

# **LONE STAR RAIL DISTRICT**

## **Board Meeting Summary Friday, September 10, 2010**

10:00 a.m.

Hill Country Event Center  
107 Centerpoint Road  
San Marcos, Texas

### **1. Call to Order**

Notice was duly posted and a meeting of the Lone Star Rail District Board was held on Friday, September 10, 2010. Board Chairman Sid Covington noted a quorum was in attendance and called the meeting to order at 10:14 a.m.

#### **Participants:**

Sid Covington, Chairman  
Tullos Wells, Vice Chairman  
Gloria Arriaga  
Hal Baldwin  
Jeff Barton  
Mary Briseño

Mariano Camarillo  
John Clamp  
Sheryl Cole  
Patty Eason  
Karen Huber

Debbie Ingalsbe  
John Langmore  
Carroll Schubert  
John Thomaidis  
Jeff Wentworth

Other participants included Ross Milloy and Alison Schulze (Rail District), Bill Bingham (Rail District General Counsel), Bill Glavin and Jennifer Moczygamba (TxDOT), and John Kulpa and Darwin Desen (Jacobs Engineering).

### **2. Chairman and Member Comments**

Board Chairman Covington thanked Vice Chairman Wells for filling in while he was working in New Mexico over the summer. There were no other comments.

### **3. Items for Consent**

- A. Consider Approval of June 4 Board Meeting Summary**
- B. Consider and Take Appropriate Action on Amendment to Freight Rail Negotiation Services Contract**
- C. Consider and Take Appropriate Action on Amendment to Rail District's Advanced Funding Agreement with Texas Department of Transportation**
- D. Consider and Take Appropriate Action on Joint Audit of Austin-San Antonio Corridor Council and Lone Star Rail District**
- E. Consider and Take Appropriate Action on Financial Statement**

Chairman Covington noted this is the first consent agenda considered by the Board and includes five noncontroversial items discussed thoroughly in prior Board meetings and/or Committee meetings. Chairman Covington directed the Board's attention to memos on each item included in the agenda packet and stated that any item could be removed from the consent agenda upon request by a Board member. There was no discussion. Upon a motion by Councilmember Clamp and second by Board member Arriaga, the Board unanimously approved the consent agenda items.

Following the status report by TxDOT under Agenda Item 12, Bill Bingham recommended the Board amend its action under Consent Agenda Item 3.C. and authorize the Board Chairman to enter into an advanced funding agreement or an interlocal agreement with TxDOT, in view of TxDOT's report that they would require an interlocal agreement for use of the State appropriated funds. Upon a motion by Commissioner Barton and second by Commissioner Conley, the Board unanimously approved the motion to reconsider and amend the action on Agenda Item 3.C. as instructed by Counsel.

#### 4. **Committee Reports:**

##### A. **Public Information Committee Meeting June 30, 2010**

Committee Chair Mary Briseño reported the Committee reviewed and provided comments and direction on the Public Involvement Plan (PIP) that will guide the Rail District's outreach efforts throughout the environmental process on the passenger rail project. The PIP, as revised by the Committee, was sent to full Board on July 1. The Committee also discussed ways to leverage the public outreach effort in the environmental process to build on the momentum established during branding process. Finally, the Committee discussed the trademark applications. The Rail District's applications for three Federal trademarks were approved. LSTAR, the name of the future rail service; the LSTAR logo; and LSTAR with tagline *Catch it* are now protected under Federal trademarking law. The application for a State trademark for the name Lone Star Rail District was rejected; an appeal was filed in March and rejected again on the grounds that the mark is geographically descriptive and can't be trademarked. The Committee decided not to pursue the State trademark further, noting that Federal trademark protection is most important to protect the Rail District's assets.

