

**Resolution #TC-15-3-2****Approved by the Commission on March 19, 2015**

BE IT HEREBY RESOLVED THAT, the Transportation Commission's Special Workshop Meeting Minutes for February 5, 2015, are approved as published in the official agenda of the March 18 & 19, 2015, meeting.

**Transportation Commission of Colorado  
Special Workshop Minutes  
February 5, 2015**

**Chairman Ed Peterson convened the meeting at 8:40 a.m. in the auditorium of the headquarters building in Denver, Colorado.**

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

ALSO PRESENT: Don Hunt, Executive Director  
Scot Cuthbertson, Deputy Executive Director  
Josh Laipply, Chief Engineer  
Scott Richrath, CFO  
Herman Stockinger, Government Relations Director  
Mike Cheroutes, Director of HPTE  
Brett Johnson, Director of the Office of Major Project Development  
Tony DeVito, Region 1 Transportation Director  
Kathy Young, Chief Transportation Counsel

AND: Other staff members, organization representatives,  
the public and the news media

An electronic recording of the meeting was made and filed with supporting documents in the Transportation Commission office.

**Staff Presentation**

Chairman Peterson welcomed everyone to the workshop on the I-70E Project. He stated that the morning would begin with a staff presentation and that public comment would open after that.

Scott Richrath began the staff presentation by thanking everyone for their attendance. He stated that he would briefly walk through the process CDOT has gone through the get to today and the decision that would be made today and then hand it off to Brett Johnson, the Director of the Office of Major Project Development. He stated that it had been over a year since he stood before the Commission and presented a Value for Money Analysis, a draft analysis of what Bridge Enterprise and other funding was available. He stated that he would present the current funding scenario during the presentation. First, he wanted to take the Commission through the events that have occurred since the presentation 13 months before. He stated that there have been several Commission workshops and an extensive public engagement effort that Peter Kozinski, Rebecca White and Kirk Webb are able to speak to. He stated that staff has been through a variety of scoping analysis looking at not only the aspects of replacing the Viaduct itself but also the aspects of carrying that project out east of the Viaduct, taking it as far as I-225/Pena Blvd. Today the Commission is examining a second draft of a Value for Money Analysis done by Macquarie, advisors to the Department. A Value for Money Analysis is intended to look at sources and uses of funds, how one goes about financing and delivering a project with as many sources, uses and moving parts as are before the Commission.

He stated that the plan is to move toward a regularly scheduled February 19, 2015, Commission meeting where staff will present to the Commission a recommendation on delivery method and financing mechanism. That leads staff to a Request for Qualifications (RFQ). Many people are familiar with a Request for Proposal (RFP), but the Department is not yet at that stage. They must first look at what industry participants qualify to handle a project of this magnitude. The February 19 decision that staff will ask of the Commission and the Board will be one more step forward to ask for an RFQ.

He stated that 2014 was a very busy year for I-70 East. He already discussed the presentations on the first draft of the Value for Money Analysis. They have discussed the importance of risk transfer and why Public-Private Partnerships (PPP) have been used across the country to take some of that risk away from the taxpayers and the public sector and transfer it to the private sector. Brett will discuss that further today. Today staff will also drill down into the decision about delivery method and financing mechanism. He stated that he wanted to touch on some of the outreach that CDOT staff has undertaken in getting the message out to the public on the importance of this project. The project is not only a CDOT project; it also involves DRCOG, the City and County of Denver, and a number of other stakeholders. This is not only a local project but also a project that has statewide significance and that has been a Bridge Enterprise project since FASTER legislation was introduced in 2009. This is one of the 30 poorest bridges in the state of Colorado. There has been significant public outreach and research and analysis on the project. Through the NEPA process, the Department received a great deal of very valuable public comment. There were approximately 900 comments, which sounds like a lot but FHWA said that for a project this size, that number would be expected. The Department has responded to those comments.

In December 2013, Macquarie presented the Value for Money Analysis to the Transportation Commission. In January 2014, he stated that he presented the staff

analysis of Value for Money. In January 2015, staff provided the Commission with an update and a second summary of that draft. Staff walked the Commission through a month by month process. They described the outreach process to the Commission. In December 2014, staff asked Commission to take clear stand on the scope of the project, and the Commission stated that this was not a project if it only moved the bottle neck from the Viaduct to the east. The scope of the project should go all the way to I-225. With that guidance staff has conducted analysis since that point. Colorado Bridge Enterprise estimates that the footprint of the Viaduct is approximately an \$850 million undertaking. The Enterprise does not have \$850 million in the bank. It has about \$100 million in the bank, but it also has the ability, statutorily and financially, to bond against future FASTER revenues in order to leverage more than \$100 million. Staff analysis to date stated that the Bridge Enterprise could leverage \$750 million of Bridge Enterprise funding not only to replace the Viaduct as it is but to also add additional capacity. DRCOG has passed by resolution of its Council \$50 million to this project. Senate Bill 228 funding is contingent upon a number of things occurring. The first trigger occurred when the economy in Colorado grew enough in 2014 to put SB 228 funding into motion. Unfortunately for CDOT, there is a back end trigger that states when TABOR refunds occur, that reduces by either 50% or 100% the amount that SB 228 that would be transferred to CDOT. That is a five year trigger. Once that occurs, CDOT has five years in which they could receive or be eligible for SB 228 funds, but CDOT does not necessarily get them in each and every year. CDOT will also not receive 100% of the transfer in years where the TABOR refund reduces the amount. What had the potential to be a \$1 billion transfer from SB 228 over five years at \$200 million per year with 10% statutorily dedicated to transit has been reduced according to the most recent forecasts to \$200 million over five years. Again, with 10% to transit, that leaves approximately \$180 million to highway and bridge programs. That is the \$180 million that is presented today. He stated that it is important to point out that those are not the only funds CDOT has to work on this project. There are Bridge Enterprise funds under FASTER. Under Asset Management and RAMP , CDOT has grown the preservation of preventative maintenance of statewide assets, and that includes \$30 million per year from RAMP to the Bridge Program for what today has been preventative maintenance of non-poor bridges (good and fair bridges), keeping them from falling into poor and keeping them from going to the Bridge Enterprise.

