Aviation Safety Advisors Group Annual Awards Banquet is the November 14 in Phoenix. Aviation Day, of course, at the State Capital is scheduled for the January 20, 2010. I'd also like to tell you that in your respective districts and regions if you ever want to come out and visit the airport, give me a call. If you're not already in touch with the right people, I'll make sure that you get in touch and we'd love to show you around.

CHAIRMAN HOUSEHOLDER: Any questions for Joe? Kevin Adam.

KEVIN ADAM: Thank you, Mr. Chairman, Members, Director Halikowski, staff, good morning. I wanted to talk to you about the future of the Rural Transportation Summit this morning. As you know, the Rural COG/MPOs have essentially rotated hosting the summit. And over the last several months had discussions with both the RTAC Board as well as the COG and MPO staff sort of to try to get a feel for what direction we wanted to go with the summit. First off, on the positive side, I think what has been the strength of the summit has been the participation and involvement of the board in ADOT's staff. And we clearly want to continue that relationship. I think that the fact that the board meeting is on the 3rd day of the summit, not only is that an important draw, but it also gives both the staff as well as yourselves the opportunity to participate throughout the summit.

On the negative side or where we think we can make improvements, deal mostly with the timing of the summit. It has always been the third Friday in January, which usually means it's either the second or third week of the legislative session. As a result of that, we have not been able to have participation of legislators, their staff or the congressional delegation either. Congress goes back into session in January as well. In addition, January is so late as far as setting a legislative agenda that we really think that the ability to engage Congress and the legislature, not only with their direct participation, but with us developing our agenda, would be better served if that summit was earlier in the year. So we're targeting the Fall.

What we are proposing is to postpone the summit from this January and then move it to the following October. So right now if it was the third Friday in October, in 2010 is October 15. So we're tentatively targeting October 13 - 15, 2010 for the next summit which frees your schedule up as far as your January meeting. We're hoping that you will keep us in mind for the scheduling particularly later on in the year. We have already coordinated with the Director and Mary and will continue to do that. We're very open to your input as well as far as any recommendations that you would have for the summit. And with that, I thank you for your time.

CHAIRMAN HOUSEHOLDER: Thank you, Kevin. Are there any questions for Kevin? I've got two more requests to talk to the public and they're from two different attorney organizations. We're going to let you speak later on. District Engineer, Dallas?

DISTRICT ENGINEER'S REPORT (Dallas Hammit, Deputy State Engineer)

DALLAS HAMMITT: Mr. Chairman, Director, Board Members, Tom Goodman is going to give the District Engineers' report for this area. Tom is a Senior Resident for the Payson area. I did want

to mention one announcement; Greg Gentsch will start as the Prescott District Engineer a week from Monday. This week, today internally, over the week and externally there will be an advertisement for the Tucson District Engineer. Ron Casper is going to be the interim while we do this selection process. Tom is going to give you an update on the Mesa half of the district. I gave you one on the Prescott and Cottonwood side last month. Thank you.

TOM GOODMAN: Thank you, Dallas. My name is Tom Goodman; I'm the ADOT Senior Resident Engineer for Payson. I'm a resident of Payson and handle the construction projects for this area. The Payson area is part of the Prescott District, which is very large. We've got three current projects ongoing on SR87. One of the things that we love about Payson are the four seasons., however, in the wintertime we have to deal with a lot of snow and ice. Some seasons we don't have a lot, but the last few years we have. In the summertime we have a lot of people that like to come up and go to the White Mountains and pass through Payson. This is on SR 260 near Christopher Creek as they're heading back towards town. This is on SR 87 coming northbound.

We've got two projects under consideration for award today and quite a few projects under design. The first project underway right now on SR 87 just south of town is the Oxbow Hill Project which is a safety project. It's on the southbound direction for a distance of about 3 miles. We're adding a 10 foot shoulder on the right hand side and a 4 foot shoulder on the left hand side. That's \$3.7M. Bison Construction is handling that project. Further down on 87 at Slate Creek we have what we call the Landslide Project. Currently, we're under Phase 2. That project is currently at \$2.4M. We just started a project on SR 87, Payson to Pine. That is an ARRA stimulus project. It has two different segments; one just north of Payson that runs for about a mile and then a segment going into Pine that runs also about a mile. That is a safety project, which we are adding 8 foot shoulders on each side of the highway.

Projects under consideration for award today are a Payson to Pine fencing project. That's a stimulus project. That came in at about \$320K. Our bigger project under consideration today is on 260 at Little Green Valley is \$19.7M.

We've got several projects under design on SR 87 in town. The roundabout currently under design at Airline Drive and the latest I heard on that is we should hope to advertise that later this year, a project on SR 260, past Kohl's Ranch, which will create a a four lane divided roadway. We've got a pavement press job that we're hoping to advertise toward the end of this year on SR 87, from Pine to the top of the rim. Also a spot repair job currently under design on SR 87 South of Payson at outpost 230 where we're going to fix a curb and improve the elevation. Also on SR 87 at the Casino intersection we have a signal repair job.

CHAIRMAN HOUSEHOLDER: Thank you, Tom?

BILL FELDMEIERS: I have a question. The slides cost how much money in terms of repairs roughly?

TOM GOODMAN: We're into Phase 2 now. On Phase 1 we probably spent \$6.5M. What we're spending now and we've got some additional work we're going to be adding to that project. I'd say we're upwards of \$10M right now.

BILL FELDMEIERS: And what was the source of that funding because we didn't have that allocated within the 5-year Plan?

TOM GOODMAN: The funding for Phase 1 was State funds. However, we have applied for emergency relief funding under a Federal Aid Program and that's in the works. That's reimbursed at, I believe, at almost 100%, quite a bit of that. This phase that we're in now is a Federal Aid Project also. And so we're getting Federal funding on that.

BILL FELDMEIERS: What can we do to prevent an occurrence like this from happening again in terms of design work or what?

FLOYD ROEHRICH: Mr. Chairman, Mr. Feldmeier, if I could just quote for the record my name is Floyd Roehrich, State Engineer. As we continue to evaluate not only that area, but along SR 87, we're looking for signs of distress or signs of potential sloping so we can go and correct them. This case, it happened so catastrophically at a time where we were not able to really react to it. We had to move forward. Specific to this area we've done a thorough geotechnical analysis that is in the final stages of being finalized and presented to us. They're looking at a number of different things. Not just the remedial action that Tom was talking about to look at that situation, but what's the long term risk and impact we need to look at. One of the considerations specific in this area that is looked at, the road needs to be shifted probably and moved out of this slide because there's always going to be the potential that that area will have future slides as well. Just given the geology of the site, the rock formation out there and the fact that this area has slid, they said thousands of years ago. Millions of years through this area there have been slides in that area. We're going to continue to monitor it for today, but we're looking at a long term fix that will ensure the safe viability of that road and keep it open. One of the considerations is the road needs to be realigned through that area.

BILL FELDMEIERS: One of the things I noticed in the photograph and that I remembered from traveling that route before is that many of those cuts are they're almost sheer in nature. Would it have helped to just lay them back a lot further?

FLOYD ROEHRICH: Mr. Chairman, Mr. Feldmeier, it would. At the time that we built that section of SR 87 and widened it and working cooperatively with the National Forest Service, we're looking for ways to minimize the impact of that area is through the National Forest area and through some of their jurisdictional areas. And they've always looked at, yes, we need to accommodate your transportation facility, but let's do it in a way that has a minimal impact. All we found going through there taking those measures to try to reduce the amount of disturbance was not probably the most prudent thing given what we know now. That's why the Forest Service is definitely stepping up and working with us to do exactly has Tom had identified. Lay back the slopes. We're just going to have a bigger impact to the local area to their lands more than originally, but it's necessary for safety sake. And it's helping us to really as we start developing other projects and look at other roadways through their lands, have a better opportunity to look at exactly what it is that we need to do to balance safety, balance mitigating the total impact of their area and still allow it to look at pristine or ecologically as sound as they like it to be. It's helping us all really how we approach road construction through those areas.

BILL FELDMEIERS: Thank you.

CONSENT AGENDA

ITEMS 1, A-W Minutes Approval and Right of Way Resolutions

CHAIRMAN HOUSEHOLDER: We'll go on now to the Consent Agenda, Items A - W, Has the Board looked at them and are there any items the board wants to change? I'll entertain a motion to accept the Consent Agenda Items A - W.

Motion made by Victor Flores to accept the Consent Agenda, seconded by Bob Montoya. In a voice vote, the motion passed unanimously.

ITEM 2 Director's Report (John Halikowski)

JOHN HALIKOWSKI: Thank you, Mr. Chairman. I have only one item to talk about, the budget. As you know, the legislature approved the budget July 1st. We were there until the wee hours of the morning because, frankly, we didn't know at the time whether we were going to be open our doors on July 1 without a budget. The budget did get sent to the governor. Happily, we did open our doors for business that day, but as you know, the Governor has exercised her line item veto power and has done some significant work on the budget sent to her and has now called the legislature back into special session. So the question we're wrestling with is where does the budget action by the legislature and Governor leave ADOT. At this point, the legislature is in special session. They're meeting once a week on Mondays and adjourning, but we don't really see any action occurring before September. Where we are financially now is that we're trying to determine when they come back in September exactly, what kind of funding is ADOT going to have and what fund sweeps will be looking at. We're going to set a baseline probably around \$350-360M for operations. But even with that amount set, there's going to have to be some changes to the agency and the way it is running. There are going to be some painful decisions made as far as sizing the agency from employee standpoint to make sure that we keep our core functions moving and not try to keep everything going and diffuse our true mission out there which is essentially to construct, preserve, maintain those highways and collect revenue through the Motor Vehicle Division.

Right now we're in a balancing act. We don't want to shoot ourselves in the foot on the MVD side because that's our revenue collection side, but we have basic services that we need to keep going for the citizens of the state. Floyd and I have been working on the plan for next year. We're trying to prioritize what we have to do that's most critical. So just keeping the roads plowed and open in the winter time versus those critical maintenance issues that have to take place and things that we can begin to do less work on such as litter pick up and perhaps roadside mowing and those things. We're going to have to take a look at how we're structured as far as personnel.

