



COLORADO
Department of Transportation
Region 3 RTD

Date: September 30, 2014
TO: Josh Laipply, Chief Engineer
FROM: David A. Eller, Region 3 Transportation Director
SUBJECT: Request for Emergency Contracting for SH 139 at MP 2.8 Culvert Repair

Pursuant to the provisions of State of Colorado Fiscal Rule 2-2 and Section 120.8.3 of the CDOT Construction Manual, CDOT Chief Engineer approval is requested to pursue emergency contracting for the repair of roadway, slope and culvert at milepost 2.8 on SH 139.

Emergency Conditions:

In the morning hours on September 30, 2014 the cross culvert at milepost 2.8 on SH 139 colapsed causing the shoulder and edge of roadway to fail. Recent rainfall along with irrigation runoff caused the deteriorated pipe to colapse below the roadway surface allowing the embankment to erode into the channel and block the drainage, which has backed water onto adjacent landowners.

The conditions resulted in CDOT Maintenece forces setting a one lane detour through the day until 3:00 pm when conditions worsened and the highway was closed to the traveling public. At this time the region plans to have the roadway closed until a new pipe is installed and the roadway returned to a safe driving condition.

This is a 48 inch CMP and it is aproxiamtley 10-14 feet deep. The complexety to replace is increased because this drainage ditch flows water year around and excatvation must contend with an active water way.

Emergency Contracting Issues:

With the drainage pipe blocked and water levels exceeding the established limits the roadway needs immediate repair to prevent further damage and possible risk to adjacent landowners property.

The repairs shall be completed utilizing emergency contracting procedures as outlined in section 120.8 of the CDOT Construction Manual in the following manner:

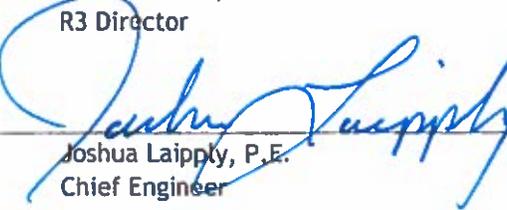
Region 3 West Program Engineer, Jason Smith, has been assigned as the project manager for this work, with the majority of project delivery responsibilities delegated to Region 3 Grand Junction Resident Engineer, Rob Beck. Plans for the repair are being developed by the Grand Junction Residency and Region resouces and support units have been consulted to get this repair immediately underway.



We respectfully request \$375,000 of Transportation Contingency Funds for this project.

This work is necessary and critical to reduce the risk of further damage to the roadway and protect the safety of traveling public and adjacent landowners. With your support of this request, Region 3 intends to issue a Notice to Proceed for contract work to a successful low bidder per State rules and procedures.

I concur:  Date: 10/1/14
David A. Eller, P.E.
R3 Director

I concur:  Date: 10/1/2014
Joshua Laipply, P.E.
Chief Engineer

I concur:  Date: 10/1/2014
Scott Richrath
Chief Financial Officer



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 14-cv-00844-REB-KMT

DRIVE SUNSHINE INSTITUTE, and
CLIFF SMEDLEY,

Plaintiffs,

v.

HIGH PERFORMANCE TRANSPORTATION ENTERPRISE,
MICHAEL CHEROUTES, ESQ., in his capacity as Director of HPTE and as an individual,
TIM GAGEN, in his capacity as Chair of the HPTE Board of Directors and as an individual,
KATHY GILLILAND, in her capacity as Vice-Chair (and at times Acting Chair) of the HPTE Board of Directors and as an individual,
DOUG ADEN, HPTE Board Member, as an individual,
BRENDA SMITH, HPTE Board Member, as an individual,
DON MARISTICA, HPTE Board Member, as an individual,
GARY REIFF, ESQ., HPTE Board Member, as an individual,
TREY ROGERS, ESQ., HPTE Board Member, as an individual,
JANE HICKEY, in her capacity as Secretary of the HPTE Board and as an individual,
JOHN SUTHERS, ESQ., in his capacity as Colorado State Attorney General and as an individual,
KATHRYN E. YOUNG, ESQ., in her capacity as First Assistant Attorney General and counsel for HPTE and as an individual,
JOHN DOE 1, ESQ., in his capacity within the Colorado Solicitor General's Office and as an individual,
JORDAN CHASE, ESQ., in his capacity as Assistant Attorney General and counsel for HPTE and as an individual,
KUTAK ROCK LLP, in its capacity as counsel for HPTE and as an individual,
MICHAEL THOMAS, ESQ., as counsel for HPTE and as an individual,
THOMAS WEIHE, ESQ., as counsel for HPTE and as an individual,
HOGAN LOVELLS US LLP, in its capacity as counsel for HPTC and as an individual,
MIKE MATHEOU, ESQ., as counsel for HPTE and as an individual,
DAVID SCOTT, ESQ., as counsel for HPTE and as an individual,
COLORADO TRANSPORTATION COMMISSION,
COLORADO DEPARTMENT OF TRANSPORTATION,
AMY FORD, in her capacity as HPTE Communications Director and as an individual,
GOLDMAN, SACHS & CO.,
BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
FITCH RATINGS, INC., and

PLENARY ROADS DENVER LLC,

Defendants.

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

Blackburn, J.

This matter is before me on the **Verified Motion for Temporary Restraining Order and Preliminary Injunction** [#26]¹ filed September 17, 2014. In a previous order [#66], I denied the motion to the extent the plaintiffs sought a temporary restraining order. Addressing the request for a preliminary injunction, the defendants against whom a preliminary injunction is sought filed a response [#42], and the plaintiffs filed a reply [#49]. I deny the motion for preliminary injunction.²

I. JURISDICTION

I have jurisdiction over this case under 28 U.S.C. § 1331 (federal question) and § 1367 (supplemental).

II. BACKGROUND

The complaint [#4] and the motion for preliminary injunction [#26] describe the operation of defendant High-Performance Transportation Enterprise (HPTE) and related entities. According to the complaint, the HPTE is a government owned business within the Colorado Department of Transportation. HPTE is a key entity managing a project for the expansion of U.S. Highway 36 between Denver and Boulder, Colorado.

¹ "[#26]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

² The issues raised by and inherent to the motion for preliminary injunction are briefed adequately, obviating the necessity for evidentiary hearing or oral argument. *C.f.* FED. R. CIV. P. 65(a)(2). Thus, the motion stands submitted on the papers.

According to the allegations in the motion for preliminary injunction, HPTE has repeatedly violated Colorado statutes, such as the Colorado Open Records Act (CORA), part 2 of article 72 of title 24, C.R.S., the Colorado Open Meetings Law, part 4 of article 6 of title 24, C.R.S., the Colorado State Administrative Procedure Act (APA), part 4 of article 4 of title 24, C.R.S., and a provision of the Constitution of the State of Colorado known as TABOR. COLO. CONST., Art. X, § 20. In addition, the plaintiffs allege that the actions of the defendants are violating the rights of the plaintiffs under the First Amendment and the Due Process Clause of the Constitution of the United States and of the Constitution of the State of Colorado.

On June 27, 2013, the HPTE purportedly entered into a fifty-year concession agreement with defendant Plenary Roads Denver LLC (Plenary). Apparently, the concession agreement permits Plenary to build and complete the project and to take control of managed lanes in the US 36 expansion project. In the view of the plaintiffs, the HPTE improperly embedded public policy changes in the concession agreement without complying with the CORA, the Open Meetings Law, the APA, and TABOR. According to the plaintiffs, the approval of the concession agreement is void *ab initio* because the HPTE did not comply with the requirements of Colorado law before approving the agreement. The plaintiffs contend the HPTE planned to ratify an amended and restated concession agreement at a meeting scheduled for September 17, 2014. Defendant Michael Cheroutes reports in his affidavit that the HPTE tabled consideration of the proposed amendments at the September 2014 HPTE board meeting. *Response* [#42], Exhibit A (Cheroutes Affidavit), ¶ 19. The HPTE board expects to discuss the amendments at its regular October 2014 meeting. *Id.* According to the plaintiffs, the HPTE again has not complied with the requirements of Colorado law

with regard to the proposed amended and restated concession agreement. Thus, the plaintiffs contend, HPTe may not validly approve the amended and restated agreement.