Commissioner Aden stated that it is important for the public to understand that there is not consensus on the projected SB 228 transfers. The Legislative Council forecast says that they will only get the transfer for one year. If that happens, there is only a \$90 million transfer, and there is a \$180 million gap. It is important to understand that risk exists, and he asked where that money would come from if that happened. He also asked about what impact that would have on the rest of the program and the rest of the state.

Scott Richrath stated that Commissioner Aden was correct. That \$180 million is a forecast from CDOT staff that looks at the Legislative Council forecast coming from the Legislature and the forecast from the Office of State Planning and Budget coming from the Executive Branch. They deviate immediately in year two. Using CDOT's own revenue analysis consultant, that is the number that staff has projected; it is not a certain number. March 20 will be the date that CDOT will receive the next Legislative

Council and OSPB forecast. Even with that \$180 million, staff comes to the Commission to present a \$90 million gap with no recommendation on how to fill that gap today. They have discussed what to do in the event that the \$180 million does not come through. That is not a decision staff has asked Commission to make at this point. But there is not a staff recommendation on how to fund the \$90 million balance of this project.

Macquarie; Stifel, CDOT's financial advisor; the High Performance Transportation Enterprise (HPTE), directed by Mike Cheroutes; and the Office of Major Project Development have been working with the same number: \$1.17 billion for this project.

Brett Johnson stated that they had discussed the \$850 million of funding from the Bridge Enterprise. As Scott mentioned, that is not cash in hand but essentially the purple area on graph. There are some details on the list of the purple area describing how they are working to pay for the project. The blue area on the bottom represents outstanding bond payments that have already been issued by the Bridge Enterprise for other bridge projects. The green area represents a few different things. First and foremost, the I-70 corridor represents about 61% of the total bridge deck. However, from a policy perspective, staff wants to constrain and ensure that they 50% of the total revenue for other future bridge projects. He stated that for the rest of the presentation, when they discuss what is affordable, it will be in reference to the purple area and what the Department can pay for this project in the future.

He stated that ultimately the purpose of this public meeting and the discussion around what method of delivery to offer is a decision between Design-Build or two forms of PPP: Design-Build-Operate-Maintain (DBOM) or Design-Build-Finance-Operate-Maintain (DBFOM). In a traditional Design-Build, it is leveraging some type of public partnership to help design and build the program. What staff has found in terms of affordability is that the risks of operating and maintaining this asset over time, if shifted to the public sector, may make a lot sense when accounting for the cost of building the project as well as maintaining the asset. When the comparisons are examined, one of the larger differences is in who holds the debt. In both a Design-Build and a DBOM, where a contractor designs and builds and is responsible for operating and maintaining, CDOT is still the obligor of the finances. CDOT is the one issuing the bonds secured by Bridge Enterprise revenues in order to pay that back. In the DBFOM model, the private sector is also leveraging their capital to finance the project. In that situation, CDOT would be paying a fixed availability payment that would represent not only the costs of building, operating and maintaining but also relying on that private contractor to come up with the finances to pay for all of these. That purple area, once again, would represent where CDOT would find the source to pay this availability payment. But again CDOT would not be the issuer. In terms of previous history, it should be of note that Design-Build is a common practice of building projects. Just in CDOT since 2008, there have been 28 projects within a Design-Build feature. In terms of a DBOM in terms of identified transportation project, this is probably one of the least-defined in terms of projects nationwide for transportation. There have been some examples internationally and through water treatment facilities of this model. The only two of recent note for DBOM examples for transportation have been in Texas and Arizona. DBFOM for transportation has been slightly more defined, and there are a number of nationwide examples of this. Of note

in Colorado, there have been two projects using this model. There are about 65 projects nationally. "Off-the-shelf" may not be the best way to describe it, but there is a little more data about how these look.

Within the discussion of project affordability, he presented a very simple graph from a present-value basis. When discussing project affordability, it is a discussion about the total cost of project based on the model vs the constraints on what the Department has to pay. In all three comparisons, there are bars in orange and blue to represent what the actual project would cost under those components. The red dotted line is essentially the capacity: whether those costs can be fit into the purple area from the initial graph. Design-Build appears to be the least affordable in terms of the constraints on revenue; so the options moving forward are really DBOM and DBFOM. The most significant difference between those two is essentially the contingency. It is discussion about what CDOT would be responsible for paying and what the private contractor would be responsible for paying. In DBOM model, CDOT would have to account for certain contingencies if there were cost overruns, maintenance overruns, and operations overruns. There would be a threshold in which CDOT would have to budget for the possibility and make a budget buffer of some kind in order to pay those contingencies. The form of that could be borrowing for a reserve or just tightening the coverage or available revenue to pay on the purple area. But it has to be accounted for as opposed to DBFOM. When the Department passes along some of the risks of future cost overruns in the DBFOM component, it is no longer necessary to account for as much contingency because of the risk that the public contractor or concessionaire is assuming, as well as whatever amount of equity may be determined as part of that deal.

He stated that moving on from project affordability, CDOT staff has assessed many different risks based on each one of these programs, from the upfront process of NEPA permitting to financial risks as well as ongoing costs of maintaining the asset. There are three starred areas in the table that have the greatest significant difference between DBOM and DBFOM. These are project financing schedule, life cycle maintenance costs and long term security costs. Project financing schedule is how complicated and how certain are the deals to put together. DBOM offers certain protections that protect CDOT in some future contingencies but not all of them. The part of the product of DBOM is more of a bundle in which a contractor may guarantee assurances and components of that. CDOT would also be responsible for issuing the debt structure. There are more steps in the process and more undefined steps in the DBOM as opposed to the DBFOM. When discussing the project financing schedule, there could be other associated risks with that. If the project is delayed because of these complications of getting these things together, there could be other risks associated with that. There are interest risks if it is not possible to go to the market and price soon rather than later. Staff knows what interest rates are today but does not know what interest rates will be six months from now. There is at least a greater amount of certainty about the package with DBFOM than with DBOM. In terms of life cycle maintenance costs, the reason why both DBOM and DBFOM are more affordable is the fact that CDOT is leveraging some amount of risk (one greater than the other) of the private sector maintaining this asset. They have skin in the game; whereas, on the public side, it is arguable that based on future budget constraints, the Department may not be able to maintain this as well. When the