The bottom line is right now we have to begin doing this in the first quarter of this fiscal year because the longer we wait the less opportunity we'll have to save money as the year goes on. Plus given the factor that our revenues are projected to be flat, at best, next year if they don't decline and with the unknown of what kind of budget we'll get out of the legislature, we have to become conservative in this first quarter and start taking action now. So we'll know more in September. And as I've talked to some of the Board Members, we'll come back and then give you specifics on exactly what we're doing with the operation's budget to make it fit in. So the news is we're okay for the moment, but we have some tough choices to make as the fiscal year goes on.

CHAIRMAN HOUSEHOLDER: Legislative Report, Gail Lewis.

GAIL LEWIS: Kevin is going to start it off. I'll take part two.

ITEM 3 - Legislation Report (Kevin Biesty and Gail Lewis)

KEVIN BIESTY: Mr. Chairman, Members of the Board, my name is Kevin Biesty, legislative liaison for ADOT. Gail Lewis is going to cover the Federal and then give you an update on the P3s. You should have a handout that Mary provided of some bills that I just wanted to bring to your attention.

House Bill 2388 transportation STAN monies repayment. This was an issue that was brought to the legislature primarily by the Town of Queen Creek. It was part of the STAN sub-council allocated some money to them. And that's actually set to Sunset. There was concern over repayment of the money before that date. So the legislature just made it clear that they had to pay the money within 15 years of receiving the money that any or city of town that would receive anything from that sub account.

House Bill 2396 is P3 Bill that we were able to work on this year. We've been working on P3s for probably about two or three years. This has not, in the Department's opinion, the ideal bill, but it's like we told the legislature it was about 90% there. We still have some work to do on it. There are some provisions that Mr. McGee and Ms. Lewis looked at that may cause some issues later on. But, again, everybody is at the table and will continue to work as we move forward and into that realm.

Senate Bill 1320. This was the Transportation Bill for this year. We were able to move this bill what started out was just some issues that ADOT brought forward primarily dealing with cleaning up some of the HOV lane statutes and providing some recommendations that the Motor Vehicle Division brought forward to improve efficiencies. Almost every House Bill that dealt with transportation that the department was okay with and that the sponsor was okay with moved in on this bill.

Two provisions that the Department and the Board had input on was some of the rest area. We've had discussions about rest areas for a number of years. What this bill will do is two things; allow us to establish sort of an Adopt a Rest Area Program similar to Adopt a Highway and also allow us to participate in the Federal Oasis Program whereby you can take an existing private facility like a truck stop that's off an interstate or off a highway and if they need certain criteria, you can certified them as kind of like the Good Seal of Approval of the State of Arizona and provide signage directing people to that facility. So our folks are looking into how to establish that. There's also a provision that will allow a city or town to construct a toll road within their jurisdiction.

Another provision that was brought to us in response to the ARRA legislation was to temporarily modify the design building construction manager at risk statutes for the requirements of ARRA. Apparently, there was some issue as to how you take the price into the decision making process on that. So that was taken care of. As Mr. Husband mentioned earlier, we made the change to the Aviation Fund's calculation. There's an entity called the Arizona International Development Authority (AIDA). That was previously over at the Department of Commerce in Title 41 and they dealt with issues along the border. They transferred that to ADOT. It allows local authorities to establish public transportation stops on state highways. That's already in statute. That was just a

change to boost the speed limit up from 45 to 55. It was an issue that a lot of locals came to us and was merely, almost a technical change.

The Bill also contains the ADOT Rules Bill. We had an audit about three years ago and it recommended that there was statutes and rule making requirements in statute. They were outdated because there are already statutes dealing with those provisions. So every time we would have an audit it would come up why we didn't make these rules; because there were already statutes. So we went in and cleaned it up. One of the things we did do different from that last bill was with regard to the Board's rules, rather than make any significant changes, it was suggested that instead of saying the Board shall make rules, we changed the shall to a may. That gives the Board greater flexibility in the future should a Board want to make changes to the rules related to those subjects.

Also with regard to the Board, it establishes a joint Legislator Review Committee on transportation between Sonora, Mexico and the Arizona Committee. It is a committee that wasn't in effect a while back; it was sunsetted and this deals with some of the issues along the border.

Two bills that were vetoed by the governor, and actually the Department had suggested to the Governor that she veto. One was Senate Bill 1022, which would prohibit an entity from removing campaign signs whether it was for a candidate, an issue or anything like that. The way the bill was written it did seem to exclude ADOT roadways, but it wasn't very clear. I know the cities and towns were opposed to it. So ADOT did weigh in and recommend to the governor that she veto it and she did. The second bill vetoed was an annual legislature Appropriating Federal Funds Bill.

As the Director said, the legislature is back in special session. A deal can break at any moment, I guess. But what people are thinking is what the Director said, "We're looking at probably September." And they will have to act by that time because there are some agencies that will just not have any money after September. So we'll continue to monitor events and keep you informed. If at any time you need further reports on anything, please feel free to contact my office. We can provide you with any information needed at any time. So with that, I'll be happy to answer any questions.

GAIL LEWIS: I'm here for Part 2 of your Legislative Report, Mr. Chairman. I'm the Assistant Director for Government Relations and Policy in ADOT and I'm here to give you a little bit more detail on the Public Private Partnership and also to fill you on what's going in Washington.

I had e-mailed to you a few days ago a brief summary that Mr. McGee and I put together on House Bill 2396 which is the Public Private Partnership legislation. As Kevin mentioned and as I'm sure you all know from reading the paper, the bills came fast and furious in the least really 48 hours of the session. This is one of the bills, quite a lengthy bill that we weren't sure was going to ultimately get the consensus and ended up moving ahead with no problems and was signed by Governor on Monday.

House Bill 2396 is the Public Private Partnership bill for transportation facilities. It basically defines an eligible facility as any sort of new or existing facility that can be used for the transportation of people or goods. This allows us to not only new highways, but also HOV lanes or hot lanes, tolls lanes. It gives us quite a bit of flexibility in terms of new facilities and congestion management techniques on existing facilities. It has a variety of project delivery methods, everything from things that we sort of have in place right now, such as alternative design and alternative construction and bid

capabilities all the way up to what you would consider more traditional toll roads where the payment can come from a variety of sources including the ability to toll a facility.

We can procure -- give the ADOT the ability to procure services to advise us on how toll facilities or Public Private facilities would be set up and managed into actually procuring with a partner to build a facility or do a hot lane for example. So we brought procurement authority as a result. We had the ability to administer the programming including paying and being paid for reviewing the project that we'll be reviewing. We do not give up our right away authority, but we do have the ability to use that upper eminent domain, and the ability to use that capacity in the furtherance of a project. Agreements can go for as long as 50 years and can be reviewed. The bill does allow other government units to engage in Public Private Partnerships as well and ADOT has the authority to basically approve those relationships.

It does have a component in it that is going to be interesting to administer. And that's any person who paid the toll can apply for a refund of their fuel taxes. This was of great concern to the trucking industry. And for the truckers who may drive quite a ways on Public Private Partnership roads, they may have the ability to apply for a refund. If you consider the average driver maybe driving 5 or 10 miles on a possible toll facility and then you figure at 18 cents a gallon how much they would get back in refund, you'd figure the stamp is going to cost more than they would get back in terms of refund, but it does allow for that. It also means that we're going to have to figure out how to engage in that.

It also, we believe, addresses the issue of whether ADOT is providing a free road that might be in competition with the tolled facility. It gives us the authority to plan what we need to plan as long as it's on the books and is ready to go. A Public Private Partnership provider can look, see what's planned, make a decision whether in spite of those plans, a toll facility is economically viable and then they have no recourse against us if the road was already or if the facility was already planned. So it provides us with some protection in that way.

Photo traffic enforcement is banned on all toll lanes and in terms of funding and financing it can come from a number of sources. That includes more traditional revenue sources that we've used in the past that just ran anticipation notes, loans, loan guarantees and other financial agreements. We can use Federal funds to the extent applicable within Federal law and we can also engage in user fees, tolls, fairs, lease proceeds, rental payments. It's quite broad in the way that it provides us with some flexibility to engage in facilities. It's been signed for less than a week and we're in the very early stages of what promises to be, I think, quite an adventure in trying to understand how we move forward.

CHAIRMAN HOUSEHOLDER: Any questions for Gail Lewis?

FELIPE ZUBIA: I've got one; it's for Mr. Halikowski. At some point I'm sure you've already kind of thought about giving the Board an update. Do you have an idea of how soon that will happen? Kind of a more detailed review of that maybe in a work study session?

JOHN HALIKOWSKI: Mr. Chairman, Mr. Zubia, Mr. McGee and I have been talking quite a bit about how the game plan is going to shape out for this. I wouldn't anticipate it within the next Board meeting or perhaps even September, but I'd anticipate around October. We're going to have a lot more definitive issues that we can bring to you because right now what we're doing is we're

gathering a lot of information to see how we're going to proceed with this. There are a number of entities that are interested not only from the private sector side, but also from the public in participation. I would envision that the way that the numbers have to work out to support a P3 facility, we're probably going to be looking at some sort of facility in an urbanized area to begin with. It may not be a full blown toll facility, but the bill does give us the authority to do some sort of high occupancy vehicle lane or some sort of hot lane as we've heard about in the past. So we will begin gathering that information. Our hope is that by early next year, we're going to be talking pretty seriously about what kind of projects would be viable.

CHAIRMAN HOUSEHOLDER: Answer your question, Felipe?

FELIPE ZUBIA: Yes.