##### B. **Executive Committee Meeting July 9, 2010**

Vice Chairman Tullos Wells reported on the Executive Committee's discussion items. Jennifer Moczygemba, TxDOT Rail Division, gave the Committee an update on the status of the State Rail Plan and discussed the \$8.7 million State appropriation that Representative Ruth Jones McClendon helped acquire for the Austin-San Antonio rail project. A portion of the funds will be used by TxDOT on the statewide rail plan, but all of the funds will be used as intended for the benefit of the project. Also, Jacobs updated the Committee on the environmental and engineering studies on the passenger rail project, and will update the Board under Agenda Item 6. Bill Bingham updated the Committee on the agreements with Union Pacific and the freight rail relocation project, and will update the Board under Agenda Item 10.

The bulk of the meeting was a discussion on how to pay for the projects. Jacobs, Public Financial Management, and Knudson presented the range of funding options available to the Rail District for passenger and freight rail projects, debt financing options, federal loan programs, public-private partnerships, and local financing issues. Ross Milloy will present information on Denver's funding approach under Agenda Item 9

##### C. **Finance Committee Meeting August 25, 2010**

Committee Chair John Clamp reported the Committee discussed and took action on several items. The Committee unanimously approved the reimbursement policy for FY11 between the Austin-San Antonio Corridor Council and Lone Star Rail District and directed staff to take the policy to Board. There is no change between the FY10 policy and the FY11 policy. The Committee also unanimously approved the draft FY11 budget. The Board will take action on the FY11 reimbursement policy and the FY11 budget under Agenda Item 5. The

Committee discussed billings for interim legal services on freight rail negotiations, and unanimously approved a motion that staff does not have authority to approve expenditures above the maximum contract amount, authorized the Executive Director to negotiate an amount to be paid, and to bring the item to the Board for approval.

The Committee discussed the cost obligations for analyses of additional station locations, and unanimously approved a policy that the cost of any additional environmental impact analyses requested by local jurisdictions should be borne by the requesting jurisdiction, and that jurisdictions may come to the full Board on a case-by-case basis to request an exception to the policy. Finally, the Committee reviewed and discussed the 2008 combined audit of the Austin-San Antonio Corridor Council and Rail District, accepted the audit, and directed staff to take the audit report to the full Board. The audit report is included in each Board member's agenda packet.

**D. Program Management Oversight Committee Meeting August 25, 2010**

Committee Chair Mariano Camarillo directed the Board's attention to the meeting summary included in the agenda packet. The Committee unanimously approved an amendment to the A3 Design contract for website and printing services and authorized the Executive Director to execute amendment. The amendment extends the end date of the contract one year and adds \$34,000 to the contract for developing and maintaining a new website module, and reprinting brochures and business cards. In addition the Committee discussed several items which are on the Board agenda for further discussion and action: the Committee unanimously recommended the Board approve an amendment to the McGinnis Lochridge & Kilgore contract for freight rail negotiation services, heard a status report on the environmental and engineering studies on the passenger rail line, heard a report on the status of the freight bypass studies, discussed an amendment to the Jacobs contract for additional services, and heard a staff report on a methodology for upcoming requests for proposals and requests for qualifications.

**5. Consider and Take Appropriate Action on FY11 Budget and Austin-San Antonio Corridor Council—Lone Star Rail District Reimbursement Agreement**

Alison Schulze directed the Board's attention to the Fiscal Year 2011 (FY11) budget included in the agenda packet. The FY11 budget includes a new section—State income and State-funded expenses—to reflect the \$8.7 million State appropriation for the Austin-San Antonio rail project. Rail District staff is working with TxDOT's Rail Division to identify the specific projects and expenditures for State funding. The FY11 budget also shows Federal grant income and expenses. Total Federal grant income is \$10.5 million, and includes a balance of just over \$2 million in the FY01 and FY06 federal grants, a pending FY11 appropriation request of \$1.5 million, and a balance of \$6.9 million in the federal funds awarded by the Capital Area Metropolitan Planning Organization in FY09 and FY10. Federal grant expenses for FY11 include continuation of the environmental studies on the passenger rail project, website and printing services, freight rail negotiation services, Union Pacific project reimbursement, staff, procurement of a program management team if the FY11 appropriations request is approved, and a reserve of nearly \$5 million.