Although not entirely clear, it appears that the September 17, 2014, meeting was the impetus for the filing of the motion for temporary restraining order and preliminary injunction on the morning of September 17, 2014.³ In the view of the plaintiffs, the

HPTe seeks to rush forward the arguable effective date of the Amended and Restated Concession Agreement in order to counter Plaintiffs' stated intention to seek a preliminary injunction of JPTE violations of the law - the sooner that HPTe can justify turning over control of the US 36 Expansion Project to Plenary, the sooner JPTE and the other Defendants can attempt to argue that the public is not entitled to enjoin the project or Plenary's rights thereunder because doing so would disrupt the status quo.

Motion [#26], p. 21.

In their motion, the plaintiffs seek the entry of a preliminary injunction against some, but not all, of the named defendants. The plaintiffs seek a preliminary injunction which provides more than 20 discrete forms of relief. *Motion* [#26], pp. 120 - 123. For example, plaintiffs seek an order enjoining the implementation and enforcement of all rules made or announced by the HPTe without compliance with the APA. However, the plaintiffs do not specify which rules they seek to have enjoined. They seek an order prohibiting the adoption of any new rules by HPTe unless the procedures used are in full compliance with the APA, the CORA, the Open Meetings Law, and federal and state constitutional provisions. The plaintiffs seek an order enjoining the ratification of the amended and restated concession agreement and the implementation of myriad terms allegedly included in the amended and restated concession agreement. Among the many policies the plaintiffs seek to have enjoined is "the implementation of snow and ice removal and mitigation policies which would permit preferential service to be rendered

³ The motion was filed at 5:54 a.m. (MDT).

for express lanes compared to general lanes of traffic.” *Motion* [#26], p. 121, ¶ 5.e. The plaintiffs also seek an order enjoining what the plaintiffs see as the rule-making aspects of the concession agreement including, *inter alia*, enjoining future toll increases initiated by Plenary if those increases are not without full compliance with the APA, the CORA, the Open Meetings Law, and federal and state constitutional provisions. *Id.*, p. 120.

III. STANDARD OF REVIEW

I begin by rehearsing the familiar. A preliminary injunction constitutes extraordinary relief. A party seeking a preliminary injunction must show (1) a substantial likelihood that the movant eventually will prevail on the merits; (2) that the movant will suffer irreparable injury unless the injunction issues; (3) that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) that the injunction, if issued, would not be adverse to the public interest. *Lundgrin v. Clayton*, 619 F.2d 61, 63 (10th Cir. 1980).

When the moving party has established that the three harm factors tip decidedly in favor of the movant, the probability of success requirement is somewhat relaxed, and the movant need only show questions going to the merits so serious, substantial, difficult, and doubtful as to make them a fair ground for litigation. *Nova Health Systems v. Edmondson* 460 F.3d 1295, 1298 n. 6 (10th Cir. 2006). On the other hand, some types of temporary restraining orders or preliminary injunctions are disfavored and, therefore, require the plaintiff to satisfy a heightened burden of showing that the four primary factors

weigh heavily and compellingly in movant’s favor before such an injunction may be issued. The heightened burden applies to preliminary injunctions that (1) disturb the status quo, (2) are mandatory as opposed to prohibitory, or (3) provide the movant substantially all the relief he may recover after a full trial on the merits.

Kikumura v. Hurley, 242 F.3d 950, 955 (10th Cir. 2001) (internal quotation and citation omitted).

Having reviewed the complaint and the motion for preliminary injunction, I find and conclude that the plaintiffs seek in their motion substantially all the relief they seek in their complaint, meaning they seek substantially all the relief they could recover after a full trial on the merits. Therefore, I conclude that the plaintiffs are not entitled to a preliminary injunction unless they meet the heightened burden of showing that the four relevant factors weigh heavily and compellingly in their favor. However, even under the standard preliminary injunction analysis, I find and conclude that the plaintiffs have not shown that they are entitled to the preliminary injunction they seek.

I deny the motion for preliminary injunction without holding a hearing on the motion. Rule 65(a) does not explicitly require an evidentiary hearing before a court may rule on a motion for preliminary injunction. If the party requesting a preliminary injunction does not show that there is a dispute concerning one or more material facts relevant to the required elements, a hearing on the request for injunctive relief is not necessary. *See, e.g., Aoude v. Mobil Oil Corp.*, 862 F.2d 890, 894 (1st Cir. 1988); *Elliott v. Kiesewetter*, 98 F.3d 47, 53 (3d Cir. 1996); *Anderson v. Jackson*, 556 F.3d 351, 360-61 (5th Cir. 2009). In this case, there is no indication that there is a dispute concerning a material fact relevant to the motion for preliminary injunction. The parties have had a reasonable opportunity to present relevant facts and to brief the issues. In these circumstances, a hearing is not necessary.

IV. ANALYSIS

A. Likelihood of Success

The defendants contend that the plaintiffs have not demonstrated a substantial

likelihood that they eventually will prevail on the merits of any of their claims tied to the request for a preliminary injunction. I agree.

In their complaint [#4], the plaintiffs assert eight claims for relief: (1) violation of the Due Process Clause of the Fifth and Fourteenth Amendments of the U.S. Constitution; (2) violation of the right to petition guaranteed in the First Amendment of the U.S. Constitution; (3) violation of the right to free speech guaranteed in the First Amendment of the U.S. Constitution; (4) violation of the rights to due process, to petition, and to free speech under the Colorado Constitution; (5) violation of the Colorado Open Meetings Law; (6) violation of the Colorado Open Records Act; (7) violation of the Colorado Administrative Procedures Act; and (8) violation of the disclosure duties of unspecified federal securities laws in the course of issuing bonds in the name of HPTE and issuance of those bonds without authority. The plaintiffs allege also that any defendant who is a licensed attorney owes additional duties to the plaintiffs under the Colorado Rules of Professional Conduct, including the duty of candor, the duty to exercise independent professional judgment, and the duty not to engage in conduct which violates the law. *Complaint* [#4], ¶ 76.

Group Pleading - Throughout the complaint, the plaintiffs frequently make allegations in which they contend that the defendants as a large group or certain subsets of defendants, such as the “Agency Defendants,” the “HPTE Defendants,” and the “Outside Counsel Defendants,” have taken certain actions. *Complaint* [#4], pp. 40 - 50. When alleging facts in support of a claim, “the burden rests on the plaintiffs to provide fair notice of the grounds for the claims made against each of the defendants. Given the complaint's use of either the collective term ‘Defendants’ or a list of the defendants named individually, but with no distinction as to what acts are attributable to whom, it is

impossible for any of these individuals to ascertain what particular [unlawful] acts they are alleged to have committed.” **Robbins v. Oklahoma**, 519 F.3d 1242, 1250 (10th Cir. 2008) (emphasis added). To the extent the plaintiffs allege claims based on such group pleading against the defendants, I cannot conclude that the plaintiffs have shown a substantial likelihood of success on the merits of those claims. An inadequately pled claim, by definition, is not a claim which has a substantial likelihood of success on the merits.

Claim (1) - Due Process - The Fourteenth Amendment provides, *inter alia*, that a state may not deprive any person of “life, liberty or property without due process of law.” **U.S. CONST.**, amend. XIV. Of course, the Fifth Amendment contains a similar Due Process Clause. The procedural component of due process protects “the opportunity to be heard at a meaningful time and in a meaningful manner.” **Mathews v. Eldridge**, 424 U.S. 319, 333 (1976) (citation and internal quotation marks omitted). To make out a claim for violation of the right to procedural due process, plaintiffs must show, *inter alia*, the deprivation of an interest within the ambit of the protection of the Fourteenth Amendment, that is, an interest in “life, liberty, or property.” **See Ingraham v. Wright**, 430 U.S. 651, 672 (1977); **Darr v. Town of Telluride, Colo.**, 495 F.3d 1243, 1251 (10th Cir. 2007); **Elliott v. Martinez**, 675 F.3d 1241, 1244 (10th Cir. 2012).