GAIL LEWIS: Very briefly to give you an update on what's going on the Federal side. They are taking quite a bit on and trying to get quite a lot accomplished before their August recess. We have to pay attention to virtually every bill because even the Health Care Reform Bill includes the ideas of more pedestrian lanes as they are promoting better general health. The first thing to mention is that Federal 20-10 Appropriations Process. The House Sub-Committee that deals with the Department of Transportation appropriations took action this week to mark up a bill that provides what is essentially an 18-month extension that would fix the Highway Trust Fund with about \$20B in revenue that would come from the repaved TARP Program, come from basically their repaid bank assets. \$20M of that would be set aside for the Highway Trust Fund. That would be an interim fix. There would perhaps be some new regulations put on use of that money for an interim basis and that would allow an 18-month discussion period for the full blown Reauthorization Bill.

Chairman of the House Transportation Infrastructure Committee, Mr. Oberstar, is very opposed to that approach. He wants to go ahead with the full reauthorization. If I were to bet right now, I would bet on the 18-month extension and a full blown bill. Although 18 months give us a bit of a retrieve and certainly the news to shore up the Highway Transportation is very welcome. It means we need to continue to push forward very aggressively on what the authorizations will look like in the future.

JOHN HALIKOWSKI: Mr. Chairman, to that point, it's critical that Congress do something by September of this year. The Highway Trust Fund is going to become insolvent if Congress does not take action by September. We're hearing there's going to be about an \$18M or \$18B cash infusion into the HTF. This is important for Arizona given our current budget position. With declining revenues and the fund sweeps that we are expecting to happen when our legislation reconvenes, our State Highway Fund balances at times run into the negative at this point. We need the Federal reimbursements in order to pay our contractors on Federal projects. If the Highway Trust Fund at the Federal level becomes insolvent, then those Federal reimbursements get delayed which just further exacerbates our economic situation here. We're working very hard to make sure that all the states are to keep Congress on track here. We need an emergency infusion by September of this year.

GAIL LEWIS: There does seem to be recognition on Congress' part that this needs to happen. The question is whether it's going to happen as part of interim reauthorization or whether the fix will occur and authorization will occur on more of a parallel track. The other bill passed by the House is the American Clean Energy and Security Act of 2009. That is the energy in climate change bill that has been widely reported. It has some provisions in it that significantly impact transportation including changes for fleet vehicles including for government fleet vehicles. Some work to set

broader standards for clean air. Having the Federal Government track climate changing and Greenhouse Emissions in much the same way that they track particular pollutants today. Basically a management plan for urbanized areas that will track their emissions and climate changing emissions all of which have enormous consequences for transportation. I think because this bill was passed so quickly, there are lots of folks scranibling to try and figure out what it might mean and using a Senate debate to try and monitor that one forward. We're taking a look at this very closely, working with AASHTO and our other national partners in state and DOTs to try and make sure we know what this will mean and to try and be ready for it as much as in advance as we can consider how quickly it's moving forward.

Finally, one bit of news that may help us in Washington and that's that our former Director Victor Mendez was confirmed last week by the Senate and he supposedly begins his new position at FHWA Administrator on Monday. I'm sure you're all glad to know that we'll have a friend again in that position. That concludes my update. If anybody has any questions, I'd be glad to respond.

CHAIRMAN HOUSEHOLDER: Thank you, Gail. Any questions that anybody would like to ask Gail? John Fink, financial report.

ITEM 4 - Financial Report (John Fink)

JOHN FINK: Good morning, Mr. Chairman, Members of the Board. we now have year-to-date HURF results. For June we were at \$105.2M which is down 3.65% compared to last year and down about 12.5% compared to our estimate. For the year we ended up at \$1.25B. And that's down 7.1% compared to last year's \$1.34B. And it's down 10% compared to our estimate that we've developed at the beginning of the year. Just for a point of reference on that total in fiscal year 2005, HURF total was \$1.246B, so we drop back a full four years. Also, I note that HURF results in 2008 total HURF was down 2.7% compared to 2007 levels. So over the two year period, we're down about an average of about 10%.

By category, gas tax for the year total \$456.8M which is down 7.3% compared to last year and down 8.4% compared to our estimate. Use field tax revenue was \$173.9M. That's down 16.3% compared to last year and down 17.5% compared to our estimates. Vehicle License Tax (VLT) at least a portion of VLT was \$357.5M. That's down 7.2% compared to last year and down 12.6% compared to our forecast.

The VLT attributable to new vehicles was down 33% for the year. VLT that was attributable to new Arizona registrations was down 44% for the year. And the average VLT was down about 7% for the year. So the average VLT in fiscal year 2009 was about \$139 last year it was about \$150. Let's see. I'll just look through these slides. I don't have any RARF results for June yet, so we have no RARF report. I'll just move right on to the investment report. Our average monthly investment balance for June was \$1.17B. Our monthly earnings were about \$1.5M for an annualized yield of 1.59%. Year-to-date earnings were about \$33.2M for an annualized yield of 2.49%.

The health report, we have a cash balance at the end of June of about \$50.2M. One thing I'll note is the Health Program has been suspended since about April or really March of last year. We did that because of the anticipation of the Board funding obligation call and knowing what loans we have approved and kind of what the status of the fund was. With where we're at today in terms of a cash

balance and loan commitments that are at there, we may at some point we may be able to reopen that program for application. So we'll keep you apprised of that as we move through the year.

The Director mentioned in his comments about the low State Highway Fund cash balances. We haven't put up this slide previously, but I wanted to put this up so you can see what this looks like. This represents our low State Highway Fund cash balance each month. It goes back for three fiscal years. Basically, what it is showing is at some point in the month what are the low cash balance was. That usually occurs the third week of the month when we make contractor payments. It can be exacerbated by payroll if payroll happens to fall in a contractor payment week. What this is showing is that since February of 2008 every month we drop negative at some point during the month. In the month of June, we drop to a point of negative \$22M. What that means is at that point of the month we're having to essentially use other funds to cover contractor payments and payroll in anticipation of getting reimbursed. Usually when we run the Federal reimbursement, it will happen the same week that we make contractor payments, but there will be several days where we'll have a significant negative fund balance.

CHAIRMAN HOUSEHOLDER: Any questions for John?

ITEM 5- Financing Program (John Fink)

JOHN FINK: We don't really have anything new to report relative to the Board's Bonding Programs this month. You have a copy of the STAN annual report for the fiscal year that just ended. By statute we're required to produce STAN annual report by July 1st and distribute that to the Governor and legislative leadership.

JOHN HALIKOWSKI: Mr. Chairman. John, I seem to recall, did the legislature take any action on the STAN Fund this year?

JOHN FINK: Mr. Chairman, Director Halikowski, there was a provision in one of the bills that passed the legislature to allow the Director to transfer up to \$10M between the various STAN accounts. That provision, however, wasn't filled, it was vetoed.

CHAIRMAN HOUSEHOLDER: Any questions for John? Thank you. Jennifer.

ITEM 6 - Framework Study Update (Jennifer Toth)

JENNIFER TOTH: Good morning, Mr. Chairman, Members of the Board. Item number 6 is in regard to the Framework Study Update. The timing, as you know, is critical to have an open dialog with elected officials about planning parameters and those potential consequences as we move the framework study forward in launching into the long-range Transportation Plan. We need to hear about the future possibilities so that we can craft that long term statewide transportation framework so that priorities can then be set. We can look at programming aspects and funding, the different alternatives explored based on that shared vision. So as a follow up to the study session that we had last month in Cottonwood, we have scheduled many different regional meetings with elected officials over the course of the July and August timeframe and hope to conclude those in the September timeframe, wrap up the framework study in October/November and move that forward into the long range Transportation Plan. So if there are any questions, I'd be willing to address those at this time.

CHAIRMAN HOUSEHOLDER: Any questions for Jennifer?

FELIPE ZUBIA: Very good job, Jennifer. When do you expect this to come back final for the Board's consideration?

JENNIFER TOTH: I think we're probably looking at the December timeframe, somewhere around there.

FELIPE ZUBIA: Appreciate it.

JOHN HALIKOWSKI: Mr. Chairman, if I can ask Jennifer. And I know you probably don't have this on your schedule, but can you talk a little bit about the rail grants we just submitted?

JENNIFER TOTH: We just submitted with the High Speed Rail Initiative Program that was released from the Federal Railroad Administration, we put in some pre-applications for two potential tracks. And that being a reconnection of Yuma west line Amtrak used to run that came into the Phoenix area and back out through the Yuma area and to re-establish that service. In addition, we put in a pre-application for the Phoenix to Tucson line. What happens at this point in time is that we will continue to move forward on the actual proposals which are due in the August timeframe as well as October and move forward. And hopefully we will see some funding come out of the FRA in regard to those and moving those initiatives forward.

JOHN HALIKOWSKI: And any talk of a Phoenix to Vegas line?

JENNIFER TOTH: There has been discussion on the Phoenix to Vegas line. In fact, we had talked as an agency about putting in a pre-application for that line as well. We worked with our colleagues within MAG and PAG. And it was determined that the coalition that's been formed on the high speed rail initiative between the Phoenix and Las Vegas line would be best suited to move that agenda forward rather than us competing with that and trying to put in a pre-application at this point in time.

JOHN HALIKOWSKI: Thanks. And just as a side note, Mr. Chairman, Secretary LaHood, I just got it over the wire announced that nationwide there are 278 applications put in. The western states put in 108 applications asking for \$38B for rail. And I believe there's about \$8B in grant money that's available. So we're trying our best to bring some home.

PRIORITY PLANNING ADVISORY COMMITTEE (PPAC)

ITEM 7 - FY 2009-2013 Transportation Facilities Construction Program Requested Modifications

a. Program Update - List of Project Deferrals from FY 2009 to FY 2010

JENNIFER TOTH: I'm going to be addressing Items number 7 through 18. I'd like to take Item 7 first. All of these items were approved by PPAC at their June 30th meeting. Item Number 7 is taking the 31 projects that are to be moved from fiscal year 2009 into 2010. In addition, the last item, Item Number 32 is a sub-program that had funds left over to be moved from the fiscal year 2009 to the fiscal year of 2010. So if there are any questions on Item Number 7?