Ross Milloy described the local funds portion of the budget. Local income and line item expenditures show little change from last year's budget. The line item expenditure of \$175,000 for State and Federal legislative consultants is still being developed and may be modified due to the upcoming State legislative session which starts in January 2011. The dollar amount will likely remain the same, but the distribution between State consultants and Federal consultants may change; if so, staff will take the item through the appropriate committee.

On August 25, the Finance Committee recommended the Board approve the FY11 budget, so a second to the motion was not required. Following Board discussion, the Board unanimously approved the FY11 budget.

**6. Consider and Take Appropriate Action on Report on Environmental and Engineering Studies on Passenger Rail Project**

John Kulpa and Darwin Desen of Jacobs Engineering briefed the Board on the progress of environmental and engineering work on the passenger rail line. Dr. Kulpa, Project Manager, described recent events on the identification of a lead agency for the project. The Federal Railroad Administration (FRA) sent a letter to the Rail District in July that outlined the key actions for FRA involvement as lead agency: TxDOT must assure FRA that the passenger rail project is a component of the State Rail Plan, and the Rail District must advance the freight relocation project to assure FRA that relocation of the through freight is a reasonable solution in order to allow passenger service on the existing rail line. Dr. Kulpa directed the Board's attention to a graphic representation of the three major tasks that must be coordinated to move forward—freight relocation studies and environmental analysis, passenger rail environmental impact study, and completion of TxDOT's State Rail Plan. The three tasks should progress concurrently.

Board discussion followed on the timeline for each project, whether the projects can be completed within the same 2- to 3-year timeframe, and the impact on available funding grants given the status of the State Rail Plan. Dr. Kulpa said the three major tasks could be done concurrently in the same timeframe, but some tasks in each timeline are outside the Rail District's control.

In response to Board questions, Bill Glavin, Director of TxDOT's Rail Division, provided additional information on the timeline for the State Rail Plan and the availability of federal grants. The draft rail plan was submitted to FRA on July 25 in order to meet FRA's deadline to issue a National Rail Plan in September. The final rail plan will be submitted to the Transportation Commission for adoption in November 2010 and, upon adoption, will be distributed to FRA and the State legislature. Once the rail plan is complete, Texas will be in a better position to compete for federal funds. Recently, \$2.4 billion was available in federal grants, but Texas was precluded from \$2.1 billion of the available funds because the full rail plan—that is, statewide ridership analyses, corridor plans, and service development plans—was not complete. TxDOT did apply for available planning grants. An additional \$1-1.4 billion in grants will be available next year. The State Rail Plan, including the additional studies, must be in place to qualify for next year's grants. Mr. Glavin stated that FRA considers the Austin-San Antonio corridor to be a segment of the larger I-35 corridor that runs from Oklahoma City to Laredo. TxDOT's application to FRA for \$14 million to conduct passenger rail studies in the I-35 corridor would include the Austin-San Antonio corridor project. Mr. Glavin clarified that the State Rail Plan lists prioritized *projects* for freight rail—and the Rail District's freight relocation project is included, but the plan only lists prioritized *studies* for higher-speed and intercity passenger rail. Any FRA grant funds in the current application process would be used by TxDOT for studies, not for project construction.

Ross Milloy noted that a portion of the \$8.7 million State appropriation for the Austin-San Antonio rail project would be used as the 20% match (\$2+ million) if TxDOT's FRA grant application for \$14 million for the I-35 corridor is successful. He further stated that the Rail District's intent is that the remainder of the State appropriation be expended on the Rail District's projects and that the funds be deployed as soon as possible. Mr. Glavin agreed and stated the Rail District and TxDOT would enter into an interlocal agreement on the expenditure of the remaining funds and TxDOT would expedite the process.

Mr. Glavin advised the Board on additional conditions attached to the FRA process. The Rail District must move forward on the freight relocation project to assure FRA that relocation of the through freight is a viable solution, the Rail District must submit the freight relocation project to the Surface Transportation Board (STB) before continuing with substantial work on the passenger rail project and, finally, FRA is not yet convinced the Lone Star Rail initiative is sufficiently intercity in nature—FRA sees the passenger project as a commuter rail project. FRA would be unwilling to fund the passenger project unless it is seen as part of a larger intercity rail corridor.