In their complaint, the plaintiffs do not identify a liberty or property interest of which any defendant has deprived or threatens to deprive any plaintiff. *Complaint* [#4], ¶¶ 72 - 78. Absent an identified and relevant liberty or property interest, the plaintiffs are not likely to succeed on the merits of their due process claim.

Claims (2) & (3) - First Amendment - Petition & Free Speech - The plaintiffs allege that “HTPE interfered with and / or denied Plaintiffs’ rights to petition on February

19, 2014 and March 19, 2014, under the First Amendment of the federal Constitution by arbitrarily and capriciously imposing alleged procedural rules of HPTE” *Complaint* [#4], ¶ 80. The plaintiffs allege also that the HPTE “interfered with and / or denied Plaintiffs’ rights to free speech . . . by using its power to prevent Plaintiffs from speaking and / or having their attorney speak on their behalf because of the anticipated specific content of their speech” *Complaint* [#4], ¶ 85.

According to the plaintiffs, at a February 19, 2014, HPTE meeting, defendant Tim Gagen, chair of the HPTE board of directors, denied the request of plaintiff Cliff Smedley to permit counsel for Mr. Smedley to speak on his behalf at the meeting. *Complaint* [#4], ¶ 54. The plaintiffs challenge also the procedures used by HPTE to establish rules for this meeting. The plaintiffs describe the same scenario in their motion for preliminary injunction. *Motion* [#26], pp. 44 - 47. The plaintiffs allege that a preliminary injunction is necessary to “restrain these Defendants from continuing their stubborn refusal to accord Plaintiffs” their rights. *Complaint* [#4], ¶¶ 83, 88.

As the defendants note, the right to speak at a meeting of a government agency is far from unfettered. ***See, e.g., Shero v. City of Grove, Okl.***, 510 F.3d 1196, 1203 (10th Cir. 2007) (summarizing basic standards applicable to restrictions on speech at public meetings; three-minute time limitation imposed on speech a restriction appropriately designed to promote orderly and efficient meetings); ***Jones v. Heyman***, 888 F.2d 1328, 1333 (11th Cir. 1989) (holding that the removal of a public speaker by the mayor at a city commission meeting was not a First Amendment violation and thus permissible because “to deny the presiding officer the authority to regulate irrelevant debate and disruptive behavior at a public meeting ... would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions”); ***Wright***

v. Anthony, 733 F.2d 575, 577 (8th Cir.1984) (noting that restriction during public debate “may be said to have served a significant governmental interest in conserving time and in ensuring that others had an opportunity to speak”).

Given the circumstances described in the motion for preliminary injunction, I find that the plaintiffs have not demonstrated a substantial likelihood of success on their First Amendment claims. The HTPE is permitted to impose reasonable restrictions on speech in an effort to run orderly meetings. On the current record, there are significant questions about whether or not the restrictions at issue here were unreasonable. Equally important, the plaintiffs allege restrictions on speech at the February 19, 2014, HTPE meeting and, to some extent, at the March 19, 2014, HTPE meeting. The plaintiffs appear to infer that similar and purportedly unlawful restrictions will be imposed at all HTPE meetings. However, there is little in the record to support the inference that the HTPE will impose improper restrictions at future meetings. A preliminary injunction cannot remedy allegedly improper restrictions imposed last February or March. The allegations of the plaintiffs do not show a substantial likelihood that the HTPE will impose unlawful restrictions on the speech in the future. I find that the plaintiffs have not shown a substantial likelihood of success on the merits of their First Amendment claims.

Claims (1), (2), & (3) - Personal Participation - The federal constitutional claims of the plaintiffs are brought under 42 U.S.C. § 1983. When asserting a § 1983 claim against an individual defendant, the plaintiffs must allege personal participation in the alleged violation by that individual defendant. “Personal participation is an essential allegation in a § 1983 claim.” *Bennett v. Passic*, 545 F.2d 1260, 1262 - 1263 (10th Cir.1976). Generally, as to defendants Michael Cheroutes, Kathy Gilliland, Doug Aden,

Brenda Smith, Don Marostica, Gary Reiff, Trey Rogers, John Suthers, and Jordan Chase, the plaintiffs fail to allege personal participation by these defendants in any alleged constitutional violation. At most, the plaintiffs make conclusory allegations of constitutional violations by these defendants, including improper group pleading allegations against these defendants. Absent allegations of personal participation as to an individual defendant, I cannot conclude that the plaintiffs have shown a substantial likelihood of success on the merits of a § 1983 claim against that individual defendant.

Claim (4) - Colorado Constitution - As alleged in the complaint, the claims of the plaintiffs under the Colorado Constitution essentially parallel their due process, right to petition, and right to free speech claims under the U.S. Constitution. For the same reasons noted with regard to the federal constitutional claims of the plaintiffs, I find that the plaintiffs have not shown a substantial likelihood of success on the merits of their state constitutional claims.

Claim (5) - Colorado Open Meetings Law - The plaintiffs allege the HPTE violated the Open Meetings Law by its failure to specify a central place where the plaintiffs can find full and timely notice of scheduled HPTE meetings and agendas, failure to update its mater calendar to reflect 2014 meeting dates, failure to provide a specific agenda for meetings when possible, failure to adhere to agendas, and failure to provide information necessary for the plaintiffs to provide meaningful comment at HPTE meetings. As noted by the defendants in their response [#42], there is, at minimum, significant debate about precisely what the Open Meetings Law requires of the HPTE. Given that debate, I find that the plaintiffs have not shown a substantial likelihood of success on the merits of their Open Meetings Law claim.

Claim (6) - Colorado Open Records Act (CORA) - The plaintiffs allege that

HPTE and defendant Michael Cheroutes violated CORA by withholding from the plaintiffs complete copies of contracts relevant to HPTE's operations. *Complaint* [#4], ¶¶ 98 - 102. The defendants contend CORA does not provide a private right of action for violation of its provisions. I disagree. Under §24-72-204(5), C.R.S., a person denied the right to inspect any record covered by the act "may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why the custodian should not permit the inspection of such record." Section 24-72-204 (5.5), C.R.S. provides a procedure for records of an executive session. There is a private right of action to remedy a violation of CORA, but the plaintiffs in this case have not sought to assert that right of action. The plaintiffs must assert the right of action provided specifically in the applicable statute before attempting to seek broader relief not specified in the applicable statute. Absent an effort by the plaintiffs to assert the specific relief available under CORA, I conclude that the plaintiffs have not shown a substantial likelihood of success on the merits of their CORA claim, as alleged in the complaint.

Claim (7) - Administrative Procedures Act (APA) - In their complaint, the plaintiffs allege that HTPE is required to comply with the APA "when taking legislative rule-making actions, yet they have failed to do so." *Complaint* [#4], ¶ 104. As an example, the plaintiffs allege HTPE failed to follow the APA when setting tolls and toll policies. The defendants contend adherence to APA procedures is required "(w)hen any agency is required or permitted by law to make rules" §24-4-103(1), C.R.S. This requirement is not applicable to HTPE, the defendants assert, because HTPE has specific statutory authority to "impose user fees" and to operate toll highways. §43-4-806(2)(c)(I), C.R.S. Under §24-4-107, C.R.S., "where there is a conflict between this

article [the APA] and a specific statutory provision relating to a specific agency, such specific statutory provision shall control as to such agency.”

At minimum, there is a strong argument that §24-4-107, C.R.S., considered in light of the specific authorization of §43-4-806(2)(c)(I), C.R.S., excludes HPTE from the requirements of the APA. Given this strong argument, I conclude that the plaintiffs have not shown a substantial likelihood of success on the merits of their APA claim, as alleged in the complaint.