CHAIRMAN HOUSEHOLDER: Any questions? I guess not, Jennifer. Are you going to go through 8 to 18?

JENNIFER TOTH: I would recommend taking a single action for Items 8 through 18 separate from Item Number 7.

CHAIRMAN HOUSEHOLDER: I'll entertain a motion for Items 8 to 18?

BILL FELDMEIER: The motion is to defer; is that correct from 9 to 10?

JENNIFER TOTH: I would recommend taking action of Item 7 first. And then we can address Item 8 through 18.

CHAIRMAN HOUSEHOLDER: Do I have a motion on Item Number 7?

Motion made Victor Flores , seconded by Bill Feldmeier, to approve Item 7. In a voice vote, the motion passed unanimously

ITEMS 8 - 18

JENNIFER TOTH: I would recommend that taking a single action of approval for Item 8 through 18 or I'd be more than happy to address those individually if the Board would like.

CHAIRMAN HOUSEHOLDER: Does the Board have any that they'd like to be addressed individually? If not, I'll entertain a motion to go with 8 through 18.

Motion made Bob Montoya , seconded by Felipe Zubia, to approve Items 8 through 18. In a voice vote, the motion passed unanimously

ITEM 19 State Engineer Report (Floyd Roehrich)

FLOYD ROEHRICH: Good morning, again, Mr. Chairman, Members of the Board, Director Halikowski. Currently we have 80 projects under construction, well over \$1.5B. And we have more than half of that dollar amount of work left to perform. So we still have a pretty good construction program out there. For the month of June we finalized seven projects. And that brings our total for the fiscal year that just ended at the end of June to completing and closing out 62 projects. So we've had a pretty busy year and it's continuing on. And, hopefully, they'll find the funding to let us stay at that level.

So far we've advertised 48 ARRA projects and opened 42 of them. From there you can see we've seen quite a bit of bid savings. We're using the time now that we were through most of the projects, to start looking at the next group of projects that were prioritized by the Board to again get those projects out and advertised to use the funding that was available. We've already started to move with the two MAG Projects and we are continuing to look at the project lists from PAG as well as greater Arizona.

At a future Transportation Board meeting, hopefully, at the next one or no later than September, we'll give you an update on what those projects are by the list that was approved by the Board, so we can show the next go around of projects. We're seeing quite a bit of activity on the recovery fund and we're seeing a very good bid savings which is going to allow us to expand our total projects that we do under that program. We've also started to move forward into the enhancement portion of the Recovery Fund and have our first enhancement project advertised. If you remember from the Board Meeting last year in Pinetop/Lakeside, the people had talked about an enhancement project that was very important to them, Porter Mountain. It had a lot of amenities along the route there and through the city. That's what this project is; we'll open that project later this month.

The last thing we are working on is the local government projects to push their projects forward in order to have them expend their Recovery Fund Projects. The one project that was advertised and open was a roundabout project which connects the two ports of entry, the existing one and the new one down in San Luis near Yuma. That project, because it was combined funding between the Recovery Funds and Federal CBI Funds, the bid was below the estimate for that project. They have allowed us to take all our ARRA funds back, so we'll be able to put those back into Yuma on some other projects as we look at expanding that as well.

Moving on to the construction projects it was a real good accomplishment by Barry Crocket's team and CNS as well as throughout ADOT. We're awarding or recommending today awarding 26 projects. That's probably the largest number of project awards that anybody can remember in recent memory. A lot of them our ARRA, but a lot of them are the continued use of the funds that were in the program. The 26 projects, 9 of them were already on the Consent Agenda and approved. There are a number that have to be dealt with individually and I'll go ahead and discuss those in a few minutes. But we're looking at adding almost \$85.5M in additional construction projects out into the economy with today's award.

CONSTRUCTION CONTRACTS

ITEMS 23, 24, 27, 28, 29, 30, 31 and 33

FLOYD ROEHRICH: At this time I'd like to look at the 17 projects that are off the Consent Agenda. I'd like to look at taking Items Number 23, 24, 27, 28, 29, 30, 31 and 33, grouping those projects together. We're recommending that those projects be awarded. They're all competent bids that we've analyzed. A majority of those are under programmed amount. A few are over on smaller projects, but we've been able to justify the cost on all of those. They provide a significant bid savings to the Department. Those projects are the ones that Mr. Schorr has asked to be allowed to vote on. And that's why I'd like to group those together. So at this time I'd ask if there are any questions with Items Number 23, 24, 27, 28, 29, 30, 31 or 33. I'll entertain those. If not, I'd ask the Board to move to award those projects.

CHAIRMAN HOUSEHOLDER: Have any questions? I'll entertain a motion on Items 23, 24, 27, 28, 29, 30, 31, 32 and 33.

FLOYD ROEHRICH: Just 31 and 33, not 32.

Motion made Felipe Zubia , seconded by Bill Feldmeier, to approve Items 23, 24, 27, 28, 29, 30, 31 and 33. In a voice vote, the motion passed unanimously

ITEMS 20, 21, 22, 25, 26, 34 AND 35

FLOYD ROEHRICH: The next group I'd like to look at are projects or Items Number 20, 21, 22, 25, 26, 34 and 35. Mr. Chairman, you identified that those grouping of projects Mr. Schorr will recuse himself from. So at this time, I'd ask the Board to give consideration to awarding projects Item Numbers 20, 21, 22, 25, 26, 34 and 35.

CHAIRMAN HOUSEHOLDER: Do I hear a motion?

Motion made Victor Flores, seconded by Bob Montoya, to approve Items 20, 21, 22, 25, 26, 34 and 35. In a voice vote, the motion passed unanimously [Si Schorr recused himself from Items 20, 21, 22, 25, 26, 34 and 35]

FLOYD HOUSEHOLDER: Thank you, Mr. Chairman. Now, the last two items to look at are Items 32 and 36. I'm going to ask that we take those individually starting with item number 32. Both these projects have issues that I would like to present to the Board. On advice of counsel, Mr. Chairman, I'd like to ask on Items 32 and 36 where I'm going to ask separate Board action, will Mr. Schorr recuse himself or will he be voting on those two items?

SI SCHORR: I did. I think I'm okay on 32. I do, however, believe I have a conflict on 36.

CHAIRMAN HOUSEHOLDER: So he can vote on 32.

ITEM 32

FLOYD ROEHRICH: Item 32 is ARRA Funded Project on SR 177 and SR 288 in the Globe District. There was an issue that developed after the bid of this project. I'd like to quickly run through the summary of this and then go ahead and make my recommendation. On the day that bids were open, Cactus Transportation Incorporated was read as the apparent low bidder with a bid of just over \$454K. Grady's Quality Excavating at the time was read as the second bidder at just over \$567K. After Mr. Crocket's team were able to look at the bids, they found a discrepancy with Grady's bid, the apparent second low bidder. They had some unit price discrepancies that when we correct that by our policy, and I know I've presented that to the Board previously, unit prices govern in our analysis of bids. When we went in and looked at the two items specifically in Grady's, Item 4040074 emulsified asphalt and Item 4040078 emulsified asphalt SSI, it does show that Grady's bid had different unit prices in there when extended out by the quantity gave a different total for those items. We corrected that discrepancy by our specification. And in doing that, ended up with Grady's being the new apparent low bidder with a bid of \$410K, but it reduced their bid by \$157K.

We notified both contractors, Cactus and Grady's and asked them to respond. Grady's response came back. And it became apparent from their response they made a clerical error in the preparation of their bid which has a really detrimental or significant impact to Grady's if we would have accepted that bid. During the course of preparing their bid, they had made an error in the place of the decimal point of the unit price for those two items at greatly significant reduced cost than what they were quoted as from their suppliers or what would be a normal cost for the industry. So at this time Grady's has requested that we go ahead and allow the Department to dismiss their bid with no impact to Grady's because it is a clerical error. It was shown to us and proven to us that is a clerical error

and staff believes that. We have set precedence in this where we have done this previously. If we've been able to document that there was a clerical error, we've held the contractor harmless on that and not kept their bid bond. We've allowed their bid to be dismissed. And at this point, that's the recommendation we are making to dismiss Grady's bid and to go ahead and award the project to Cactus Transportation Incorporated at their bid estimate of just over \$454K.

CHAIRMAN HOUSEHOLDER: Do I have a motion for Cactus Transportation Corporation to get the bill of \$450,038.78

Motion made Bill Feldmeier, seconded by Bobbie Lundstrom, to approve Item 32.

CHAIRMAN HOUSEHOLDER: Any questions?

FELIPE ZUBIA: I have a couple. Floyd, what is the difference that makes on that clerical error? What are we talking about the total amount that would have increased their bid?

FLOYD ROEHRICH: Mr. Householder and Mr. Zubia, the difference is \$157K. When they had entered in the unit price, the unit prices of \$4.55 per ton and \$2.88 per ton, really should have been \$455 and \$288 for those prices. It was a decimal clerical error when they were filling out the bid schedule.

FELIPE ZUBIA: It does seem like a big amount, but how does that relate to the Department's estimate; where would that put them in regard to the Department's estimate if you added that back in?

FLOYD ROEHRICH: While it was a reduction from their bid price, the original bid price was \$567K. We lowered their estimate by that \$157K because we would have made a new mathematical product of the unit price by the number of quantities. So it lowered Grady's bid. And we feel it lowers it detrimentally because he could not buy his products for that price. He was not quoted those prices.

FELIPE ZUBIA: So what they submitted though they have the correct total amount, \$567; is that what you're saying?

FLOYD ROEHRICH: That is correct. They have the correct total amount, but they have two unit prices that were in error.

FELIPE ZUBIA: I understand. So then what you did is based on our bid rules, we took their bid amount and extended it and then lowered it and then put them in relation to that; is that right?

FLOYD ROEHRICH: Yes, sir, that's exactly right. And then by lowering that, by looking at just the simple math of it and making that correct, it lowered them from second low bidder to the apparent low bidder. But it really put them at a disadvantage as they were not able to buy the product for the price that they erred on in their bid schedule.