Department leverages a private entity to maintain the structure, it comes with strings attached. On the DBFOM side in particular, there is an availability payment that has components of performance of the asset associated with what the Department is paying. It is not a fixed principle and interest cost with some future operations and maintenance costs. It is attributing components of performance associated with this availability payment that helps add a carrot to making sure that this asset is maintained over time. With long term security costs the discussion again becomes about what those protections are for CDOT. He stated that there are certain protections in both DBOM and DBFOM. In DBOM may include some protections like some kind of reserve, assurances, contractor guarantees, etc. Of course, when the Department shifts a lot of those risks along to the contractor, they are mitigated even further in the DBFOM model.

In terms of broad scoping conclusions, staff views DBOM and DBFOM the more optimal case for this. It should be noted that the discussion is about a project that is large in scope. When discussing the affordability, it is important to understand that when moving into risk transfer and the questions around that as well as risk tolerance, it is a matter of assessing what level of risk tolerance that the Department has. The Commission has to decide if it wants to transfer more of that risk to the private sector to make a more predictable payment within the DBOM and DBFOM models.

He stated that Scott Richrath mentioned next steps. Staff is looking in this public hearing and in the future to assign where this project is going to go in terms of delivery method. As Scott mentioned, this does not lock in a method. There is still a long process of engagement with industry. There is an RFQ out that is not yet even an RFP. Staff is at a place where they want to engage with contractors who are qualified to be partners with the Department. Staff also wants to emphasize that at every step they have been engaging with the public about this issue. This will continue. With every step that is taken, there will be components of public engagement about this project.

Ed Peterson stated that they would move into public comment. He reminded everyone that this was a very focused workshop. He thanked everyone for attending the meeting and their willingness to speak to the Commission, and he stated that the Commission valued their input and the time they had taken out of their day to attend. He then reminded everyone that purpose of the meeting is focused on how to deliver the I-70E project and whether or not PPPs provide the best value for Colorado. While the Commission does not want to prevent anyone from making the remarks he or she feels is appropriate, this meeting is not about the ongoing Environmental Impact Statement for I-70E or the merits of the current preliminary identification preferred alternative. He reminded everyone that each person had three minutes and asked those speaking to be respectful of everyone's time. He asked those who wanted to speak to the Commission to go to the podium and speak into the microphone.

### **Public Comment**

Anne Elizabeth stated that she is from Globeville and that her center of gravity is the neighborhood planning process and the National Western Center Advisory Committee

and the realities of day to day life where all of these incredible projects that are in the planning stage and unknown futures come together. She stated that she first wanted to say that she appreciated the step toward transparency that is manifested in this room. She hoped it could broaden, continue and deepen. With enough time, a lot of constituent citizens could understand what these formulas are and how formidable these decisions are. She has learned how decisions have to be made with percentages of unknowns. This is a process. That is the window she wanted to address from the point of view of the neighborhoods. On the day to day life of what is unfolding as the Commission asks questions about risk and doing the project, she wanted to reinforce that they are talking about the daily lives of people in generations in very stable neighborhoods where there are among the highest owner occupancy and many stories of people who grew up from grade school and have grandparents who worked in the original industries. This is a legacy. She stated that she hoped the questions would revolve around that. It is a very formidable sense of being overwhelmed that many people on all sides disagree with what the risks are of different types of partnerships and what the risks are of the design of the project and what the risks are of the whole future of the vital economy. She stated that she hoped the questions would continue to be rigorous. She asked for an elaboration on the statement in the Value for Money that the Unknown HAZMAT Risk is high in all categories. She asked for some details on that. She stated that finally she supported more education and outreach into the neighborhoods so that more people can engage with a full understanding of the process. She stated that she lamented the lack of civics in the schools. She stated that there is a big gap between the process in the room and people understanding what is going to impact them in their daily lives in the neighborhoods. She appreciated everyone in the room on all sides that are challenging this and trying to help people understand what is at stake because there is so much that is unanswered and uncertain. It is necessary to work together to get the bottom lines of what life is going to be like, what is the future vision of the city and how these decisions impact it. It could be extraordinary and it could be things other than extraordinary. She thanked the Commission for the opportunity to speak.

Dennis Gallagher, the auditor for the City and County of Denver, stated that it was a joy to be at the meeting. He stated that he is very concerned about the I-70 expansion. He stated that he was speaking as the elected auditor for the city. The cost of this project is indefensible. \$1.2 billion for 1.8 miles makes this project between 1.7 and 22 times more expensive per lane mile than TREX and up to 13 times more expensive than the proposal to rebuild I-70 through the mountains from Golden to Silverthorne. CDOT proposes funding \$850 million through the state's road and bridges fund. \$850 million is every dollar for 8.5 years to this project with not one penny to roads and bridges for the rest of the state. None of the financials shown today show the interest in finance cost for building the project. Debt service is not included. As an auditor that is concerning. In today's price for an ounce of gold, he stated that he figured it would be possible to pave the highway over 78 times at the same thickness the gold on the Dome was just replaced. To paraphrase William Jennings Bryan, do not crucify North Denver on a highway paved in gold. He stated that they should not leave the city uglier than they found it. The ancient Greeks swore an oath to make the city more beautiful than they found it. That means financially as well. He stated that he hoped the Commission would reexamine and reconsider.

Commissioner Gruen asked Dennis Gallagher if he was speaking personally or for the City. Dennis Gallagher stated that he was speaking personally and was not quite sure what the City's position was. Commissioner Gruen stated that this is a vitally important project for the City of Denver.