Claim (8) - Duty Not To Take Unauthorized Actions - In this claim, the plaintiffs allege, *inter alia*:

(A)“Defendants” participated in issuing bonds in the name of HPTE which each knew or reasonably should have known were not duly authorized. In doing so, Defendants engaged in violations of their disclosure duties under the federal securities laws, placing the welfare of HPTE in jeopardy and harming Plaintiffs, including, without limitation, harming Plaintiffs in their capacities as third party beneficiaries of all transactions made in the name of HPTE because Plaintiffs actual use of the Colorado resources over which HPTE exerts authority and which are the subject of these transactions is impaired.

Complaint [#4], ¶ 108. The plaintiffs seek a judgment declaring “that Defendants’ failure to adequately advise investors of the material risk and material potential effects of unauthorized acts taken in the name of HPTE constitute violation of the duties to HPTE, to investors, and to Plaintiffs,” so defendants will more clearly understand thier duties.” In the motion for preliminary injunction, the plaintiffs seek an order requiring accurate disclosures to myriad people and entities concerning the bonds, and restraining issuance of future bonds without prior disclosure. *Motion* [#26], p. 122.

There are multiple problems with this claim which preclude a finding that the plaintiffs have shown a substantial likelihood of success on this claim. Notably, the plaintiffs do not allege any specific source of the alleged duty of disclosure. They do not

allege that they are investors in HPTE bonds or that the defendants had a duty to disclose bond information to the plaintiffs. HPTE has statutory authority to issue bonds and the plaintiffs allege nothing specific about why the bonds in question were issued in excess of that statutory authority. Finally, as pled, this claim suffers fatally from group pleading against the defendants. To rehearse yet again, an inadequately pled claim is not a claim which has a substantial likelihood of success on the merits.

Claim (9) - Taxpayer's Bill of Rights (TABOR) - In their motion for preliminary injunction [#26], the plaintiffs allege violation by the defendants, or some of them, of a provision of the Constitution of the State of Colorado known as TABOR. COLO. CONST., Art. X, § 20. In their complaint [#4], the plaintiffs do not allege a TABOR claim. A party seeking a preliminary injunction must establish a relationship between the injury claimed in the party's motion and the conduct asserted in the complaint. *Little v. Jones*, 607 F.3d 1245, 1251 (10th Cir. 2010). Absent such a relationship, a plaintiff cannot demonstrate a substantial likelihood of success on the merits of the claim underlying the request for preliminary injunction. Absent a TABOR claim in their complaint, the plaintiffs in this case cannot show a substantial likelihood of success on a TABOR claim. To the extent the motion for preliminary injunction seeks relief under TABOR, there is no present basis to consider such relief.

B. Irreparable Injury

In their motion [#26], the plaintiffs rely on their First Amendment rights, and the relationship of those rights to statutes such as the APA, CORA, and the Open Meetings Law, to show irreparable injury. To rehearse, the plaintiffs have not shown a substantial likelihood that they will prevail on their First Amendment claims or their claims under the state laws purportedly related to the First Amendment. Absent such a showing, there is

no basis to conclude that the plaintiffs will suffer irreparable injury absent a preliminary injunction.

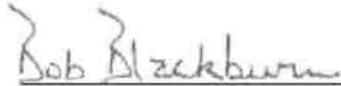
V. CONCLUSION & ORDER

The plaintiffs have not demonstrated a substantial likelihood of success on the merits of any of their claims; nor have they shown that they will suffer irreparable injury absent the entry of a preliminary injunction. On the current record, the plaintiffs are not entitled to a preliminary injunction.

THEREFORE, IT IS ORDERED that the **Verified Motion for Temporary Restraining Order and Preliminary Injunction** [#26] filed September 17, 2014, is **DENIED**.

Dated October 7, 2014, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge

Contents: Budget Workshop Informational Items (for Documentation Purposes)

FY2014 Maintenance Level of Service Funding Requests

- Route Optimization Analysis
- Avalanche Gazex© System
- Vehicle Diagnostic Equipment
- Tow Plow Equipment

FY2016 Decision Item Request Approved by Department Senior Management

- Geographic Information Systems (GIS) Update

FY2016 Indirect Funding Request Approved by Department Senior Management

- Program Management Systems Implementation
- Office of Employee Development Project Management Training

TSM&O Funding Considerations

FY2014 - FY2015 Roll Forward Requests Detail



**Roll Forward Funding Request:
 Division of Highway Maintenance: Route Optimization Analysis**

Summary of Staff Recommendation for Funding:

\$1.0 million for one year. Current Maintenance funds are intended to support existing highway maintenance projects and additional funds were requested to perform analysis intended to identify areas for improved service.

| | FY 14-15 | Total |
|--------------------------------------|-------------|-------------|
| Funding Request-Staff Recommendation | \$1,000,000 | \$1,000,000 |

Justification of Request

- Contributes to the achievement of MLOS goals for snow and ice removal
- Improves service and enhances public safety

Summary

The Division of Highway Maintenance (DHM) is requesting funding to perform a route optimization analysis, which would improve snow removal operations statewide. By directing work crews to roads based on need instead of assigning crews based on geographical boundaries, CDOT can simultaneously reduce cycle time while utilizing fewer resources thereby improving resource efficiency and service across all regional networks. Analysis will generate efficiencies in personnel, equipment usage and materials, saving CDOT funds in future years.

Details

CDOT Maintenance has historically built snow removal routes on a geographical grid. In processing route cycle timing for our Maintenance Decision Support System (MDSS), it was pointed out that some routes are left unattended for five or more hours under current deployment practices of equipment and labor. In today’s competitive market, CDOT must do more with less, and in order to do that we need plow routes confirmed by a solid route optimization program. Analysis will incorporate discrete route information, service level, and highway category. This would include (but is not limited to):

- FTE counts at each patrol, facility locations
- Average Annual Daily Traffic (AADT)
- Type of road (Interstate, National Highway System, State Road or other)
- Pavement structure (i.e. PCCP versus HMA)
- Annual funding levels for snow and ice operations
- Elevation considerations and avalanche issues; climate and geography considerations
- Routes that may be more prone to blowing and drifting snow
- Available equipment and equipment storage facility locations
- Material stock pile locations and capacity





**Roll Forward Funding Request:
 Division of Highway Maintenance: Avalanche Gazex® System Procurement**

Summary of Staff Recommendation for Funding:

\$2.5 million for Fiscal Year 14-15. The Division of Highway Maintenance (DHM) requested State or Federal Funding to design and build Gazex® avalanche system mitigation projects to improve safety for CDOT crews. Initially, the DHM suggested three funding options of which the second option, summarized below, was selected.

Recommended Option 2: Design and Construction Funds for US-6 Seven Sisters Project

Approve \$2,495,594 for design and construction of the US-6 Seven Sisters project. The Avalanche Program has initiated United States Forest Service (USFS) special use permits and environmental clearances. DHM requests \$20,000 for the environmental phase, \$100,000 for the design phase and \$2,375,594 for construction.

Figure 2: Design and Construction for US-6 Seven Sisters Project

| Option 2 | FY 2015-2016 |
|---|--------------------|
| Environmental phase | \$ 20,000 |
| Design phase | \$ 100,000 |
| Construction phase | \$2,400,000 |
| Funding Request-Staff Recommendation | \$2,500,000 |

Justification for Roll Forward

- Decreases safety hazards for those employees working with explosives in high risk operations.

Details

A previous study of avalanche mitigation strategies for US-40 Berthoud Pass recommended GAZEX® for the Eighty Slide and the Stanley Slide. CDOT purchased equipment for Stanley Slide, but is still awaiting an installation construction contract; design for Eighty Slide has yet to begin. In July 2014, Gazex® manufacturer TAS reviewed the Seven Sisters avalanche paths. CDOT based an application to the United States Forest Service for installation of Gazex® on the Seven Sisters using the finding published in the TAS report. With funding for US-6 Seven Sisters approved, installation will commence in the summer of 2015 and 2016. In conjunction with the avalanche mitigation study, a risk management tools are being developed using the Geologic Asset Management blueprint developed by Ty Ortiz in the geo-hazard unit. The tool is still under testing and development will be used to set performance goals.