FELIPE ZUBIA: I guess the ultimate question is their total bid amount that was part of their sealed package showed the 567. The clerical error though actually was what we took and revised that as to put them where there are at now. So there was not an attempt to actually submit the lower bid?

FLOYD ROEHRICH: That's exactly correct, yes, sir. And that's how they responded in our identifying and showing the error that was identified in their bid.

FELIPE ZUBIA: Has this company had any history of those types of clerical errors in the past or any others?

FLOYD ROEHRICH: This is a relatively new company. They've only bid with us for a few projects. They are going to be awarded a project today. This is the first time they've erred like this, but they've only submitted a few bids with us, Mr. Zubia, over the past year as they started to compete for ADOT projects.

FELIPE ZUBIA: In order to bid we have a requirement to have a bid bond, what is that in this case?

FLOYD ROEHRICH: The bid bond would be 10% of their bid. So in this case it would be just over \$40K. By spec, we could keep that bond and still reject their bid. But as we said in precedence, when we saw clerical errors and we feel that they truthfully identified that to us, we waived taking their bond and we've given it back to them. We're not penalizing them any more for that.

FELIPE ZUBIA: For future reference, do we have any internal Department policy for companies that may have consistently have clerical errors? Is there anything that we do in that respect?

FLOYD ROEHRICH: Mr. Zubia, if we would have a situation like that, we'd have the opportunity to ask that company and to review their pre-qualification to determine whether they're still a responsible enough contractor to be able to perform and to bid on the Department's work. To this point, one or two incidents we've not exercised that or brought a company in and done that. If it's a repeated violation or repeat of incident that we see, that's what we would end up doing. We would hold a pre-qualification review to determine if that contractor will stay pre-qualified.

FELIPE ZUBIA: But we've never had to run into that?

FLOYD ROEHRICH: Not to my knowledge, Mr. Zubia, no.

FELIPE ZUBIA: That's all for my questions. Thank you.

CHAIRMAN HOUSEHOLDER: Any other questions? We have the motion.

In a voice vote, the motion passed unanimously.

SI SCHORR: Mr. Chairman, this is Si. I'm signing off now since the item is one I'll be recusing myself on.

CHAIRMAN HOUSEHOLDER: Okay, Si.

ITEM 36

FLOYD ROEHRICH: Mr. Chairman, this next item, Item Number 36 was on the Board's agenda last month, but it was, at that time, just a little bit of history. I had asked the Board to delegate to me the opportunity to hold a public hearing to look into the bid protest as well as responsiveness and

responsibility of the apparent low bidder of this project. At the time that this project came for award previously, we were looking into it. An issue of that was brought up by the second low bidder, in this case, Pulice Construction, on an apparent low bid at the time of Fisher, Sand & Gravel doing business as Southwest Asphalt Paving. In this case, I'll refer to them as Fisher.

We had the protest hearings. We've had a number of communications and documentations with both parties in regard to this as well as some other parties. I've summarized that and it was presented to the Board as well as a number of exhibits. It is in the binder that was presented to the Board here very recently. Hopefully, you have had a chance to look at that. What I'd like to do is at this time just go through a quick background and some additional information.

And then I know there's an opportunity, both parties wanted to talk to the Board. So I'll work through that. This project is on Interstate 10. It's a widening improvement project to add an additional lane in the median of Interstate 10 on in the West Valley of the Phoenix Metropolitan area. It is a Recovery Funded project. The bids were advertised and opened. The bid opening was on May 8th of this year. At the time, Fisher was read at amount of \$21.8M. The second low bidder at the time, Pulice Construction, was \$22.7, just over \$900K difference between the two bids. Previously, Fisher, Sand & Gravel was indicted by the Federal Government on tax fraud as a corporation as well as three former officers of Fisher. Their vice president, comptroller, and chief financial officer individually were indicted as part of a long time investigation that the Federal Government was looking into the improper filing of personnel expenses as well as corporate expenses for Fisher. They had indicted the individuals and the corporation in late April, 2008. Fisher, itself, through their president, Mr. Tommy Fisher, had presented that indictment as well as information to the Department disclosing it to us as required by our specifications. That was in May of 2008.

Since May 2008 up to and including today, Fisher has been including a notice at the time of each bid by specification, a notice describing the indictment as well as outlining any of the current actions such as when their former officers had pled guilty and certain aspects of that. For about 40 projects or so over the past year plus that Fisher has bid on, they have provided us that notice on the day of bid by specification. And we've accepted that as their notification to us. At the May 8th project that was bid, Fisher submitted an electronic bid which I believe they bid electronically for the most part by paper. But recently with the electronic bids, our bidding process doesn't allow them to add any additional sheets to the bid at the time they're submitted. They are only allowed to go in and prepare the bid documents as required and then submit those. So the practice we've been using with Fisher and we've allowed is to have him fax in his notification by specification of the indictment on the day of bid, fax it in before he submits his electronic bid. And then we will keep those in our file. That was the same process that was used on May 8th.

After bids were open on May 8th and we started reviewing the bids, Pulice Construction contacted the Department between May 8th and about June 3rd. They became aware of some information pertaining to the indictment and the ongoing Federal legal actions that Fisher was going through. They became aware of some information and submitted to us on June 3rd a public records request. After receiving our information and looking at it as well as some other information, Pulice then moved forward on June 9th and submitted a protest of the project claiming a responsiveness issue and Fisher was non-responsive because they did not attach the indictment notification with their bid at the time that they submitted it. They also prepared a subsequent protest that came in on June 17th that talked about not only responsiveness, again, and at that time they brought in the responsiveness of Fisher not fully informing the Department of an ongoing action that happened prior to June 8th. That's a Deferred Prosecution Agreement (DPA). I'll talk a little bit about that in a minute. But on the 17th subsequent supplemental protest, they also brought in the issue of responsibility of the contractor based upon

what the DPA agreed to or was agreed to by Fisher and the US Government. Because of that they say that the contractor was non-responsive and non-responsible.

That led to at the time at the Board meeting last month to say we needed to hold a protest hearing as well as ADOT needed time to do an independent inquiry into the matters surrounding what was going on with Fisher's legal issue as well as the specifics of this contract in regard to the protest that Fisher had filed. I tried to lay down some background and I'm going to get into the recommendation and some of that here in a minute. Subsequent to that we held a hearing on July 10th. A public hearing where we gave both parties an opportunity to come in, present information. They brought in witnesses. We questioned them as well as the Department held its own separate inquiries at the time. After June 10th and just this morning, we had another conversation with the legal counsel for Fisher, a gentleman who is their legal counsel in North Dakota to try to get further clarification on just what was known at the time of the May 8th bid.

We've had multiple conversations with both parties, correspondence back and forth by letter and e-mail and telephone. We held a protest hearing and public hearing on July 10th and we had a conversation this morning with legal counsel from Fisher to get a clarification on an issue. So we've had a lot of conversations that went in to a review of this case, more so than we probably reviewed this project, more so than any other. Based upon all the information that we've been able to gather and go through, I'd like to outline the matters that were presented to me as part of the hearing and as delegated to me by the Board last month. One of them was to look at the bid protest that was filed by Pulice Construction claiming that the lower bidder, Fisher, Sand & Gravel was non-responsive and non-responsible. The second thing is the Department held its own investigation concern of responsiveness and we've held our own investigation regarding Fisher's responsibility as a contractor.

To summarize after going through all that we've been doing here in the past few weeks and taking into account all the information and everything that I was able to gather through this, I'm recommending that the Board reject Pulice's protest as beyond timely. I also ask that the Board find Fisher's bid responsive as well as Fisher itself, a responsible contractor. I'm going to recommend that the Board award the contract for Fisher, Sand & Gravel. In your packet is a number of exhibits as well as written responses received from both parties based upon the recommendation that was presented to them. On top is a 14 page recommendation with quite a bit of information. And I don't intend to read all of that. It can be placed in the record. If we would want to I can give it to Mary. But what I would like to do is summarize some parts of it.

Throughout my summary, you're going to see reference to the transcript which is included in here. And that's a transcript of the hearing that was held as well as reference to exhibits that are included through here. They are numbered in sequence, the ones that we received. We had 62 exhibits I think. I did not give you all the exhibits or all pieces of every exhibit. I have all the information here that we can review to the depth that the Board cares to. I have all the backup, but what we've provided to you is relevant exhibits that I feel the Board may want to consider.

I'd like to first start with the consideration of the protest filed by Fisher and why I think it should be rejected by the Board. In talking about the timeliness of Pulice protest, Pulice filed their first protest on June 9th which was more than a month after the May 8th bid date. By our Specification 1023, excuse me, by our specification in submitted protests, they have a timeframe of seven days in order to submit their protest. The June 9th day is well after the May 8th date plus seven days in this case, May 15th of which the protest should have been filed. The issue at the May 8th date brought up by Pulice Construction was an issue of responsiveness pertaining to Pulice not physically attaching their

indictment notice letter by specification to us at the time they submitted the bid. We've reviewed that procedure that we did and have identified there really is no physical way with our current electronic bidding process to attach or to add documents. Therefore, in this case and with Fisher we have allowed them to fax it in separate and we have no document that they have given us the full disclosure statement with the bids that they submitted at the time they submitted it. Therefore, they are responsive in regard to that issue. That was the issue brought up in Pulice's first protest.

Because that protest came June 9th, well after the seven days, the issue that they identified as part of the basis for the protest, not attaching the notification letter with the bid, was something that could have been found if Pulice would have looked at filing a protest within the seven day timeframe that they had available to them by specification. Pulice's argument to that regard is they didn't realize there was a problem there until they submitted their public records' request on June 3rd and then found out that the letter came in separate and was not attached to the bid package. Therefore, they would have not known that prior to their public records request. My thoughts and looking at that are they absolutely could have known that within that seven day timeframe if they would have chosen to come down and look at the bid or submit a public records' request within the first seven days. They would have found out the information that they wanted to. They had the opportunity to get that information whether they chose to or not in that first seven days should not be a basis for them to come on later and say they should be allowed to submit their bid. So in regard to Pulice's first protest from June 9th, I'm saying that our recommendation is it is rejected because it did not meet the seven day timeframe within the requirement or specification.