Charles Ward, Vice President of Public Affairs from the Denver Metro Chamber of Commerce. The Denver Metro is a membership organization including 3000 businesses located up and down the Front Range representing over 300,000 employees with business interests across the state. He stated that he was before the Commission primarily to support the use of PPPs in Colorado for major projects, when it makes sense. He stated that included that caveat because he understands that it does not always make sense. It is an innovative financing project that first showed up in Colorado on US36 at a state level but it has been used for a number of different projects across the state and around the country for years. It is not a new means of delivering a major project, but it is an efficient means to draw in other financial resources to help complete in a timely manner those projects that are very important to the business community in Colorado. I-70 in particular could be called the "aorta" through the state. It is certainly a key conduit for transit, for commercial, operations and business. This is also true of when people go to the mountains. It is a part of the "brand" of Colorado. On the particular project facing the Commission today to the extent that it does facilitate completion of the project in a timely manner they strongly supports the use of a PPP on the project and strongly give their support to solving the problem. The risk that people face with the current stretch of I-70 from a safety perspective and from an adequacy perspective, they urge the Commission to approve a plan that is going to provide relief and stability to that corridor.

John Prosser stated that he knew some of the Commissioners and had never had the opportunity to meet others. He lives at 390 Emerson Street in Denver. He has been an urban designer and architect for 52 years in Denver. He stated that he has no vested interest in this project and wanted to ensure that was clear to the Commission. He stated that he was also a member of the Urban Land Institute and was on their Community Development and Affordable Housing Councils for 20 years. He worked on approximately twenty different interstate systems both in the US and overseas. The last one he did was a 100 mile corridor between Dublin and Belfast that was a PPP type of project. He stated that what he wanted to do this morning was to be a messenger. He had a letter from the Iliff School of Theology at Denver University (DU). That letter now has over 380 signatures. He provided a copy of that letter to the Commission. He stated that he also has a letter that he personally sent to the Governor and to the mayor that shows the functional problems of this. He stated the reason he could speak to this is because he first started doing Environmental Impact Assessments in 1971. The largest one that he did in Colorado was 160 square miles in Summit County. He stated that he was speaking as an expert in that because he taught the course at the University of Colorado for several years, and he helped come up with all the methodology at what was known as the Rocky Mountain Center of Environment. He asked the Commission to look at the two letters to see what information is there. One is on the ethics, and the other is on what is the function. In his opinion, based on the analysis he has done over the last two

and a half years, this project is headed for disaster. He thanked the Commission for the opportunity to address them.

Frank Sullivan stated that he lives in Park Hill and is a retired instructor of biology for Front Range Community College. He became very interested in this project a number of years ago when he and his oldest grandchildren would go swimming at the swimming pools in Swansea and Elyria. As he sat at the swimming pool watching the kids, he would look south and see the highway from a perspective he had not seen previously. He would ask himself and his kids why that interstate was there and why it should be there. He asked why not something else. He spent a number of years looking at this and asking the same questions: why is it there and why not something else. He kept getting the answer, even as recently as this past week, "The train has left the station. Stop concerning yourself about that. This highway is going to be built just as the Colorado Department of Transportation has suggested it is going to be built." He stated that he came here today to state that they do not have the money to do that. He asked why they do not look at alternatives that the Department can afford and is probably more beneficial to the neighborhood, the northern part of the city, and the surrounding areas. He stated that he understood they were supposed to be focusing on the program laid out for this morning but that he still saw a \$90 million shortage of funds, which is probably actually greater than that. He also stated that all of the expenses have probably not been delineated at the present time. He asked why the Commission would embark upon something that seems to be failing at the beginning. He asked why not spend the Commission's time more productively looking at something affordable, something that people will be proud of in subsequent years. He thanked the Commission for their time.

Keith Howard stated that he lived in the Sunnyside neighborhood, which is a neighborhood directly affected by Interstate 70 as it forms the northern boundary. He stated that he is also involved with the group United North Metro Denver. He stated that he did not have any particular expertise but that he could only offer the Commissioners from the view of a reasonably informed and interested citizen how this process and this financing appears. The public document for discussion today says that CDOT does not have \$1.8 billion but that it has some money to start the project, the first phase. It seems like as a Transportation Commissioner, one would want to be sure to be able to finish whatever project one starts. Of course, the \$1.8 billion price tag is not new; the people have heard that figure for a number of years. Commissioners are being asked to backfill part of the \$1.2 billion with an unknown quantity of money from Asset Management. The rest of the project, a few subsequent phases would have to be accomplished. He stated that to him it looked like the Commissioners are proposing in effect to write a very big blank check. He stated that he thought the voters would help the Commission out of this problem if they were asked if the project should go forward in the present configuration at the present cost. He stated that the Commission needed a miracle, and the one on offer was a PPP. That is the 21<sup>st</sup> century version of the miracle of the loaves and the fishes where a constrained funding source by some miraculous process satisfies a multitude of greedy appetites. But to his mind the real miracle of the PPP is that the voters have no chance to look over the final proposal and say no. It seems to be a dangerous path to continue forward on. The funding situation for infrastructure in Colorado is bad. That is one thing that everyone in the room could agree about. To continue to deceive

the public that expensive projects can be procured at no cost to them in taxes is fundamentally self-defeating and a mistake. He thanked the Commission for their time.

Jude Anillo stated that she is a retired social worker and would not give the Commission her lecture around social justice on this issue. But she stated that last night she saw the US Secretary of Transportation Andrew Foxx. She stated a few points he had made were interesting that she would like to elaborate on. One was that he was saying with transportation, there are two issues that really need to be looked at. One of them is the changes in transportation. They talked about the self-driving cars and how it is necessary to look at the needs for transportation very differently. She stated that is one thing she hoped the Commission was looking when deciding whether or not to pay for a project like this. The other one, being a retired social worker, was very near and dear to her heart because he said that many times people define the problem incorrectly. She stated that she believed that is what happened in this situation. She stated that the problem has been defined as lack of capacity when the real issue, at least for part of I-70 specifically the part that goes through the heart of Old Denver, is that the interstate is picking up all this local traffic that is stymied because of 56 dead ends in the area. Then they get on the highway, and it gets clogged because there are very few exits. She stated that what she currently saw the Commission doing was talking about paying for a project when the problem has been defined incorrectly. The problem is not more capacity. If the Commission looks at all the cities right now that are looking at changes in their highways, almost all of them are the areas where it is going through an old neighborhood and usually a poor neighborhood of town. That is her concern. She had clients in that area and saw all the negative effects that that highway had on people. The money would be much better spent on truly doing what the highway is supposed to do: interstate travel. If the money was spent on improving I-270 and I-76 for this small part of the highway. At one time 6<sup>th</sup> Avenue was supposed to be a highway. It is possible to see how it is a highway for a while, and when it gets into a town, it is a boulevard; and that works. She stated that this is what she would like the Commission to consider here. Also, the Commission should remember the mistakes that have been made before in spending money like the Bridge to Nowhere in Durango. A lot of money was spent on that, and people cannot get anywhere on that. If the Commission funds this project, they will be funding a parking lot.