Review of Initial Request

Below is a review of the other two funding options presented by DHM. All options were calculated using the following cost table, based on data gleaned from the US-40 Stanley Gazex® project.



Proposed Option 1: Design Only for All Projects

Approve \$480,000 for pre-construction phases of Gazex® projects on US-6 Loveland Pass, US-40 Berthoud Pass, I-70 Vail Pass, and the west side of the Eisenhower Tunnel. All projects are located in Region 3. Funds will be used to charge in-house regional engineering time and consultant task orders in a blended team effort. Pre-construction will be managed by DHM Engineering Staff.

Figure 1: Design Only for All Projects

| Option 1 | FY 2015-2016 |
|--------------------------------|------------------|
| Environmental and Design phase | \$480,000 |
| Total cost | \$480,000 |

Proposed Option 3: Design and Construction of All Proposed Projects

Approve \$7,017,485 for design and construction of mitigation systems on the following avalanche paths: US-40 Eighty, US-6 Seven Sisters, US-6 Little Professor, US-6 Black Widow, EJMT Loop Road and I-70 Vail Pass Narrows. DHM requests \$110,000 for the environmental phase, \$370,000 for the design phase and \$6,537,485 for construction.

Figure 3: Design and Construction of All Projects

| Option 3 | FY 2015-2016 |
|---------------------|--------------------|
| Environmental phase | \$110,000 |
| Design phase | \$370,000 |
| Construction phase | \$6,537,485 |
| Total cost | \$7,017,485 |

Cost Analysis

| Project | Environmental Phase | Design Phase | Preconstruction Total | Construction Total | Project Total |
|-----------------------|---------------------|------------------|-----------------------|--------------------|--------------------|
| US 40 Eighty Slide | \$10,000 | \$20,000 | \$30,000 | \$274,560 | \$304,560 |
| US 6 Seven Sisters | \$20,000 | \$100,000 | \$120,000 | \$2,375,594 | \$2,495,594 |
| US 6 Little Professor | \$20,000 | \$50,000 | \$70,000 | \$794,638 | \$864,638 |
| US 6 Black Widow | \$20,000 | \$50,000 | \$70,000 | \$800,638 | \$870,638 |
| EJMT Loop Road | \$20,000 | \$100,000 | \$120,000 | \$1,792,055 | \$1,912,055 |
| I-70 Narrows | \$20,000 | \$50,000 | \$70,000 | \$500,000 | \$570,000 |
| Total | \$110,000 | \$370,000 | \$480,000 | \$6,537,485 | \$7,017,485 |





**Roll Forward Funding Request:
 Division of Highway Maintenance: Vehicle Diagnostic Equipment**

Summary of Staff Recommendation for Funding

\$385,409 over 4 years. Funding will be used to update diagnostic hardware and software for fleet vehicles and equipment statewide.

| | FY 14-15 | Total |
|---------------------------------------|-----------|-----------|
| Funding Request- Staff Recommendation | \$500,000 | \$500,000 |

Justification of Request

- Improves safety of the CDOT fleet for road crews
- Prolongs life of fleet vehicles through proper diagnostics and repairs

Summary

As a result of increasingly rapid changes in technology, CDOT mechanics have been struggling to maintain industry standards over the past decade. The technology gap has become so great; they can longer accurately diagnose equipment problems. Heavy Equipment Mechanics and repair facilities manage a diversified fleet that requires new software to complete proper diagnostics and repairs.

Details

There are currently several CDOT equipment systems in need of electronic tools for complete diagnostic and troubleshooting tests. These include (but are not limited to):

- Insite - Cummins - engines
- Diamond Logic - International (Navistar) - chassis electrical systems
- Service Maxx - International (Navistar) - engine systems
- Acert - Caterpillar - engines and subsystems
- IDS/Rotunda - Ford - engines and subsystems
- PTT - Mack - engines and subsystems
- Allison - auto transmission
- Eaton - automated manual transmission
- Meritor/Bendix - brake systems

CDOT is prepared to move forward with statewide implementation and has already tested the various scanners and diagnostic tools requested

Cost Analysis

The Division of Highway Maintenance requests funds for the following diagnostic tools to outfit shops consistently statewide (see Figure 2 for regional breakdown):

- Laptops: \$1,987.00 (each)



- Cabling to connect to vehicle: \$3,629.00 (each)
- Software registration and yearly subscription fees: \$500.00 (each license)
- Fully loaded scanner including all software needed for all application: \$13,500.00 (each)
- Yearly updates: \$10,000.00

Figure 2: Funding by Region

| Item | Cost | QTY | Total |
|---|-------------|-----|---------------------|
| Laptop (each) | \$1,987.00 | 7 | \$13,909.00 |
| Scanner (each) | \$13,500.00 | 25 | \$337,500.00 |
| Vehicle Cabling (each) | \$3,629.00 | ? | ? |
| Software Registration & Subscription Fees (per license) | \$500.00 | 8 | \$4,000.00 |
| Yearly updates (per year) | \$10,000.00 | 3 | \$30,000.00 |
| Total (not including vehicle cabling?) | | | \$385,409.00 |





Roll Forward Funding Request: Division of Highway Maintenance: Tow Plow Equipment Procurement

Summary of Staff Recommendation for Funding:

\$1.0 million for one year in order to purchase 8 units for beta testing. The Division of Highway Maintenance requested funding to purchase Tow Plow units in order to increase snow and ice removal capacity. Initially, the DHM suggested two funding options: \$6,498,470 for one year or \$945,232 spread across seven fiscal years until the requested 55 units were reached. Of the two options presented, option 1 was selected and revised.

Recommended Option 1: Onetime Purchase of 8 Tow Plows for Beta Testing

Approve \$6,498,470 for the onetime purchase of 55 Tow Plow units this year. The Transportation Commission purchases all units and recovers the cost by withholding year-end Snow and Ice surplus until balanced. Once reaching their life cycle, equipment will be replaced through the annual equipment replacement plan. It is expected that deploying Tow Plows will reduce the need for future snowplow replacements while shrinking the overall equipment fleet size.

Figure 1: Purchase 8 Units

| Option 1: | QTY | Cost (each) | Total |
|---|-----|-------------|--------------------|
| Original Request: Onetime Purchase of All Tow Plows | 55 | \$118,154 | \$6,498,470 |
| Revised Request: Initial Purchase of 8 plows for Beta Testing | 8 | \$118,154 | \$1,000,000 |
| Funding Request-Staff Recommendation | | | \$1,000,000 |

Justification of Request

- Enables performance levels for snow and ice removal to be maintained at a “B” level of service or higher
- Increases efficiency
- Improves public safety

Details

When used in conjunction with conventional snow plow trucks, the Tow Plow saves time and increases snow clearing capacity while decreasing maintenance costs. CDOT has successfully tested the Viking-Cives Tow Plow for over three years in Region 4, and has seen the following operational benefits from the Tow Plow:

- Decreased cycle time due to one pass clearing and wider clearing path
- Higher operating speed potential
- Improved equipment reliability
- Extended plow blade life due to reduced down force
- Faster deployment of dicing materials which increases level of service
- Broader clearing capacity coupled with decreased on-road equipment fleet size



Review of Initial Request

Below is a review of the other funding option presented by DHM.

Option 2: Purchase Eight Tow Plows Per Year

Purchase eight units totaling \$945,232 each year for the next six fiscal years, and seven units totaling \$827,078 in fiscal year 2019-2020 to reach the needed 55 units.