The subsequent supplemental protest that they submitted on June 17th addresses the responsiveness as well as the responsibility issue further expanding on into the issue that they found pertaining to Fisher's indictment as well as their subsequent DPA and the guilty pleas that were submitted by their former officers. As part of Pulice's review into Fisher and the legal actions, tax problems that were going on that they've identified, they had found an article that was published online from the Jamestown Sun. It was a paper in Jamestown, North Dakota. It's an article around the 29th of May that identified that Fisher has entered into a DPA accepting responsibility and acknowledging its corporate responsibility for the tax fraud that was part of the indictment by the Federal Government. It also went on to say that three former officers, Michael Fisher, who was the minority owner, and vice present as well as the chief financial officer and the comptroller had all pled guilty. And they identified that they would have future sentencing. Based upon that May 29th article that Pulice knew of on June 1st as identified by the paper that they presented to us, they knew of it well before the 17th. So they had knowledge of the indictment as well as the issue that Fisher was going through on their legal battle. They asked for a public records request, June 3rd. We responded. They evaluated the information. They continued to go through their analysis situation. Finally, submitted the supplemental protest on June 17th. Again, between the date that they knew of the issues that were going on June 1st and the date that they submitted the supplemental bid protest, June 17th, well past the seven days. Again, as identified in my recommendation here, there was an opportunity for them to have identified their issue earlier than the seven days. And they should have had time to file the protest within that timeframe. So I'm recommending that that protest be rejected as well.

The third supplemental protest that they submitted and they've only identified that it's only information and not a true protest. So I've not addressed that. I've only addressed the first two, June 9th and June 17th. So that's the discussion of background in regard to the two protests filed by Pulice and my recommendation why they should be rejected.

The second and third issues of the hearing that I talked about was the Department's own review of responsiveness as well as Department's review of Fisher as a responsible contractor. I'd like to spend a few moments talking about that as well. Even with rejecting Pulice's protest, the Department felt important that we continue to review and look into the situation that was identified in Pulice's protest that there was some merit in there that felt we needed to have further discussion, especially the issue of notification by Fisher to the Department for the DPA.

I'd like to spend just a couple of minutes talking about a DPA. And this is something where Mr. Acosta may have to help me with. As identified when Fisher has presented to us a copy of the DPA, in late April, April 29th and up until the Court accepted the DPA on May 5th, Fisher had been cooperating with the Federal Government in review of not just the tax fraud issue that was indicted against Fisher, but the same that was indicted to its three former officers, that being Michael Fisher, the 30% minority owner and vice president of Fisher, their chief financial officer, Neil Shaft and their comptroller, Mr. Franks. And all three of those gentleman were found to conspire to write off, if you will, or to at least pay for Mr. Michael Fisher's personal expenses for he and his family, some of his family, to go ahead and right those off as business expenses, not claim them on his tax returns as income and he avoids that tax. But also was written off as expenses for the company which at the time lowered their tax liability. So the Federal Government has done a multi-year investigation into those allegations. As part of the investigation indicted the company as well as the three former officers. Then subsequent cooperation with the investigation, Fisher itself, through its president, Tommy Fisher, who is the majority owner as well was investigated and cleared of no knowledge or wrongdoing in regard to the indictment, was allowed to enter into and negotiated a DPA. There's an exhibit of the DPA in here. My understanding is it allows the corporation to acknowledge and accept responsibility for the actions of its officers, in that case the ones who pled guilty. It also allows them to go ahead and make restitution as well as put in place mechanisms and actions whether it's within the corporate structure, within its operating model, in this case the Code of Ethics of enhances and the Code of Ethics that was adopted that allowed the corporation to continue to stay a functioning corporation. It delayed and deferred any further prosecution of the corporation, but it allowed the corporation to settle its part of the ongoing investigation. Then it fully cooperates as it continues to look at the indictment and the subsequent legal action of its former officers.

Mr. Tommy Fisher once identified and he found out what was happening by these three officers who were conspiring, he took immediately action to buy out his brother and to fire the other two officers and to make the necessary recommendations to satisfy the Federal Government that led to the approval of the DPA. What that does is it defers any further prosecution against his firm for the actions of those former officers. It defers it until the end of December 2011. If at that time Mr. Fisher and Fisher Sand & Gravel stay in full compliance with the conditions of the DPA, the indictment itself will be dismissed with prejudice meaning the Government will not come back and indict him on those same conditions as it did at the time. If he is in found in violation of any of the conditions of that DPA, the Federal Government can take that agreement, go to Court and get immediate conviction. Up to that point, it's really not termed as a conviction, but it is termed as accepted knowledge and responsibility for those officers and those actions of the corporation. That's as best as I understand the DPA. Mr. Acosta might be able to help out with questions on that.

The issue that became part of our responsiveness and responsibility was our specifications identified that we need to be notified of any indictments, convictions or civil judgments against a firm or its employees and we need to be disclosed and informed of that. Anything that's separate from that that's not disclosed to us could have ramifications where the contractor is allowed to bid. In this case,

the DPA, as I understand it, is a slightly different animal than anything identified within our specifications. So there's some argument whether we needed to be made aware of it or more specifically when do we need to be made aware of the situation. As I've gone through and discussed it with Mr. Fisher, looked at the facts, looked at the information as best I can understand it, I think there's enough doubt in my mind that, yes, you could maybe argue that it was some type of a legal action, but it does necessarily fit our specifications exactly. In Mr. Fisher's mind and his counsel who was advising him at the time, they felt that it wasn't necessary to tell us that as part of submitting bids on May 8th. Although what we found this morning in our discussion with the legal counsel, Mr. Prevy (sp), although he was made aware of the DPA on May 5th when the Court approved it, he didn't have an understanding that Fisher, itself, was bidding here. And, therefore, he didn't have time to react to prepare a new notification letter indicating any current actions by May 5th. They have, subsequent to that, on other bids given us full disclosure of the DPA as well as all the current actions that are going on.

Okay. Having said all that and looking into it, there's quite a bit of discussion. I think at this point I'd ask either if Mr. Acosta wants to summarize anything. If not I think you should hear from both parties and I'll come back and restate my recommendation unless you have questions for me right now.

VICTOR FLORES: Mr. Chairman, I do have a question. First of all, in order to avoid what occurred in Wickenburg where we were there until 2:00, it's not that this is not an important issue, but I believe that procedurally I would hope that the Chairman would allow for a motion to accept the recommendation. Let me ask a question from counsel first, is the responsive portion of what took place in the hearing, is that all done through Floyd? And is our role is simply to accept or reject by voting up or down his recommendation?

JOE ACOSTA: You can elect to hear more to the extent that you wish.

VICTOR FLORES: I understand that. I do want to hear both sides. But my question is if the recommendation from Floyd his recommendation is to accept the bid, then the responsive, the protest all of that is part of the recommendation. We don't have to deal with that particular issue. It can be discussed and both parties can speak to it, but we don't have a motion to reject the motion. We don't have to have a motion; is that correct?

JOE ACOSTA: First, for the record, Joe Acosta, Jr. Assistant Attorney General. Mr. Chairman, Mr. Flores, the way I see it it will be a single motion. The single motion would basically have four parts of it though. As you can see, it includes another recommendation. Part 1 would be to reject the protest as being untimely. Part 2 would be to find Fisher to have been responsive as it did. Part 3 would be to find in Fisher as a contractor as responsible. And then Part 4 would be to award to the lowest responsible bidder, Fisher, Sand & Gravel. So it would be one motion basically, but there are four issues within that motion.

VICTOR FLORES: Thank you, Mr. Acosta. Mr. Chairman, again, and I refer to the Wickenburg Hearing where the attorneys spoke at length. And, again, this is an important issue, but I would like for us to be able to determine an end to the discussion through a vote up or down when the question is called for a motion. So this is not to suggest that I made my decision either way, but I would move that we accept the recommendation from our engineer to accept Fisher's bid.

CHAIRMAN HOUSEHOLDER: Do I have a second to that motion?

Motion made Victor Flores, seconded by Bob Montoya, to approve Item 36

CHAIRMAN HOUSEHOLDER: The question is we're going to let them come up. And the first one that will be coming up is Josh Grabel. I'm going to let both attorneys talk, and you'll be allotted ten minutes. I've got a clock over there, and when I say it's up, I'm going to have you sit down.

JOSH GRABEL: Thank you, Mr. Chair. Is there a chance if I can get a one minute notification so I can make sure I'd wrap myself up? My name is Josh Grabel. I'm with the firm of Snell & Wilmer. I'm here representing Pulice Construction with regard to its bid protest. I'm going to skip ahead a little bit and essentially try to focus the Board on, because I have 10 minutes, the facts that matter and the legal issues that matter and the things that should drive this Board to reject Fisher's bid in this instance. And we're just talking about right now today. We're talking about this bid, what happened on May 8th and whether their main bid was responsive and responsible. The answer to that is no. Mr. Roehrich talked a lot about the DPA. But what he didn't tell you is he didn't tell you the key facts as to what Fisher admitted in that DPA. On April 28th, the Board of Directors for Fisher signed off and agreed that they were going to enter into a DPA that was then signed on April 29th by their general counsel. It's not their counsel; it's the person who works inside and in-house at the firm. The person who is actually and you'll note is the person who is required to know what their legal obligations are in all their states and to make sure they're confined.

