

**Bridge Enterprise Board
Regular Meeting Minutes
Thursday, August 15, 2013**

PRESENT WERE: Gary Reiff, Chairman, District 3
Shannon Gifford, District 1
Ed Peterson, District 2
Heather Barry, District 4
Kathleen Gilliland, District 5
Kathy Connell, District 6
Douglas E. Aden, District 7
Sidny Zink, District 8
Leslie Gruen, District 9
Bill Thiebaut, District 10
Steven Hofmeister, District 11

ALSO PRESENT: Don Hunt, Executive Director
Heidi Humphreys, Director of Admin & Human Resources
Debra Perkins-Smith, Director of Division of Transportation
Development
Mike Cheroutes, Director of HPTE
Scott McDaniel, Director, Staff Services
Herman Stockinger, Director of Policy and Government Relations
Amy Ford, Director, Public Relations
Barb Gold, Director, Division of Audit
Ryan Rice, Director, Operations Division
Tony DeVito, Region 1 Transportation Director
Tom Wrona, Region 2 Transportation Director
Dave Eller, Region 3 Transportation Director
Johnny Olson, Region 4 Transportation Director
Kerrie Neet, Region 5 Transportation Director
Kathy Young, Chief Transportation Counsel
John Cater, FHWA
Vince Rogalski, Statewide Transportation Advisory
Committee (STAC)

AND: Other staff members, organization representatives,
the public

Chairman Reiff convened the meeting at 1:55 p.m. in the CDOT Headquarters building at 4201 E. Arkansas Avenue, Denver, CO.

Audience Participation

The Chairman noted that no members of the audience had signed up to address the Board of Directors.

Act on Consent Agenda

Chairman Reiff stated that the next thing on the Agenda was action on the Consent Agenda. Director Connell moved for approval of the Consent Agenda. The motion was seconded by Director Gilliland. Chairman Reiff asked if there was any discussion of the motion and hearing none he asked for those in favor

to signify by stating Aye and asked for those opposed to state no. Chairman Reiff stated that the motion had passed unanimously.

Approval of the Regular Meeting Minutes for June 20, 2013

Resolution #BE-139

Approval of Regular Meeting Minutes for July 18, 2013

BE IT RESOLVED THAT, the Minutes for the July 18, 2013 meeting of the Bridge Enterprise Board of Directors are hereby approved by the Bridge Enterprise Board as published in the Agenda for the August 14 & 15, 2013 meeting of the Bridge Enterprise Board of Directors.

Resolution #BE-140

BE IT RESOLVED THAT, the Revised Budget Adjustment Policy is hereby approved by the Bridge Enterprise Board.

Resolution Number BE - 140

Revise Budget Adjustment Policy

Proposed to the Bridge Enterprise Board of Directors on: August 15, 2013

WHEREAS, pursuant to 43-4-805(2)(a)(I) C.R.S., the Colorado Bridge Enterprise was created as a government-owned business within the Colorado Department of Transportation ("CDOT"); and

WHEREAS, pursuant to 43-4-805 C.R.S., the Bridge Enterprise is to operate as a government-owned business within the Department of Transportation and shall constitute an "enterprise" for the purpose of Section 20 of Article X of the Colorado Constitution so long as the Bridge Enterprise retains authority to issue revenue bonds and received less than ten percent (10%) of its total annual revenues in grants, as defined in C.R.S. 24-77-102(7), from all State and local governments combined; and

WHEREAS, the business purpose of the Bridge Enterprise is to finance, repair, reconstruct, and replace Designated Bridges (as defined in 43-4-803(10), C.R.S.) in the State, and as agreed to in the Master Agreement between the Bridge Enterprise and CDOT, maintain the Designated Bridges it finances, repairs, reconstructs, and replaces; and

WHEREAS, Section 43-4-805(5)(f), C.R.S. authorizes the Bridge Enterprise Board to enter into agreements with the Colorado Transportation Commission or CDOT; and

WHEREAS, in furtherance of the business purposes of the Bridge Enterprise the Bridge Enterprise Board has determined it necessary and appropriate to delegate authority to the Bridge Enterprise Director to move non-project related budget within and between the approved budget categories, so long as the changes net to zero; and

WHEREAS, the following non-project related Bridge Enterprise budget categories are not considered administrative: Regional Scoping Pools, Maintenance, Preservation and Bonding Program / Debt Service; and

WHEREAS, this budget adjustment policy is intended to improve efficiency and reduce the number of minor budget revisions brought to the Bridge Enterprise Board.