Commissioner Peterson stated that concluded the list of members of the public who signed up to speak. He asked if there was anyone else in the room who wished to address the Commission. Seeing none, he again thanked everyone who took the time to come to the meeting and address the Commission. He also stated that he received an email from Steve Kinney. He asked that hard copies be distributed to the Commission. With that he concluded public comment.

### **Commission and Board Discussion**

Commissioner Reiff thanked all the members of the public who both came and spoke. The public process is incredibly important to the Commission. He stated that the Commission has tried to and been very vigilant about keep executive session to very narrow matters of contracting that the Commission would not want released before a

public bid that would lead to noncompetitive purposes. He wanted to be clear that the Commission has tried to keep as much as possible in the public session because they believe the public session is the most important, and only those things that could lead to anti-competitive behavior should be discussed in Executive Session. With respect to this program, there have been many people working very hard on it. He thanked Executive Director Don Hunt who came up with the idea of lowering the interstate through Denver in order to connect those two important neighborhoods. He thanked Mayor Hancock for his leadership in helping bring the city to the table with a process that has worked hard. The neighbors themselves have done a tremendous job, as has the CDOT staff. That has left the Commission with a project that is still going through the EIS process but as part of that process the Commission needs to identify a funding option and a funding approach. He stated that as the staff knows, he has been sometimes exceedingly difficult over the last year, asking questions both from an HPTE stand point where he sits and on the Commission. This is not an easy answer. Unlike C-470 where it was relatively easily and quickly decided that would be a pure public and not a public-private transaction, this one becomes much more complicated because the Commission is trying to dig into variables and assumptions that are difficult to understand. There are issues about coverage on bonds, interest rates and contingencies. But for the Commission to do its duty and complete and EIS, they needs to try to do that and do it to the best of their ability. He stated that when he first looked at the reports, he was concerned that the reports themselves were assuming a conclusion: DBFOM, which is the full Design-Build-Finance-Operate-Maintain. The Commission pushed very hard for the staff to go back. They brought in alternative consultants to relook at it. He stated that he really does believe as a few of the Commissioners have said, it is a very close decision. It is 8 miles of project through the middle of Denver. It is vital corridor. The constituencies and communities have come together to address it. How the Commission chooses to finance the project is going to be very important for the rest of the state in addition to Denver.

Commissioner Reiff stated that the Commission has made a variety of assumptions that are important. First of all, they are not going to starve the rest of the state to complete this project. In so doing, the Commission has said they will allocate approximately 50% of the Bridge Enterprise to this. It is important to keep in mind that this bridge is 61% of the deck area. They have left a strong amount of money available for the rest of the state for their bridges. That is an important facet. The second important facet to consider is, in the long run if there are problems that exist in construction, operation or maintenance, how the Commission will protect the rest of the state and the rest of the funds themselves. This is where it becomes more complicated. There are methods to do Design-Build-Operate-Maintain without the finance component, and he stated that he was originally going fairly strongly that direction. He believes CDOT has the ability to deal with the financing themselves. The problem with that as he continued to consider the option is the unknowns later on. The funding sources at CDOT and the rest of the state have been relatively stagnant, other than the FASTER money. The gas tax has not changed in over 20 years, whether it is federal or state. In that 20 years, Colorado has many more vehicle miles traveled on the roads. The buying power for that gas tax continues to decrease, and there are very few other funding sources. He is not optimistic that he is going to increase those funding sources for the rest of the state or the rest of the metro area

for this project. With that in mind, he started to think about the Commission minimizes the risk for the metro area and for the rest of the state to deal with a project that needs to be done. That is where he begins to tilt a little more to adding the finance back in. By adding the finance back in, the private sector is taking on the long term obligation without state funding to maintain this project. If it falls into less repair, they are going to be obligated either as the equity holders or the bond holders to fix it. He stated that it is still a close call, and he is not 100% supportive of the DBFOM model. But he believes in looking at how the rest of the state will be most benefitted fixing the cost for this project at this moment in time. CDOT will complete the project. It is eight miles, and it is going to be completed. The other portion that the Commission decided not to do does not affect the viability or the efficacy of this transportation project. That is really important because if they cannot do a transportation project, they should not do any transportation project. He stated that he is open to the other Commissioners and to other public feedback because it is a close call. At this moment, which is different than two weeks ago, he is tilting toward adding the financing back in because of the importance of fixing the amount of money that is going into this project so they can continue to benefit the rest of the state with the rest of the funds available. But it is a close call.

Commissioner Gruen echoed Commissioner Reiff. He thanked everyone for taking time out of their schedules to join the Commission. He stated that the Commission appreciates hearing what everyone has to say. He told Mr. Sullivan that in response to his comment, the train has left the station on this one. The Commission has decided that this project is of such critical importance to the citizens of the state of Colorado that they will proceed on this. The Commission is trying to figure out how to do so in a manner that makes the most sense for everyone. They are debating the delivery method to achieve the construction project that they have been working on for years. This particular project was on an original state strategic project list and is one of 2 of 27 that is not finished yet, and part of that is due to the extraordinary cost. The Commission is very cognizant of the immensity of the cost. But that does not ameliorate the fact that this is a critical improvement. If the Commission chooses not to do anything, the cost of that decision will exceed the cost the Commission faces of financing the project today. He again thanked everyone for attending. He stated that the Commission tries to be as transparent as possible. He stated that they have been working hard for years. It is not a new issue that has come up over the last few months. They have been working for years to make it a thoughtful and successful transportation project for the state.