Mr. Milloy noted there are numerous moving parts in each of the three projects shown on the timeline. The purpose was to present a high-level picture of the three projects and the connectivity between them. Alison Schulze reported the PMO Committee recommendation was to have Jacobs present the issues and begin the discussion at the Board level. The staff recommendation is that staff and the Jacobs team continue to refine the project schedules, milestones, and decision matrix; identify options for moving forward on the passenger rail studies; take the next iteration through the PMO Committee; and bring the PMO Committee recommendation back to the Board. Upon a motion by Commissioner Barton and second by Board member Langmore, the Board unanimously approved the staff recommendation.

#### **7. Consider and Take Appropriate Action on Amendment to Jacobs Contract for Additional Services to Conduct Freight Relocation Alternatives Alignment Analysis**

Alison Schulze noted that Federal Railroad Administration (FRA), Federal Highway Administration (FHWA), Surface Transportation Board (STB), TxDOT and the Rail District all agree the Rail District needs to move forward with the freight relocation studies as soon as possible. The first step in the freight relocation process is to conduct an alternatives alignment/fatal flaw analysis that will take the project to the level of detail required to submit the project to STB, the agency responsible for overseeing the environmental process on new freight alignments. Adding to the sense of urgency, the funding source for the project is the 2009 State appropriation, which must be spent by September 2011. The issue before the Board is whether to award the work to Jacobs as a noncompetitive procurement or to issue a request for proposals (RFP).

On August 25, the PMO Committee consensus was to award a limited contract to Jacobs for only the initial studies and to ensure a competitive procurement process on the remaining freight relocation projects. The Committee directed Jacobs to submit a scope and fee proposal limited to the initial alignment studies required to submit the project to STB; Jacobs submitted a proposal for \$1.9 million on September 2. The PMO Committee also directed staff to submit a letter to TxDOT stating the reasons for awarding the contract to Jacobs on a noncompetitive basis. The letter was submitted to TxDOT on August 30; TxDOT's response is pending.

Board action depends on TxDOT's response to the Rail District's request to proceed on a noncompetitive basis. Bill Bingham outlined the options available to the Board: 1) award the contract to Jacobs on a noncompetitive basis, which is allowed in the Rail District's procurement policy or 2) issue an RFP on an expedited basis, delegate authority to the PMO Committee to award the contract, and establish a budget cap of \$1.9 million - 2 million for the contract.

Chairman Covington commented that Jacobs' established relationship with Union Pacific is an additional and important issue to consider, especially in the context of moving forward quickly. Board discussion followed on the timeline for expenditure of the State appropriation, the scope and cost of the alignment analysis, the time required to complete an expedited RFP process, TxDOT's issues regarding noncompetitive procurement, and striking a balance between an open, transparent process and the need to move forward without delay.

Upon a motion by Board Vice Chairman Wells, a second by Mayor Baldwin and two friendly amendments, the Board unanimously authorized the PMO Committee to take action on either awarding a contract to Jacobs on a noncompetitive basis or pursuing an RFP process, authorized the Committee to award a contract not to exceed \$1.9 million, authorized staff to schedule a PMO Committee meeting within two weeks or to issue an RFP if the Committee can't meet, and directed the Board Chairman and the Executive Director to concur with the PMO Committee decision.

**8. Consider and Take Appropriate Action on Methodology to Pre-qualify Firms for Upcoming Requests for Proposals**

Ross Milloy stated the Rail District needs an abbreviated procurement process, and recommended developing a system to pre-qualify consultants—similar to processes used by the counties and TxDOT—that would allow the Rail District to move faster on consultant selection. Staff would work with TxDOT and develop a methodology on a pre-qualification process, reevaluate the current procurement policy to ensure a clean and expeditious process, and bring a recommendation to the Board in December. Upon a motion by Board member Briseño and second by Board member Langmore, the Board unanimously approved a motion to direct staff to develop a methodology to pre-qualify firms for upcoming requests for proposals.