NOW THEREFORE BE IT RESOLVED, the Bridge Enterprise Board hereby resolves to delegate authority to the Bridge Enterprise Director to move non-project related administrative budget within and between the approved administrative budget categories, so long as the changes net to zero.

Herman J. Stockinger III
Herman Stockinger
Secretary, Bridge Enterprise Board of Directors

9-11-13
Date

Discuss and Act on Resolution to Approve the Revised Budget Adjustment Policy

Chairman Reiff mentioned that the next item of business was a resolution on the Revised Budget Adjustment Policy.

Julie Becker mentioned that last month Ben Stein submitted a resolution to the Board with the intention of providing the Bridge Enterprise Director authority to move budget related items that were non-project related administrative budget within and between the approved administrative budget categories, so long as the changes net to zero. This resolution clarifies that the following non-project related Bridge Enterprise budget categories are not considered administrative: Regional Scoping Pools, Maintenance, Preservation and Bonding Program/Debt Service.

Chairman Reiff asked if anyone had any questions and if there was any discussion on the item and hearing none, Director Gilliland motioned for the approval of the Revised Budget Adjustment Policy and Director Connell seconded the motion. Chairman Reiff asked for those in favor to signify by stating Aye and asked for those opposed to state no. Chairman Reiff stated that the motion had passed unanimously.

FASTER Lawsuit Update

Kathy Young mentioned that she had very good news today and that she would introduce then turn the presentation over to the Lead Attorney, Special Attorney General, Mark Gruskin. Ms. Young also took this opportunity to give recognition to co-counsel Harry Morrow and Megan Rundlet of the Transportation Unit. Mr. Gruskin went on to state that "WE WON!"

Mr. Gruskin gave credit to the witness for the case. Mr. Gruskin stated that it was an interested trail with extraordinary witnesses. Mr. Gruskin thanked the witnesses in the case: Don Hunt, Ken Szeliga, Ben Stein, Josh Laipply and stated that they really painted the picture of what this exercise was all about. Not only what its goal is, but what we hoped to accomplish.

Mr. Gruskin informed the Directors that the plaintiffs have another three weeks to decide if they are going to appeal. Mr. Gruskin anticipates that they may appeal with the Colorado Board of Appeals, but that we created an extremely factual record and Judge Martinez viewed it as such. Ms. Young & Ms. Rundlet will tell you that they did not do anything, but that is not true.

Lastly, Mr. Gruskin wanted the directors to know that they came in 25% under budget.

The Colorado Bridge Enterprise (CBE) has been awaiting a decision stemming from the two-day bench trial held before Judge Michael Martinez of Denver District Court on May 13-14, 2013. On July 19, 2013, Judge Martinez issued his final order and CBE won on all issues. The trial stemmed from the TABOR Foundation's (Plaintiff) challenge of the bridge safety surcharge fee, which the Legislature enacted as part of the FASTER legislation, as a tax, not a fee, requiring a vote of

the people. Plaintiff also challenged bonds issued by CBE as being in violation of TABOR.

Judge Martinez issued Findings of Fact and Conclusions of Law on July 19, 2013. Judge Martinez ruled in favor of the CBE on both issues raised by the Plaintiff. Judge Martinez concluded that the bridge safety surcharge was indeed a fee and not a tax and held that CBE was an “enterprise” under TABOR because it did not receive impermissible “grants” from CDOT exceeding the 10 percent limitation on state and local government revenue in any fiscal year. The Court concluded that federal money provided to CBE was exempt from the 10 percent limitation and the value of bridges transferred by CDOT to CBE for replacement or repair did not violate the 10 percent limitation. Therefore, bonds issued by CBE without a vote of the people did not violate TABOR. The Court’s ruling and trial record provide little basis for an appeal, but Plaintiff’s counsel indicated prior to trial that an adverse judgment against the TABOR Foundation would be appealed. Plaintiff must file a Notice of Appeal on or before September 6, 2013.

Mr. Hunt went on to mention that Mr. Gruskin & the legal team took this case very seriously.

Project Highlight: Pecos over I-70 Bridge Move

Tammy Mauer went on to present a time-lapse video highlighting the bridge move and “50-hour closure of I-70” including:

- Offsite bridge fabrication
- Demolition of existing Pecos Street structure
- Bridge move via SPMTs

CDOT successfully replaced the Pecos Street over I-70 Bridge using various innovative accelerated bridge construction techniques including: off-site fabrication of the replacement structure and tracking (or moving) a 2,400 ton (or approximate 5,000,000 pound) structure into place using self-propelled Modular transporters (or SPMTs).