Commissioner Aden also thanked everyone for coming and sharing their thoughts with the Commission. He stated that there were a few things he had been focused on. From the very beginning, one of them has been the impact on the Bridge Enterprise and by extension the rest of the state. He stated that he had been around the Commission for a long time, and he reflected back on when the discussions were taking place in the 2009 session of the legislature, as a follow up to Governor Ritter's Blue Ribbon Panel. The FASTER legislation was crafted. They have known from the beginning that this project was one of the original thirty worst structures in the state that was presented to the Legislature. They were told that if they enacted the increased registration, those thirty were the priority projects. They have known from Day 1 that this project would have a profound impact on the Bridge Enterprise. As

one of the Commissioners who represents a rural part of the state, he is willing to accept that. There has been tremendous progress all over the state with the Bridge Enterprise in its relatively short life. He stated that he is comfortable that if the Commission moves ahead with this plan that there will still be adequate funding to do what needs to be done for critical bridge work in the rest of the state. For the purpose of the discussion on the best method of delivery is, he stated that he agreed with Commissioner Reiff. He had been very much on the fence about the decision, but from a policy perspective the Commission has to consider the risk transfer as they make the final decision. The DBFOM tends to transfer more of that risk to the private sector. As the Commission examines the long term funding available to CDOT, they do not have the luxury of being able to take a lot of risk. It is not clear at all what kind of revenues will be available in the future, should some contingencies take place. One of the other concerns that he has is that they do not really know what the funding gap is. He reflected back on the TREX project. At the time that the voters authorized CDOT to borrow \$1.5 billion for the 7<sup>th</sup> Pot Projects, the Department had revenue projections at that time that showed CDOT would have future general fund revenues to service that debt. In a few years that was available, but in most years CDOT did not receive those. CDOT has had to cover the \$167 million of debt service in most of those years, and that has had a big impact on the program throughout the state. When relying on future general fund revenue projections, there is a history of fits and starts of general fund revenue transfers to CDOT. There is some risk there. The Commission needs to be very mindful of that during the decision-making process. He stated that he is not sure when the Commission reaches the point of no return on this decision. I stated that he would unfortunately not be able to attend the Regular Commission Meeting in February, but he would say that if they choose a delivery method and proceed with a Request for Qualifications, that he hoped the industry would understand that there are still many on unknowns on the project. He does not know when they reach the point of no return. He hoped that by issuing an RFQ that the Commission is not creating an expectation that CDOT will find the money somewhere. He stated that he is not willing as a Commission to find the money somewhere. That somewhere would be to take it out of the rest of the program and projects in the rest of the state. He stated that he is not willing to do that. CDOT either has the money, or it does not. At some point it is necessary to have a very definitive source of revenue. This is the largest project in CDOT history, the largest portion of CDOT funded. The cost of TREX was shared with RTD. He could not think of another project in all his years on the Commission where they proceeded when they did not know where the money would come from. He stated that the before the Commission reached the point of no return, they needed to have more clarity than they currently had as to where the money is going to come from.

Commissioner Gilliland stated that she could not agree more with the comments that have been made. She thanked all the members of the public for coming and helping the Commission understand what the perception is. That is a great help to the Commission, knowing where there is information that has not been clear enough, specifically about where the Commission has been. As was previously mentioned, this is not a project that has only come up in the last few months. This has been ongoing for a long period of time. She stated that she appreciated all of them coming out. She stated that when she looked at the project, it is huge. It is mind boggling to

think about how it is going to get done. One of the things that strikes her is how it has been talked about for years. If the Commission puts it off and moves the problem forward, it becomes a safety risk on one level. They know that structure is not sound. It is considered poor at this point in time. To leave it and to continue fixing what can be fixed can only go on so long before something has to be done. The longer the decision is put off, the higher the cost will be. As mentioned before, the buying power of every dollar was much higher twenty years ago than what it is today. If the project continues to be delayed, somewhere down the line the Commission will have to find the wherewithal to do this. Although there are challenges now with the funding gap and how to bring that together, that is a challenge the Commission needs to struggle with and find the creativity in the project to move it forward. She stated that she had also looked at both delivery methods that seem to have the highest opportunity, DBOM and DBFOM, and it is a consideration of where the risk lies, where the public has the least risk but the Department still gets what it needs out of the project. She stated that when she looks at the concessionaire in the DBFOM model, there is an incentive that goes along with that. When discussing how a project is developed and designed and when there is someone taking responsibility for the long term commitment that will need to be made in that form, they will look at how they can build it and design it so that they will be able to maintain it long term. That is a big thing that needs to be considered as far as what the Commission decides for a delivery model. Looking very seriously at these issues, no one on the Commission is taking these issues lightly. Finding the funding is absolutely critical. But the time is now. It is necessary to do this and make this happen to get this fixed. It is a vital corridor for the economic vitality of Colorado. Again, to consider putting it off until later or choosing to only do part of a project is not viable at this point in time. The Commission has to look at what is in the best interest of the public in moving forward and moving people and goods through Colorado.

Commissioner Gifford thanked the public for coming out and echoed Commissioner Gilliland's comments that it is necessary to move forward on this project to address the significant safety issues and because of the increase in cost to whatever extent the decision is delayed. She stated that there is obviously more discussion that needs to happen between the staff and the Commission about either DBFOM or DBOM. At this point her inclination is to tilt toward the DBFOM procurement simply because it seems to have a better limit to construction risk, with associated contingencies on the front end and long term securities on the back end. In terms of limiting the impact on the rest of the state, that seems the best way to balance the needs of both this project and the rest of the state.

Commissioner Barry stated thanked everyone who took the time to come to the meeting. This is a key project, probably one of the key projects for the state as well as the region. They value all the public engagement that has taken place today. Additionally, as a Commissioner, she recognized the importance of the regional participation. They are partners with Denver and value them in this process. They will be key as the Commission moves forward in making those decisions. They recognize that this is a project that has to happen and is on a tight timeline. She stated that the Commission does have to do be good stewards of the public's resources. This is a large decision that has to be made, and the Commission has to make the smartest decision possible. Moving forward over the coming weeks, the

information presented today was great. The presentation laid it out very clearly. Moving forward, they have to make a decision, but this has been a very good process. She thanked everyone who has been involved.

