



zero deaths | zero serious injuries  
on Montana roadways

**Montana Department of Transportation**

2701 Prospect  
PO Box 201001  
Helena MT 59620-1001

Michael T. Tooley, Director

Steve Bullock, Governor

August 17, 2016

TO: Megan Moore, Research Analyst  
FROM: Dave Ohler, Chief Legal Counsel  
RE: Gallatin Gateway Water and Sewer District

I am writing in response to your request for additional information concerning the Gallatin Gateway Water and Sewer District's ("Gallatin") letter to the Revenue and Transportation Interim Committee. The principal point that Gallatin appears to be making is that the definition of "utility" in MDT's administrative rules is erroneous as applied to Gallatin and the relocation of utilities statutes in 60-4-401, MCA, et seq. More particularly, Gallatin believes that, with respect to relocation of utilities, MDT's administrative rule improperly references the definition of public utility in 69-3-101, MCA. That definition excludes county water and sewer districts from the definition of a public utility.

The administrative rules discussed by Gallatin were adopted to implement two statutes. The first, as noted by Gallatin, is the grant of rule-making contained in 60-4-402, MCA, which pertains to reimbursements to utilities with respect to relocations costs. The second statute is 60-3-101, MCA, which grants the Department rule-making authority to comply with the provisions of federal law in Title 23, U.S.C. Federal law and regulations require MDT to adopt rules for both utility relocations and the locating of utilities within our right-of-way. 23 C.F.R. Part 645.

I have reviewed our administrative rule and the statutes concerning relocation of utilities and agree with Gallatin that MDT's administrative rules are unclear with regards to the relocation of utilities statutes. The administrative rules concerning utilities have not been amended for 20 years, and the Department is taking a comprehensive look at all of these rules, including the administrative rule defining utility.

Let me know if you or the Committee has additional questions.