**9. Consider Report on Denver Rail Project Implementation Approach**

Ross Milloy briefed the Board on Denver's public-private partnership (P3) process. Denver's P3 approach could serve as a model for the Rail District in that both projects include passenger rail and relocation of Union Pacific freight traffic. The Denver project, which cost \$5 billion, includes 35 miles of commuter rail with 14 stations. The design/build scope of work was conducted in two phases: Phase 1 included design of the entire project and construction of the 23-mile East Corridor from downtown Denver to the airport. Phase 2 will include construction of the 7-mile Gold Line and the 5-mile northwest segment. Mr. Milloy described the procurement process, the timeframe, and the equity partners. Funding sources included Federal Transit Administration (\$1 billion), private activity bonds and equity (\$.5 billion), sales tax for construction (\$1.1 billion) and sales tax for operations (\$2.4 billion). The freight relocation portion of the project involved moving the freight line within the existing right of way so that a second track could be built for passenger service. To expedite the project, the party that won the award will build the entire project even though Phase 2 is not funded yet. The project includes a single concession agreement with a 34-year term that included 5 years to design and build the project. Denver's Regional Transportation District owns all of the project elements, retains all revenues generated, and sets fare policy and values. The availability payments are backed up by sales taxes.

**10. Consider Status Report on Freight Rail Agreements**

Bill Bingham reported the Rail District and Union Pacific have two agreements in place and are working on a third agreement—a memorandum of understanding (MOU)—which sets out the entire project. The Rail District and Union Pacific have substantial agreement on the terms of the MOU, and discussions are continuing on the remaining points. Mr. Bingham stated he is optimistic the MOU is close to completion.

**11. Consider and Take Appropriate Action on Billings for Legal Services Related to Freight Rail Negotiations**

Agenda item 11 was postponed pending additional discussion and negotiation.

## **12. Consider Status Report by TxDOT Rail Division**

Jennifer Moczygemba briefed the Board on the Texas Rail Plan. TxDOT recently conducted 10 public meetings on the plan and will hold the public hearing at 1:30 p.m. on October 6 at the TxDOT offices in Austin. Comments on the plan will be accepted through November 5. The plan will be presented to the Transportation Commission on November 18. Both the Lone Star passenger rail project and the freight bypass project are included in the plan.

Ms. Moczygemba provided updates on studies, grants, and funding agreements:

- TxDOT cancelled the Amtrak study that was evaluating two additional round trips in the corridor, but the infrastructure analysis that was completed prior to cancellation will be useful. TxDOT will forward the information to the Rail District.
- The Austin-San Antonio Passenger Rail Study, which was mostly funded by the Rail District, is complete and TxDOT is reviewing the final draft of the report. Upon completion, TxDOT will forward a copy of the report to the Rail District.
- TxDOT has selected a consultant to conduct statewide ridership studies and corridor studies and is in the final stages of negotiating the contract. TxDOT is working with the Rail District and Jacobs to move forward on the ridership and corridor studies and determine how the Rail District's studies of the Austin-San Antonio corridor will feed into TxDOT's statewide studies.
- TxDOT submitted a grant application for FRA funds for final design and construction of the VIA multimodal center.
- Regarding the State appropriation for the Austin-San Antonio rail project, an interlocal agreement between the Rail District and TxDOT must be in place before any charges are incurred; in addition, TxDOT is submitting a request to the State legislature to allow the funds to be used beyond FY11. The legislature will consider the request during the 2011 session.
- TxDOT is developing a substantial legislative appropriation request specifically for rail.

## **13. Consider Legislative Update**

Discussion on the Rail District's legislative program was deferred until the next Board meeting.

## **14. Concluding Board Member Comments (no action taken)**

Chairman Covington announced the next Board meeting would be on December 3 at 10:00 a.m. at the San Marcos Activity Center. There were no additional concluding comments.

## **15. Public Comment**

Joe Cantalupo, Parsons Brinckerhoff, stated he had met with Ross Milloy to discuss the Denver project and commended the Rail District for its progress. There were no additional public comments.

## **16. Adjourn**

Chairman Covington adjourned the meeting at 12:30 p.m.