Commissioner Hofmeister thanked everyone who has been involved and has worked very hard. This is a very difficult decision that they have to make over the next few weeks. He stated that he has the same concerns that Commissioner Aden has: that if the Commission finds it has a large funding gap near the end of the project, how will that affect the rest of the state? He stated that is something this is a large consideration as he is trying to convince himself to vote yes for this project in a few weeks.

Commissioner Zink thanked everyone for their comments and taking the time to be there. She stated that she felt like a couple of those people were probably thinking that everyone thanked them for their comments but were completely ignoring what they had to say. She stated that she did not want them to feel that way because she does not believe that is true. Some of the Commissioners do not have the long history that Commissioner Aden has, so some of the questions that come up are new questions to some of the Commissioners. They have been dealt with in the past to many people who have been involved with this project over a longer period of time. If there is some way that someone could very briefly recognize the two or three people who commented about whether or not this is really right the answer and are there engineering problems that have not been addressed. She stated that she has no doubt that they have been addressed, but she does not want those people to walk away feeling like they have been ignored.

Commissioner Connell also thanked the public again. She stated that she agreed with so much that has been said by the Commission members, particularly Commissioner Aden. She too represents areas of Western Colorado. The funding issue is without a doubt her most serious concern about proceeding with the project. She stated that she also thinks it is important to recognize the greater good that this project does. The greater good is not only for people passing through the state but also for the neighborhoods that are impacted. As one Commissioner at the meeting, she stated that wanted to say that it is incumbent upon everyone to listen to what was said by the public, listen to the emails and the letters and ensure that those are answered and dealt with correctly. They have been dealt with in the past, but she is not a Commissioner of long history. Those questions need to be readdressed. That and the impact of this project onto the neighborhood are the most important as we go forward. It is the people of the whole state that the Commission needs to be concerned about, not the people of some of the state or the people who are just passing through. At this particular time, she is tending to look toward minimizing the risk as the Commission moves forward. She is very much looking forward to getting more information, but since there are not good funding sources in the future, she believes that sharing the risk is going to be an important part of the equation. She again wanted to emphasize that she thinks that they need to be good stewards now and in the future with everybody. She stated that she will strive for that.

Commissioner Thiebaut stated that he is pretty new at this, only having been on the Commission for a year and a half. He wanted to say from the outset that he has

always had concerns about this project. It seems as though the project is going to move forward because the votes are there. The public needs to know that. He stated that he realizes that. He stated that what he thinks what the Commission is trying to say today is that there are mainly two areas of focus. One is affordability, and the other is risk. As far as affordability goes, one of the issues that the Commission has to be very careful to address is the very issue that Commissioner Aden brought up, and that is where the money will come from. There is a gap in funding, and there is no designated source to fill that gap. The thing that he is concerned about is if they use the Asset Management money, which will come out of needed projects around the rest of the state. Perhaps there is a way to mitigate that, but he for one as a Commissioner does not support using Asset Management money to fill the gap. They might be pleasantly surprised to find out there is more Senate Bill 228 money. They might be pleasantly surprised to find out that there is money that the Commission is not aware of today. They might be pleasantly surprised to find out that the City and County of Denver would be willing to come up with money and perhaps even match it with federal money. That would all be good news on the affordability issue. As far as the risk issue goes, he stated that he is very concerned about the whole concept of public highways somehow becoming private enterprises. Although he knows that the only way to really finance projects of this size, and his understanding is that this is the largest project in the United States that is on the drawing board not only in Colorado or a particular region of Colorado, there are a lot of interested players out there in terms of how they would come in and make this work. He stated that he wanted to see the Commission get the best bang for their dollars. He thought that by negotiating with some of these interested parties, the Department might be able to have them assume risk but still keep some of what he believes are the major responsibilities of a state government in place in watching over to make sure the future needs of the citizenry relative to this project are being met. The thing that he is concerned about with the DBFOM method of financing is that the Commission is washing its hands and saying it is no longer the Commission's problem, it is the private enterprise's risk. He stated that he has seen in the past where that does not always work. Down the line many years from now there could be a situation develop that the state of Colorado has the risk and then they have a problem with the companies that have said they would assume the risk. Then the state pays double. His thinking is that while the delivery method is a close call, the DBOM might be one that the Commission needs to think about a little further in order to see what can be gained out of a tough negotiated process to slide that contingency risk to the private sector but to keep an iron in the fire to make sure the Commission's role as a public entity watches out for the interests of the citizens. He stated that the seven witnesses' comments were helpful to him. He especially appreciates hearing from the public, especially one of his former Senate colleagues, Senator Gallagher. It is good to see the involvement, and he stated that he is very appreciative to his fellow commissioners for their deliberative attitude towards this and to the Executive Director. This is something that is high on the Governor's agenda. That makes it important as a Commission member because the Governor designated him to serve District 10. At the same time, when discussing affordability and risk, he has to draw some independent conclusions from the presentations. He stated that he has some grave concerns. Between now and February 19, he will either reconcile them or he will not, and he will make a decision then.