What did they admit? They admitted that they willfully falsified corporate tax returns to the Federal Government for three years and that they knowingly and intentionally did so with the intent of defrauding the Federal Government. They admitted that they knowingly and intentionally provided false and immaterially misstated financial statements to their auditors with the intent to falsify their audited financial statements. They admitted that they knowingly and intentionally understated the income of one of the owners of the companies and the company's vice president with the intent of defrauding the Federal Government. They also noted that they had to pay a fine of half a million dollars and that they were having to pay over \$650K in back taxes because of the fraud that they admitted they committed. And, lastly, they said Tim Prevy, our general counsel, you're going to be the person who is going to be responsible for making sure that on a going forward basis, Fisher always discloses to government agencies the truth of all matters related to and truthfully discloses facts to Government Agencies. That document was signed by Mr. Prevy on April 29th. It was submitted to the Court on May 1st after it was signed by all the Government attorneys and by all the other attorneys representing Fisher. It was approved by the Court on May 5th. So May 5th the DPA is agreed to by the Board, signed and known by Mr. Prevy, including all those facts that I just laid out for you, those five facts that are truly important with a bunch of other facts that would also be important. And it's approved by the Court meaning it's public record. It can be retrieved. And, in fact, Fisher, at the hearing noted that police could have gotten it on May 5th. So there's no question that Fisher knows all those facts on May 5th.

Bid is made three business days later. Why does that matter to you? Why does that matter to this Board? Well, really simply. The question before the Board today is do you uphold your own specifications? Do you uphold the special specifications that were set for this project? This isn't even in your general bid specs. The bid specs for this project said you have to disclose. And it's not informed. It's fully described the facts related to an indictment. Those five facts that I just laid out for you that were known by Fisher and that were publicly disclosed on May 5th were all determined by ADOT's own personnel by Barry Crockett to be material to the determination under 102.03 which is the relevant specification as to

whether Fisher's bid was responsive. And they were not disclosed on May 8th. So the question is does this Board uphold its own specifications? We spent a lot of time at that hearing and all of this timing issue stuff. What happened is the argument that Fisher has made and the argument that was adopted by the engineer essentially we're going to strictly uphold our standards. We're going to strictly uphold those specifications. You're not in seven days, you're out. But when it comes to the other specifications, well, we'll just sort of believe that they didn't really know what they were suppose to do and they intended to do it.

The path to H - E, hockey sticks is paved with good intentions. And the fact of the matter is that they didn't disclose these facts that they had that were accessible. All they had to do was provide you with that document, the DPA. That's it. They could have attached it to their bid. And this Board knows repeatedly that when you have the opportunity to do something and you don't, it doesn't matter what you intended, it matters that you didn't do it because you are not responsive for failure to disclose. And, again, what does this fact say? And I'll remind the Board, your mission, your obligation is to make sure in honoring public contracts or awarding public contracts that we uphold the purpose of the bidding statutes which is to promote competition, to guard against favoritism, fraud and corruption and to secure the best work at the lowest possible price. You cannot favor a bidder because they bid a number of times.

Now, one of the things that Mr. Roehrich pointed out is that Fisher had disclosed the indictment previously, but they didn't do it on May 8th. They didn't give you the indictment on May 8th. They can't have fully disclosed an indictment that they don't provide you in that bid packet. And this Board knows each bid packet is evaluated individually. They gave a letter that said that they had. And Mr. Roehrich has said, "Well, they disclosed it 11 months ago. So we're going to give them credit for that." But it is unquestioned that you cannot -- the spec doesn't say, well, disclose it either with your bid or sometime previously. Disclose it with your bid or some other time later on when we talk about it. It says, "With your bid fully describe the facts related to your indictment." And the material facts related to this indictment are that Fisher admitted to the fraud, they admitted to defrauding the Federal Government and they didn't tell you that. It's not simply an inform. It's not simply just tell us that it happened and let ADOT go out. Why does that matter? Because ADOT shouldn't be required to do that. Why do you put a specification into each product that says tell us if you've been indicated and fully describe it to us because you want them to do that. You are putting the obligation on the bidder. And it is not okay for the person, well, we just didn't get around to it. Our procedure, really, we weren't sure. And what Mr. Prevy testified to today was we had a document, but I didn't get around to correcting that document yet. I just hadn't gotten to it. It wasn't important enough for me to tell ADOT the whole truth. It wasn't important enough for me in filling out my bid for ADOT to ask all of my entities, hey, are you bidding projects because if you're bidding projects, we've got new information. We've got to get them, in particular, because ADOT has a specification that requires it.

The question before ADOT is do you want to give a \$22M project of Federal Funds to a company that defrauded the Federal Government and then forgot to tell you about it? In fact, it's not even forgotten. They intentionally made a determination that they weren't going to tell you. They said we're not going to disclose it because they knew it advance and they submitted a letter that didn't disclose it." Now, they're saying well, it just sort of happened. They knew months in advance that it was coming. They knew it was disclosable on the 8th. They chose not to. Why did they choose not to and how do we know that? Well, a couple of things. We know that they thought this bid was going to be awarded on June 5th. They testified to that. So they were hoping to get away with not disclosing it to before June 5th. When did they, in fact, disclose the DPA, it's another thing I think is important for the Board to recognize. When was the DPA disclosed? On June 3rd, Pulice submitted a public records request to ADOT with regard to

this project. On June 4th, Mr. Roehrich called Mr. Fisher and said hey, what's going on? There's a public records request. What's up? On June 5th, the next day, you had a letter from Fisher disclosing the DPA. On June 8th, the next business day, so two business days later, they were able to disclose the DPA and to get that to ADOT. They were able to fully describe the DPA and the facts related to their indictment as they were required to on bid day within two days of an inquiry. But they claim that the three business days that they had between May 5th and May 8th, even though they knew about it 10 business days in advance wasn't enough.

You are obligated, obligated, obligated to hold up your specs. You have very specific specifications that tell them what they need to do. We cannot for the life of us consider why you would decide in this case to demonstrate favoritism to this contractor and say, you know, what they haven't abided by the integrity of the process, but we're going to go ahead and give it to them. It's also by the way not the first time it's happened. If you look at the Wyoming statutes, in Wyoming after they were indicted they forgot to check a box telling Wyoming that they did indicted. And they said, oh, it was just an administrative error. This is a pattern and a practice. It is important for you to understand that I understand there's a temptation to say oh, there's a million dollars and we want to hold up the million dollars. But the fact of the matter is that Arizona's law on public procurement require this Board to uphold this Board's integrity and the integrity of the process. Fisher knew about the DPA on April 29th, was approved by the Court on May 5th. It wasn't disclosed on May 8th. Your specification required disclosure. It isn't a question of well, did they get around to it. Must fully disclose with the bid. They did not fully disclose the facts. Their bid is non-responsive. They're a non-responsible contractor. For this Board to award to an entity in that circumstance is clearly inappropriately. Pulice is the lowest responsive responsible bidder and should be awarded the contract. I'll be happy to take any questions from the Board to answer any that they might have. Obviously, that's at the Board's discretion, Mr. Chair, Director.

CHAIRMAN HOUSEHOLDER: We haven't got time. You used your ten minutes up and I don't think the Board wants to ask any questions. So thank you.

JOSH GRABEL: Thank you, sir.

CHAIRMAN HOUSEHOLDER: Bill Quinlin?

BILL QUINLIN: Yes, sir.

CHAIRMAN HOUSEHOLDER: Okay, you've got ten minutes.

BILL QUINLIN: Well, I'll open the statement right now that we will not take the full ten minutes. I just want to say very briefly that first of all Mr. Fisher is here. We appreciate the opportunity and we appreciate the State Engineer and Joe Acosta did the amount of time and effort that went into this recommendation, the all day hearing, the volumes of information before you. And our position as we laid out with the engineer is that Fisher disclosed what Fisher had disclosed. Your specs say an indictment, civil conviction. The DPA is neither one of those. What is it and I'd ask the Board to consider when they think about this matter, the individuals that were involved in the wrongdoing are no longer with Fisher, Sand and Gravel. It's not the same company that was charged in that indictment. That fact and the fact that Tommy Fisher who has been doing business with ADOT for ten years and low bidder or second bidder on many of the projects I think were awarded today that he was not part of the (inaudible 9:58). He had, as the US Department of Justice found, he wasn't part of that and they allowed him to enter into a DPA. And what that did was that allows Fisher, Sand & Gravel to continue. It allows them for those

two years, as long as they follow the requirements to continue operating with and the caveat was Tommy was going to run from the company. Those people were no longer there.

Since that time, we have a letter in packet from US Department of Justice Lane (inaudible 9:58). We also have a letter from the United States Department of Transportation that was familiar with this that says Fisher, Sand & Gravel is a responsible bidder. We have spent days and Mr. Fisher has spent lots of dollars trying to put this out and make sure that ADOT is comfortable with Fisher, Sand & Gravel as a responsible bidder. Mr. Roehrich is. And we would ask that Mr. Roehrich's conclusion be adopted. Thank you very much.

CHAIRMAN HOUSEHOLDER: Thank you. The Board have any questions for any of them?

VICTOR FLORES: Mr. Chairman, I have a question actually of Mr. Acosta. Since, obviously, I'm assuming he's in agreement with the recommendation at this point. Our specs clearly state that the exceptions to the paragraph that was alluded to in the previous presentation be fully described. And it actually said, "Shall be noted." And as a non-attorney I suppose the "shall be noted" is probably the May 8th letter that accompanied the bid suggesting that there was some indictment or some charges. Is that correct, Mr. Acosta? Is that the "shall be noted" portion of it that if you accept?

JOE ACOSTA: Here's, Mr. Chairman, Mr. Flores, here is the whether you call it an ambiguity or a loophole or whatever thing on which side you are, there is a preliminary question that comes up how do you interpret that specification. And there's a general rule that were a specification can be reasonable interpreted by a bidder in a certain manner. He can't hold it against that bidder for interpreting it in that reasonable manner. And, of course, then the question is is the interpretation reasonable or not. An interpretation that has been forwarded by Fisher is that noted and fully described means here's the indictment and the indictment is for tax fraud related to the misconduct of a former officer and for the personal benefit of one of those people. One could argue that that is noted and fully described because you have told the Department about the indictment. You have also said something about the indictment itself. You described the indictment. And here's where there the debate is with the Pulice because Pulice says describe means not only do you have to put the indictment in front of the department, but you have to say this is what is happening in the court hearing. Will they plead guilty or other factors. So that's one of the items that Mr. Roehrich has considered in his recommendation. How do we interpret the specification?