Figure 2: Purchase 55 Units (Over Seven Fiscal Years)

| Purchase Eight Tow Plows Per Year | QTY | Cost (each) | Total |
|-----------------------------------|-----------|-------------|--------------------|
| Tow Plow units (FY 2015-2016) | 8 | \$118,154 | \$945,232 |
| Tow Plow units (FY 2016-2017) | 8 | \$118,154 | \$945,232 |
| Tow Plow units (FY 2017-2018) | 8 | \$118,154 | \$945,232 |
| Tow Plow units (FY 2018-2019) | 8 | \$118,154 | \$945,232 |
| Tow Plow units (FY 2019-2020) | 8 | \$118,154 | \$945,232 |
| Tow Plow units (FY 2020-2021) | 8 | \$118,154 | \$945,232 |
| Tow Plow units (FY 2021-2022) | 7 | \$118,154 | \$827,078 |
| Total cost | 55 | | \$6,498,470 |

The following table summarizes the quantity of Tow Plows to be distributed across regions as well as the Interstates to be serviced by the new Tow Plows.

Figure 5: Unit Allocation

| Region | Interstate Serviced | Quantity of Tow Plows |
|--------------|-------------------------------|-----------------------|
| 1 | 76, 70, C470, 225, Hwy 85, 25 | 15 |
| 2 | 25 | 10 |
| 3 | 70 | 13 |
| 4 | 70,76,25 | 17 |
| TOTAL | | 55 |

Additional Details

The Tow Plow is a steerable snow plow trailer equipped with a 26’ moldboard and either a liquid delivery system or a granular spreader. When working in combination with a conventional snow plow truck, they can plow a path the width of two typical traffic lanes. No new trucks or additional employees will be needed to accommodate new Tow Plows. However, normal planned replacement vehicles will be ordered with larger capacity hydraulic systems and enhanced tire and brake systems to further optimize efficiency. Tow plows will be used to offset increases in surface area resulting from recent and anticipated capacity improvement projects. The Tow Plow’s innovative technology not only creates a method for improving performance, but directly impacts two customer needs: improving roadway safety and ensuring prudent stewardship of taxpayer dollars.

Figure 1 and 2 below illustrate the cost savings that will be gained by the Division through the use of Tow Plows. DHM projects that each individual Tow Plow will save over \$10,000 in maintenance and fuel costs while in sum, the 55 requested new Tow Plows are projected to save DHM over \$600,000 annually. the



Tow Plow is a visual demonstration of CDOT's commitment to innovation and efficiency that the public can easily understand and respect.

Cost Analysis

Figure 1: Comparative Cost Analysis per Unit

| New Truck | Tow plow | Savings |
|-----------|-----------|-----------|
| \$241,000 | \$118,154 | \$122,846 |

Figure 2: Tow Plow Cost Savings

| Type | Unit Savings | QTY | Annual Savings |
|--------------|-----------------|-----|------------------|
| Maintenance | \$2,948 | 55 | \$162,140 |
| Fuel | \$8,000 | 55 | \$440,000 |
| Total | \$10,948 | | \$602,140 |





**Decision Item Request:
 Geographic Information Systems Update: Add Right-of-Way Information
 Fiscal Year 2015-2016**

Summary of Approval for Funding:

\$1,000,000 over two years. Total program request is \$2,000,000 over 3 years.

| | FY 14-15 | FY 15-16 | FY 16-17 | Total |
|---|-----------|-------------|-----------|-------------|
| Total Funding Requested | \$200,000 | \$1,000,000 | \$800,000 | \$2,000,000 |
| Leveraged Funding | \$200,000 | \$500,000 | \$300,000 | \$1,000,000 |
| Department Senior Management Approved Funding | 0 | \$500,000 | \$500,000 | \$1,000,000 |

Justification of Request

- Supports program management and project management efforts
- Contributes to Department wide efforts to centralize and improve data collection
- Improves service to the public and decreases response time to Colorado Open Records Act (CORA) requests

Summary

The goal of this project is to improve and standardize the collection of pertinent right of way data and into an accessible, central location. It will serve as the first phase in the development of a complete Geographic Information System (GIS) right of way database, with the goal of providing limited initial benefits while working toward Department and Statewide benefits in the future.

Details

Access to private property abutting the Interstate and State Highways is not legally permitted once an emergency has been down-graded to the clean-up and permanent restoration stage. Having information on the location of CDOT’s right of way line location can give CDOT a head-start in knowing whether private property owners need to be contacted when planning permanent repairs. Example of projects that would benefit from centralized right of way data might be:

- The ongoing work along US-36
- A permanent flood restoration project
- An urban corridor that may need to be updated due to the Americans with Disabilities Act (ADA) accessibility issues.



This project will provide the following benefits:

- A map of CDOT's right of way will assist with project and program management allowing Region designers and project managers to quickly evaluate potential ROW impacts and account for these impacts in project schedules.
- CDOT maintenance crews performing other maintenance work in the field would have a centralized right of way location map available on an as-needed basis.
- Having a central, accepted source for right of way and related data would speed up CDOT's response time to Colorado Open Records Act (CORA) requests.

Conversion of existing right of way data that is in Computer-Aided Design (CADD) to a format that can then be included in CDOT's existing GIS. A personal services consultant would be hired to perform the following task:

- Locate all of the existing statewide right of way data that is in CADD format Add the CADD data to CDOT's current GIS, displayable in Online Transportation Information System (OTIS).
- Collect comprehensive right of way and other associated data for a smaller geographic area, such as a recent project site,
- Add this more detailed data to the GIS, as proof of concept of the benefits of comprehensive right of way data.





**Informational Only: Indirect Funding Request
 Program Management Systems Implementation
 Fiscal Year 2015-2016**

Staff Approved of Indirect Funding:

\$ 5,559,567 over 3 years. Total program cost is \$ 7,021,256 with leveraged funding contributed from CDOT Office of Information Technology and the Administrative Budget. Ongoing system maintenance costs of \$300,000 will be leveraged using available administrative budget funds.

| | FY 14-15 | FY 15-16 | FY 16-17 | TOTAL |
|--|------------|--------------|------------|--------------|
| Total Amount Needed | \$ 533,789 | \$ 6,198,511 | \$ 288,956 | \$ 7,021,256 |
| Leveraged Funding- CDOT OIT Service Division | \$ 530,000 | 0 | 0 | \$ 530,000 |
| Leveraged Funding- Administrative Budget | | \$ 642,733 | \$ 288,956 | \$ 931,689 |
| Remaining Balance Requested | \$3,789 | \$ 5,555,778 | \$ 0 | \$ 5,559,567 |

Justification of Funding

- Supports the implementation of Program and Cash management
- Improves the reporting capabilities of the Department
- Enhances the ability of Department Staff to make data driven decisions

Summary of Request

With the implement new program and cash management practices, CDOT is changing its business practices. In support of these efforts, a gap analysis of current program and cash management capabilities was conducted and recommendations were made for improvement. Implementation of improved program and cash management systems was identified as fundamental to the success of program management and project delivery capabilities.

Details

Expected benefits from implementation of improved program and cash management systems include:

- Ability to manage and allocate resources to optimize efficient use including cash
- Ability for proactive risk management at project and program levels
- Single point of data entry to reduce staff effort and improve data integrity
- Enhanced use of electronic workflows
- Development and management of master schedule which supports a statewide view of budgets, spending plans, schedules, and resources
- A program level view of projects and the ability to drill down to detailed level
- Real time perspective of schedules, resources to allow quicker adjustments based upon need



- User-friendly view, entry and reporting on program, project and cash management
- Integration of systems and automation of processes
-

Cost Analysis

A portion of the consultant scope included development of a scope of work and cost estimate to address technology system needs and assist with system procurement and implementation. The consultants identified several options and recommended allowing the market to determine the most appropriate solution. Goals to be achieved by the implementation systems were identified as follows:

- Provide a system solution for program, project and cash management
- Provide ability to track and report performance metrics
- Standardize process and reporting to improve program delivery and provide program management capability
- Integrate existing systems to eliminate redundant data entry and enhance reporting functionality
- Manage cash as a resource for delivery of programs and projects

Table 1 provides detailed breakdown of all items that are included in the funding request:

TABLE 1

| | FY '15 | FY '16 | FY '17 | Total |
|--|-------------------|---------------------|-------------------|---------------------|
| Implementation Line Item | | | | |
| Systems Integrator including 10% Contingency | \$ 389,912 | \$ 3,799,190 | \$ 225,456 | \$ 4,414,558 |
| Other Third Party Assistance (SAP, ProjectWise, AASHTOware) with 10% Contingency | \$ 23,424 | \$ 296,704 | \$ 13,274 | \$ 333,402 |
| Project Advisory Support | \$ 51,000 | \$ 306,000 | \$ 25,500 | \$ 382,500 |
| OIT Staff - changed formula to only pull OIT PM costs | \$ 20,653 | \$ 123,917 | \$ 10,326 | \$ 154,896 |
| IV & V | \$ 28,800 | \$ 172,800 | \$ 14,400 | \$ 216,000 |
| Security Assessment | \$ - | \$ 50,000 | \$ - | \$ 50,000 |
| Software Licenses | \$ - | \$ 1,072,500 | \$ - | \$ 1,072,500 |
| Software Maintenance | \$ - | \$ 257,400 | \$ - | \$ 257,400 |
| Hosted Environment | \$ 20,000 | \$ 120,000 | \$ - | \$ 140,000 |
| Total Project Cost | \$ 533,789 | \$ 6,198,511 | \$ 288,956 | \$ 7,021,255 |

* Costs including in this request are the implementation costs, NOT ongoing support costs.





**Informational Only: Indirect Funding Request
 Office of Employee Development (OED) Project Management Training
 Fiscal Year 2015-2016**

Staff Approved Indirect Funding :

\$2,500,000 over 5 years. Total program cost is \$3,000,000.00 over 5 years, with leveraged funding coming from the Office of Employee Development.

| | FY 14-15 | FY 15-16 | FY 16-17 | FY 17-18 | FY 18-19 | TOTAL |
|-----------------------------|-----------|-----------|-----------|-----------|-----------|-------------|
| Total Amount Needed | \$500,000 | \$625,000 | \$625,000 | \$625,000 | \$625,000 | \$3,000,000 |
| Leveraged Funding- OED | \$500,000 | 0 | 0 | 0 | 0 | \$500,000 |
| Remaining Balance Requested | 0 | | | | | \$2,500,000 |

Justification for Funding

- Supports the implementation of Program and Cash Management Initiatives
- Focuses on the professional development of existing CDOT staff
- Ensures the long-term sustainability and success of new project management practices

Summary of Request

The Program Management initiative is critical as CDOT continues to improve its business model in order to better meet the needs of the citizens of Colorado. At the core of the Program Management initiative is implementing solid project management practices across the entire Department. The Project Management Employee Development Program (PMEDP) is designed to align all residencies with standardized project management tools, language, and processes across all levels of project complexity. If program management is to be successfully implemented, it is imperative that we offer this training to all employees so that they have the knowledge and skills required to properly manage the multitude of projects CDOT maintains.

Details

The PMEDP will develop employees through four levels of project management over an estimated four to seven year timeframe. The employee development will result in CDOT internally certifying employees as, “Apprentice, PM I, PM II, and PM III”. Employees will be able to lead projects of increasing risk and complexity as he or she advances through the ranks of project management. At a high level, the PMEDP is based around the 10 main knowledge areas that are presented in the Project Management Body of Knowledge (PMBOK), which is the quintessential guide that is used to prepare for the Project Management Professional (PMP) certification. The employee development will occur not only through a series of



instructor lead, and computer based training, but will integrate on-the-job experience, be tied to a mentorship program, contain supervisor/employee evaluations and employee development plans, modification of existing CDOT manuals, utilization and modification of classes already owned and taught by CDOT, and a number of other project management employee development related items.

Cost/Benefit Analysis

The CDOT U College of Engineering has conducted extensive research to determine the scope of this development. In addition, 17 DOTs were polled in a survey to determine depth of project management instruction offered and cost for implementation. Along with these agencies, four private companies were also polled for cost, based on size and scope of program delivered. The standard cost range, divulged by these organizations, was 2.5 to 3.5 million dollars.

It is common practice for DOT's, with similar programs, to employ an outside company to deliver project management related training. This is often paid for on a per student basis, ranging from \$5,500 to \$15,000 per student. CDOT's PMEDP differs in that CDOT is seeking to hire a vendor to deliver customized CDOT project management coursework, and materials that will be exclusively owned, and ultimately administered, maintained, and delivered by CDOT personnel. This results in a higher up-front investment, but results in a less expensive, and more stable program in the long-term.

It is less expensive in that, CDOT desires to educate in the range of 100 to 150 people per year going forward. Not all employees at CDOT will go through the entire program to the PM III level, however most people involved in project delivery, such Environmental, Right-of-Way, Utilities, etc., will receive training in project management in some form.





Informational Only: Funding Request Division of TSM&O Fiscal Years 2015-2016

Summary of Funding Request:

This funding request includes \$9.0 million for TSM&O projects, programs, and services and an additional \$10 million for ramp meter expansion projects in Region 1 to reduce traffic congestion on highway I-25 between Lincoln and SH7. This would increase our percent of system control of on-ramps on I-25 from 31% to 64% in Region 1 and would increase system control of on-ramps on I-25 between 48th Ave and Colorado Boulevard (State's most congested and unreliable section of freeway) from 24% to 90%.

Current FY15 and FY16 budgets do not meet funding needs. However, as funds are spent in FY15 and in FY16, the Division of TSM&O may request additional funds through the monthly budget supplemental process.

| | FY14-15 | FY15-16 | TOTAL |
|---|--------------|--------------|--------------|
| Requested | \$12,000,000 | \$19,000,000 | \$31,000,000 |
| Approved Budget | \$7,236,795 | \$6,107,619 | \$13,344,414 |
| Possible Funding Requests (through Monthly Budget Supplement Process) | \$4,763,205 | \$12,892,381 | \$17,655,586 |

TSM&O Future Funding Needs

- An estimated \$60 million is needed in ramp meter expansion projects Statewide over the next 5 years to increase our system control of on-ramps in congested corridors to from 27% to 75%
- Annual funds needed for operations projects to reduce traffic congestion over the next 5 years are estimated at \$15M (including the above ramp meter project costs)