Director Barry declared that it was an awesome experience and it was really exciting to see the bridge actually moving. Director Barry commented on the crowd and that folks even camped out to be part of this great experience. “If CDOT plans similar projects in the future, we should take the opportunity to leverage some of the interest that the community has in projects like this one.” Lastly, Director Barry complimented the engineers on their nice work in completion of the Bridge Move.

Director Gilliland wanted to highlight the time-saving factor of such a project and the fact that this innovative project impacted the public for a very small margin of time. Director Gilliland mentioned that when you think back to a couple of years ago, how long that road would have had to be closed, traffic re-routed to accomplish this project. Director Gilliland complimented the Technology and the fact that CDOT is using it to the best of our abilities.

Monthly Progress Report

Tim Harris presented the update as follows:

Program Schedule

- Program schedule updated for work complete through July 2013
- July Schedule Performance Index (SPI) = 0.92
 - Reflects a 0.02 INCREASE from previous month
 - June SPI = 0.92
- Over-performing projects
 - 12 projects (4 more than last month) with \$16.7M in combined Earned Value (EV) greater than planned
 - Increases overall program SPI by 0.05; a 0.01 increase from prior month
- Under-performing projects
 - Non-Railroad projects (Lost SPI \geq 0.01)
 - 2 worst projects (1 less than last month) with \$11.8M in combined lost Earned Value
 - Reduces program SPI calculation by 0.03; a 0.02 decrease from prior month
 - Railroad projects
 - 11 Railroad projects with \$12.1M in combined lost Earned Value
 - Reduces overall program SPI calculation by 0.04; a 0.01 increase from prior month

Major Achievements (July workshop – August workshop)

- Favorable ruling in FASTER Lawsuit
 - Released July 19, 2013
 - the Court finds and hereby declares that the CBE was an "enterprise," as that term is defined in the applicable TABOR provisions, C.R.S. § 43-4-805(2), when it properly assessed the bridge surcharge safety fee and issued revenue bonds in fiscal year 2010-2011, and did not violate TABOR
 - Program Reporting
 - Completed Bond Allocation Plan Update
 - Completed Q3 FY2013 Quarterly Report
 - Work complete through May 31st
 - Drafting Q4 FY2013 Quarterly Report
 - Present Prioritization Plan at PE III meeting
- Design/Build Procurements
 - Region 2: Ilex Design/Build Project RFQ (Pueblo, CO)
 - Short list released July 22, 2013
 - Edward Kraemer & Sons, Inc. (Kraemer) / Tsiouvaras Simmons Holderness (TSH)
 - Flatiron Constructors, Inc. / HDR Engineering, Inc.
 - Ralph L. Wadsworth Construction Co. (RLW) / Michael Baker Jr., Inc. (Baker)
 - Region 1:
 - F-17-DM: SH 88 ML over Cherry Creek (Arapahoe County, CO)

- Completed One Bridge
 - Region 1
 - F-16-CS: SH 121 ML (Wadsworth) over Bear Creek (Denver, CO)

DBE Participation; Quarterly Update

- From **3/1/2010 – 6/30/2013**, State & FHWA-funded BE construction contracts* continue to help CDOT exceed its overall DBE goal through the following achievements:
 - 3 DBE Prime Contracts Awarded = \$ 7,014,350
 - 283 DBE Subcontracts Awarded = \$29,142,553
 - 286** Total DBE Contracts Awarded = \$36,156,903
 - Overall DBE Participation on BE Contracts = **16.6%**

* Design-Bid-Build only

** The 286 total contracts went to 100 individual DBE firms

Formal Nomination of the New Chairman & Vice Chairman

Chairman Reiff stated that there needs to be a formal election for the Board of Director's Chairman and Vice Chairman. Commissioner Gruen stated that it was his great pleasure to nominate Director Douglas Aden as Chairman and Director Ed Peterson as Vice Chairman. The Chairman also re-nominated Herman Stockinger as the Secretary. The move was seconded by Director Hofmeister. Chairman Reiff asked if there was any discussion of the nomination and hearing none he asked for those in favor to signify by stating Aye and asked for those opposed to state no. Chairman Reiff stated that the nomination had passed unanimously.

Adjournment

Chairman Reiff asked if there were any more matters to come before the Bridge Enterprise Board and hearing none, Chairman Reiff announced the adjournment of the meeting at 2:12 p.m.

Herman Stockinger, Secretary
Colorado Bridge Enterprise Board

Date