VICTOR FLORES: Mr. Chairman, aside from the legal arguments about the action that apparently Pulice feels was not submitted, I mean, all that legal stuff. You as our advisor, agree with the recommendation that this document does, in fact, meet the standards of noted and fully described. Is it a yes or a no?

JOE ACOSTA: Yes, you're referring to the May 8th letter?

VICTOR FLORES: Correct.

JOE ACOSTA: Yes, I do. I agree with Mr. Roehrich's recommendation. Now, and that interpretation I must say is partly a factual interpretation of the document in line with the specification. In other words, it's not entirely a legal question. It's not as if a Judge would look at the document and say unquestionably as a matter of law with regard to any interpretation that may be made, the document is

either good or bad. It requires the discretion and knowledge of the industry and experience that a person like Mr. Roehrich would have as opposed to being purely a legal question.

VICTOR FLORES: I guess, I mean, as a non-attorney, if somebody tells me that there was a murder committed without the details and then there was a murder committed. Is this going to be changed? Do you believe that this thing that obviously was written by attorneys is ambiguous and consequently regardless of what happens for this particular action. It's going to be addressed or is there going to be a further description of what this truly means or are we going to have to be dealing with this subsequent to this action?

JOE ACOSTA: Oh, are you referring to the specification?

VICTOR FLORES: Yes. The "shall be noted" and "fully described" which -- it may not be ambiguous to me as a non-attorney. It obviously is to folks that are talking about a multi-million contract. So what happens with this particular portion of the specs going forward?

JOE ACOSTA: Well, we may or may not. I rather not discuss that out in the open and with what may happen. But certainly as with other bid disputes, at least it's my practice to discuss these matters with Mr. Roehrich and with others who may be involved such as Mr. Crockett and contract specifications. And consider whether we want to change the specifications. I will say one thing. The specification was not written by this lawyer. I don't know if it was written by any lawyer and Mr. Roehrich can fill you in a little bit, but most specifications are written by other people besides lawyers. I mean, hopefully, if there's an issue with the specification it's brought to my attention and we try to work it out. But I will say that in general you've seen those big books are hundreds of pages thick. You can see if you look at the specification in Exhibit 3 you'll see that it's at page 36 at 100 and something. So all those specifications are not written by a lawyer.

VICTOR FLORES: Thank you.

JOE ACOSTA: And I'm not saying it's good or bad, I'm just saying that just is the fact.

CHAIRMAN HOUSEHOLDER: We've got one other Board Member that would like to ask a question.

BILL FELDMEIER: One quick question. In the recent past, in the last six months, didn't we deal with an issue related to Fisher and indictments that were pending or whatever related to a project?

JOE ACOSTA: Well, Mr. Roehrich can give you a little bit more background. But I believe when this first started there was a potential issue. It didn't get to this level of controversy.

BILL FELDMEIER: On an entirely different project?

JOE ACOSTA: Yes. An entirely different project.

BILL FELDMEIER: So it was out there already?

JOE ACOSTA: It was out there already?

BILL FELDMEIER: So this is no surprise that as I understood from the discussion in the past and this is the other project, that at some point in the near future this was going to come to conclusion. The fact that

it's being concluded was no surprise to me. This is not a new event. It was out there. It was in public. It was being discussed at another Board meeting. I don't understand why it's a surprise at this point to anyone that it was coming to conclusion.

CHAIRMAN HOUSEHOLDER: Good point. Any other questions?

FELIPE ZUBIA: Well, first of all, I'd thank Victor for kind of setting this on the right path to start. I think he asked the right questions and I think we got the answers that satisfy me. I'm prepared to support Mr. Roehrich's recommendation with a couple of caveats. Understanding that there is the DPA (DPA) out there and there is I guess a hammer hanging over their head for lack of a better term to the extent that they don't comply with that DPA and they do the Deferred Prosecution and that is they move forward on that. What duties does the Board have to 1) either stop work or cancel the contract, indemnify for any damages in that respect because I would feel a little bit more comfortable knowing that we have that if it's not in the current contract, I guess the question is to Joe then can we right that language into the contract. And then the second item is, given the fact that we're generally talking about a trust factor here, one of the things that I would be concerned about is change orders at a future date, particularly any large ones that would come across our desk. So I would like to know if there's anything that we can be notified on immediately within I guess a 7 to 10 day period of any major change orders that would come across this contract. Those are the two questions that I'd like to have answered.

JOE ACOSTA: With regard to the contract you have to sign it as is because it's a publicly good contract. When you publicly bid a contract that's going to set the parameters of the contract. What remedy is there for the department or the Board if something occurs in the future that would intend to create a doubt as to the responsibility of the contractor. I'll just try and make it a little bit broader than just the DPA. If an issue were to occur in the future or to be found in the future with regard to this, the Department could, 1) declare or at least start the process toward declaring the contractor ineligible for future bids by going to the prequalification process which is not part of the Board process, but it's written by the pre-qualification Board within the department. In other words, we could take away the pre-qualification and then Fisher could not bid in the future. With regard to a contract that is ongoing at the time of such an event occurs, depending on how bad it is, the department could, at that point, look into a termination for a default out of the default provisions of the contract depending on what the item is. If it's a serious item that leads to a doubt whether we have a responsible contractor that's going to finish the job, then the Department could go through that process. Now, that would not involve the Board. That would be a contractual process that the Department would undertake under Section 108 of the contract which provides for default actions by the Department where there's a doubt whether the contractor or is going to finish the job or where in fact the contractor walks out. So that's another revenue that the Department has. Neither of those though would involve coming back to the Board and having the Board take action; it is not part of the Board's legal responsibility under the governing statutes of Title 28.

FELIPE ZUBIA: I understand it wouldn't come back to the Board. I'm fine as long as we're sufficiently protected as a Department. I guess then more specifically though one of the questions that's left out there is whether or not on a future date they're going to follow through on the DPA and then ultimately whether or not if FHWA determines them as a non-responsible bidder and then disbars them from bidding on any Federal projects. If that happens in relation to during the term of his contract, I'm not asking for a legal opinion, but to the extent that he can give some feedback on that, would that give us enough to proceed towards canceling that contract?

JOE ACOSTA: Well, since you are asking a legal question I guess I'll answer it. I believe so. If it comes up --

FELIPE ZUBIA: So then also taking that one step further, we're talking about awarding this contract with ARRA funds. It was noted earlier in the legislative report that we've actually had to go back and change State Statutes to be in performance with some of the requirements of the ARRA Funds expenditures. Since there are higher standards in using those ARRA funds, are we at risk by awarding this contract because of it?

JOE ACOSTA: I guess what you can say is we're at some extent to greater risk when you have an ARRA Project as opposed to a regular Federal project that any item that's deemed to be an irregularity in the process could result in an issue whether it's awarding this or not. On the other hand, at least with regard to this project, at this time there is the no action letter which is Exhibit 61 in your book if you want to look at it which was dated just this Monday from the Federal Government they're not proceeding with regard to the responsibility. They're not proceeding to do anything in the nature of a debarment with regard to the company at this time.

FELIPE ZUBIA: So it would seem to me that the representatives of FHWA signing off on Fisher as a responsible bidder as well as other US DOT employees doing same would help us in that regard should any questions arise with regard to our award?

JOE ACOSTA: I guess I would say probably. You never know what's going to happen in a legal situation.

FELIPE ZUBIA: Well, then if I could ask Floyd then as we go through the process of checking all the boxes and expending our funding that we keep an eye on that and to the extent that we need to disclose that as well as bringing in any other supporting documentation from the Federal Government to support that. I would appreciate that.

FLOYD ROEHRICH: Yes, sir. Mr. Household and Mr. Zubia, especially with the ARRA funds and given not only the extra reporting requirements, but as well as the extra oversight that comes with the FHWA being involved in the oversight audit by the inspector general, audit by the Government County office as well. These projects inherently will have a greater oversight and a greater review of all the legalities and everything was done appropriately and by State, Federal and law statutes, just inherently in these ARRA projects that are going to have a greater sense of oversight.

FELIPE ZUBIA: That answers my question.

CHAIRMAN HOUSEHOLDER: We have a motion before the floor to take the recommendation of our District Engineer and award the bid to Fisher, Sand & Gravel Company?

BILL FELDMEIER: I want to make sure that we understand that the motion includes all four of the points that were raised by the State Engineer.

CHAIRMAN HOUSEHOLDER: Victor made that motion.

VICTOR FLORES: I did make that motion, but, Mr. Chairman, I'll just clarify. I move that the board reject the bid protest by Pulice Construction as untimely, that the Board find Fisher, Sand & Gravel has

been responsive in its bid, that Fisher is a responsible contractor and that the contract be awarded to Fisher, Sand & Gravel.

Motion made Victor Flores, seconded by Bob Montoya, to approve Item 36. In a voice vote, the motion passed unanimously

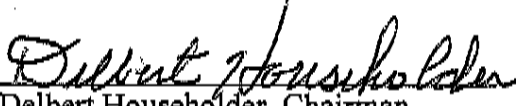
VICTOR FLORES: Mr. Chairman, I'd like to explain why I support the recommendation as well. And it's based totally on my non-legal interpretation as the May 8th where they specifically state that Fisher Sand and Gravel and two of its officers were indicted on tax fraud charges. To me, the notes that they identified that they were in some type of a legal proceeding and, therefore, I think they did in fact comply with that part of the specifications.

ITEM 37 (Comments and suggestions)

CHAIRMAN HOUSEHOLDER: Does the Board have any suggestions or items they want on the Agenda for the next Board Meeting? If not, I'll entertain a motion to adjourn.

ADJOURN

Motion made by Bill Feldmeier, seconded by Victor Flores at 11:27 a.m. In a voice vote, the motion passed unanimously.


Delbert Householder, Chairman
State Transportation Board


John Halikowski, Director
Arizona Department of Transportation