Executive Director Hunt also thanked everyone who attended the meeting. He wanted to reaffirm that this is another step in the process. Although the Commissioners have discussed this project and its importance not only to the Denver metro area but also as the main highway to Denver International Airport. In that context, the Governor stated in his State of the State speech that Denver metro area's health is dependent upon continuing investment in transportation, especially in the I-25 and I-70 corridors. Those are the corridors of commerce. This is probably the most critical investment that CDOT has to make, not only for the Denver metro area but also for the state in terms of additional capacity. It seems like there is some confusion about if there is not \$1.8 billion, which is the EIS number, for two new lanes in each direction, than the plan should be given up. That is not the state of transportation right now. The Environmental Impact Statements identify a program of project over a 25 year period. It is up to the Commission and the Department to figure out what it can afford in a first phase. For instance, the I-70 Mountain Corridor EIS said that they should have \$5 billion for highway improvements and \$10 billion for train improvements. However, that does not mean everyone will just sit around and do nothing until there is \$15 billion available. CDOT is here to serve the state. That is why there have been step by step investments that have been a couple of hundred million dollars' worth of investments at the Veterans Tunnels and the Peak Period Shoulder Lanes this year to keep improving mobility and capacity for the health of Colorado. Here they are saying that they need \$1.2 billion to get one lane in each direction out toward DIA. They are still short, but they are also about a year and a half away from having to really make the final decision on this project. There is time. It is not unusual, in fact it is business as usual, that there is not the money for any given project that is being planned a year or two or three out. He stated that he would not make any comments on affordability or choice of delivery method, but he did want to comment on the risk transfer table that is in the report on page 19. That came up in Anne Elizabeth's comments. One of the considerations that they have in lowering the highway in Globeville, Elyria and Swansea is the condition of the soil. It has been an area that has had a number of industries over the last 50 to 100 years. They want to make sure that they are protecting the public safety as they start to remove that material. All the chart is saying is that there are unknown hazards of this material. They will endeavor, no matter what delivery method is chosen, to do as many borings as they possibly can to identify the appropriate means of managing ground water, the soil and air quality during construction. "Unknown" means that there are always unknowns when doing a project like this. Unfortunately, none of the three methods: Design-Build, DBOM or DBFOM, can adequately transfer that risk if it not known beforehand. That will remain a public risk, a CDOT risk, in any of those options. Again, he wanted to stress that CDOT has been at this for over ten years. It is not an easy project. It is not his favorite project. They are as close as they have ever been to having an idea that might solve the problem for everyone. They are spending in this \$1.2 billion an increment of over \$150 million to make this highway fit better into the neighborhoods by lowering it and adding a cover at Swansea Elementary School. He believes that they have demonstrated that they are taking this challenge very seriously, but they still have a ways to go. The environmental process is not over, and there is still a funding gap to fill. That is why what will happen at the February 19<sup>th</sup> Commission meeting is just one more step in this process. There is another year and half ahead of everyone.

Chairman Peterson thanked the entire Commission. He stated that he represents District 2, which is just to the West – Jefferson County, so he is a metro area commissioner. He has understood the importance of this project for a very, very long time and has been working in a collaborative method with the Denver Regional Council of Governments, the City and County of Denver, and with other partners in transportation in both the public and private sector. The decision that the Commission faces is not an easy one. It is a decision, however, that cannot be dismissed because a decision to do nothing is in fact a decision of action. He stated that this Commission has demonstrated repeatedly that they set aside parochial interests and look at the overall impact of any project, this one or any other, to the entire transportation highway system for the state of Colorado. The I-70 Corridor is the coronary artery of transportation in the east-west direction, and the I-25 in the North-South direction. For commerce and people, it has a huge impact on the overall economic sustainability and viability of the state on many sectors. This is not an easy decision, and he has struggled, as have his fellow commissioners, with the best way to handle a delivery method that works well for the people of the state of Colorado that does not over-emphasize this project or take critical funds away from the rest of the state that then negatively impacts the system statewide. Looking at the two delivery methods between DBOM and DBFOM, he has been torn and wound up in circular arguments. One day he is looking in one direction, and the next it goes to the other. He thanked staff and the Executive Director for the incredibly hard work they have done over the past few weeks to consolidate and make these delivery methods more understandable to the Commission and hopefully more understandable to the public in general. He stated that Commission Reiff stated it very eloquently at the beginning of the session: this is not an easy decision, but it is a decision that the Commission will have to make. He stated that he hoped this month as the Commission convenes that they will continue to receive additional information and ask questions of staff and consultants. He is hopeful that the Commission will be able to take that next step. As Executive Director Hunt stated, this is not the final, definitive, absolute decision on this project. It just gets the Commission a little further down the road in making that decision. The question before the Commission this month and the question before this workshop is about which delivery method (Design-Build, DBOM, or DBFOM) the Commission prefers. For himself, he has received a lot of good information and a lot of input from the citizens, which he again thanked them for and assured the people that the Commission took those comments to heart. He said he could speak for the entire Commission in saying that there was not a single Commissioner who did not appreciate that they took the time out of their days to come before the Commission and comment on these issues. They are important to the Commission, and they weigh heavily in the decision-making process. Having said that, he is still “on the bubble” but leaning more towards the DBFOM, only because of the potential to transfer both long term and short term risk from the people of Colorado, realizing that there is never an organization that is too big to fail. That has to be included in the discussion as well. He will be ruminating over this decision before the Commission meeting. He will probably have more questions, and he is sure other Commissioners will as well. With that, he once again thanked everyone for their comments. He asked if there was anyone else who wanted to make any further comments.

Commissioner Gilliland stated that given what Commissioner Thiebaut mentioned about the difference between DBOM and DBFOM that the concern is whether or not CDOT still had oversight capabilities even though they would be shifting risk. She stated that she would like more information on that because that is key. Her assumption was that in shifting that risk that the Commission would still have the ability to qualify upfront what the project will look like and how it is going to be maintained and to what standards. She stated that she is thinking that it is where the emphasis is placed on what part of the project, whether it is before or during the execution, that might make the DBOM more effective if they lose the oversight with the DBFOM. She wants the Commission to have a clearer understanding on that piece before a final decision is made.

Commissioner Reiff stated that in response to that question that he had an offline conversation with Scott Richrath. He stated that it would be helpful for Scott Richrath to be prepared to go through that to explain the same issue that Commissioner Gilliland has had. If the Commission could effectively have balance sheet risk by the concessionaire in DBOM, then there is a different answer. If it is not possible to effectively do that, then one starts to be driven to the DBFOM model. That analysis would be very helpful.

### **Adjournment**

Chairman Peterson thanked all the Commissioners who had joined by telephone, thanked the public for attending and announced that the meeting was adjourned at 11:35a.m.

Herman J. Stockinger III  
 Herman Stockinger, Secretary  
 Transportation Commission of Colorado

4-1-15  
 Date