| FY2014 - FY2015 Roll Forward Request Detail | | | | | | | | | | | | |
|---|-------------------------------------|--|--|---------------------------|------------------|---------------------|----------------------|-------------|-----------|---------------------|----------------------|----------|
| Region | Organization | Project / Program | Justification of Requests | Encumbered / Unencumbered | Staff Recommends | Round 1 | | | | Round 2 | | |
| | | | | | | \$ Amount Requested | Tentatively Rejected | TC Approved | Approved | \$ Amount Requested | Tentatively Rejected | Approved |
| HQ | Project Support | AECOM | The Cash Management, Project Management and RAMP programs are continuing to be developed and updated. As a result, we have several PO's for AECOM that funding is being requested to roll-forward for: PO's are: 4310000495 - \$1,134,480.00, 431000888 - \$178,280.00, 431000945 - \$394,800.00, 431000632 - \$64,449.00, 431000661 - \$107,625.00 PR's: 700003471 - \$629,547.00. Staff Branches is also using a facilitator to assist us with our QIC meetings and we would like to request the funds to roll-forward for PO - 411000771 - \$34,500.00. | E | Y | 2,543,681 | | | 2,543,681 | | | |
| | Division of Administrative Services | Laptop Replacement | 381 laptop computers were ordered for delivery by June 30 but because of issues with the supplier (HP), they were not delivered on time. If not approved, 381 HQ employees will not be replaced. | E | Y | 412,080 | | | | 412,080 | | |
| | | CGI Catalog | This money was allocated to pay for the installation of the CGI catalog functionality for CDOT employees. This functionality will enhance the purchasing experience and make it easier and less time consuming. The project was delayed and now is expected to roll out in Sept 2014. If not approved, payment will consume FY15 funds instead of FY14 funds. | U | Y | 400,000 | 400,000 | | | | 400,000 | 400,000 |
| | | Training & Organizational Development | This project will complete the CDOT wide contract writing development Project Manual. The Project Manual will provide guidance to the field and allow for effective cross-training throughout the Department. The objectives of the Project Manual is: a. Fully document processes and procedures for all contract types that CDOT produces, b. update written procedures, c. capture procedures or steps of procedures that are not currently documented, d. display organizational structure of each type of contract by creating flow charts of processes and procedures, to include reference to current laws and regulations. | U | Y | 73,820 | 30,281 | | | 43,539 | 30,281 | 30,281 |
| | Division of Accounting & Finance | Flood Recovery | Budget and spending authority are required to continue to support the Flood Recovery efforts. Not approving this request would have a detrimental effect on the areas that support the Flood Recovery, such as: business office staffing, document control efforts, closing out the ER projects utilizing the Finals Engineer, potential loss of FEMA reimbursements, discontinuing the Flood Risk and Resiliency program with FHWA, and the flood consulting support would cease. | U | Y | 581,524 | | | | 581,524 | | |
| | Office of Transportation Safety | First Time Drunk Driver | CDOT - Highway Safety Office (HSO) works with over 120 local law enforcement agencies throughout the State of Colorado in an on-going effort to reduce crashes resulting in fatalities and serious injuries caused by speed, impairment, and un-restrained passengers. It is feared that legalized Marijuana will increase incidents of driving while impaired. Increased prevention is considered the best method to impact the number of fatalities. The retention of these funds will allow increased funding of the local agencies. | U | Y | 88,000 | 88,000 | | | | 88,000 | 88,000 |
| | | Security Access | The Transportation Commission allocated \$900,000 to support the expansion of the access control system statewide. The system expansion began in February 2014 with an upgrade to the existing system prior to expansion, but delays were encountered during the purchasing and the project. | E | Y | 607,933 | | | | 607,933 | | |
| | | Agility Testing | CDOT on May 8, 2014, notified Occur-Med. LTD, to commence work according to the Physical Agility Testing, Contract Number 14 HAA 68160. The successful vendor will perform job evaluations for the Transportation Worker I positions on a statewide basis. These evaluations will allow for development of the Physical Agility Testing for individuals who have applied for and been offered a position as a Transportation Worker I. The testing will identify applicants who can perform the physical requirements of the positions. | E | Y | 150,000 | | | | 150,000 | | |
| | | Safety Ed Mgmt | The Excellence in Safety program is entering a critical phase. Beginning next fiscal year, all TM-II Maintenance and Traffic Work Leads will be trained to perform Safety Engagements. Additionally a Phase II Employee Safety Recognition program will be implemented; the funding for this will come largely from roll-forward dollars. These funds will also be used to pay for our annual maintenance fee for the Origami database. | U | Y | 150,000 | | | | 150,000 | | |
| | DTD | Traffic Data Collection | Traffic data collections are done in the Spring and Summer due to weather conditions, requiring open POs to roll into the new fiscal year to complete the process. DTD typically requests funds to be rolled in order to cover the expenses that will hit the active POs. - \$10,800 - This PO is to get the Weigh in Motion equipment calibrated using proprietary software that communicates with the WIM equipment. - \$21,766 - This PO is to get the contractor to assist with ATR and WIM repairs. - \$21,802 - This PO is with a company that will provide repair equipment which is contained within the Diamond equipment used on 90 stations throughout Colorado. - \$226,323 - This PO is for Traffic Data Collections for short duration counts. | E | Y | 280,692 | | | | 280,692 | | |
| TSM&O | Real Time Incident Management | This roll forward will allow for the purchase of several pieces of technical equipment to use for traffic incident management. These items will provide IT support for incident management including critical support for incident observation and notification for the traveling public. They will also provide IT technical skills to evaluate and mitigate incident issues. | E | Y | 359,254 | 359,254 | | | | 359,254 | 359,254 | |
| R1 | Maintenance | Holly Complex - CM | Region 1 is requesting \$38,800 roll into fiscal year 2015. Region 1 submitted a damage claim on June 2, 2014 due to hail damage at the 2000 South Holly Complex. Due to the claim being submitted in fiscal year 2014, the Division of Risk sent the \$38,800 via internal fund transfer on July 8th but dated the IT document as June 30, 2014 to comply with the year-end process. The Region could not get the scope, shopping cart, bid solicitation, awarded and work done by June 30, 2014. | U | Y | 38,800 | | | | 38,800 | | |
| R3 | Maintenance | Sign Replacement | The FY14 Sign Replacement Project was delayed due to unforeseen circumstances. As a result, the PO (#231004317) was carried forward into FY15. The requested roll forward of funds associated with the PO will ensure the completion of this project. | E | Y | 206,095 | | | | 206,095 | | |
| | | Kolbe Striping | The Kolbe Striping Project was planned as a two year project. Because of unforeseen delays, the contractor for the Project was unable to complete all of the work planned for FY14. The requested roll forward of funds associated with PO 431001111 will ensure the completion of this project. | E | Y | 94,400 | | | | 94,400 | | |

| Region | Organization | Project / Program | Justification of Requests | Encumbered / Unencumbered | Staff Recommends | \$ Amount Requested | Tentatively Rejected | TC Approved | Approved | \$ Amount Requested | Tentatively Rejected | Approved |
|---|-----------------|-----------------------|---|---------------------------|------------------|---------------------|----------------------|------------------|------------------|---------------------|----------------------|----------------|
| R4 | Other Equipment | Nuclear Density Gauge | This is a request to roll-forward unencumbered Region 4 capital operating funds (also referred to as non-road non-computer). Rolling these funds into FY 15 will allow the Materials Lab to purchase one nuclear density gauge that would not otherwise be possible given the limited funding available and list of needs in FY 15. | U | Y | 3,619 | | | 3,619 | | | |
| | Maintenance | 19237/SH 257 | This is a request to roll forward funds that were encumbered for consultant task order #17 to perform construction management and inspection services for project 19237/SH 257 & Crossroads Blvd signal. Because the contractor was unable to complete the task order, the construction work will be re-advertised in FY15. | E | Y | 50,000 | | | 50,000 | | | |
| R5 | Maintenance | HVAC Upgrade | This is a request to roll forward \$20,091.34 from the Region 5 FY 14 Controlled / Deferred building funds for upgrades in building #1000/5/74. The purchase order (411001648) for the project was issued on 6/16/14, but not completed until 7/15/14. This roll forward will ensure that funds associated with this PO do not consume the region's FY15 budget | E | Y | 20,091 | | | 20,091 | | | |
| Total Roll Forward request under consideration by Staff that do not require TC approval under PD 703.0 | | | | | | 3,516,307 | 877,535 | 2,543,681 | 2,638,772 | 877,535 | 447,254 | 430,281 |
| Subtotal of TC Approved FY2014 Roll Forward Request | | | | | | | | 2,543,681 | | | | |
| Subtotal of Approved FY2014 Roll Forward Request by Senior Management Team (Round 1) | | | | | | | | | 2,638,772 | | | |
| Subtotal of Approved FY2014 Roll Forward Request by Senior Management Team (Round 2) | | | | | | | | | | | 430,281 | |
| Grand Total for Round 1 and 2 | | | | | | | | | | | 5,612,734 | |

= Rejected Projects

| Cost Centers | FY2014 MLOS Cost Center Balances | Encumbered / Unencumbered | Staff Recommends | \$ Amount Requested | Tentatively Rejected | Staff Recommends |
|---|--|---------------------------|------------------|---------------------|----------------------|-------------------|
| R14MS-010 | Aurora Traffic Section | | Y | 1,239,301 | | 739,301 |
| R15MS-010 | Aurora Maintenance Section | | Y | -1,147,648 | | |
| R19MS-010 | Tunnel Maintenance Section | | Y | -13,214 | | |
| R6589M-010 | Traffic and Safety Maintenance Section | | Y | 1,122,264 | | 622,264 |
| R68MS-010 | Denver Maintenance Section | | Y | 864,036 | | 864,036 |
| R24MS-010 | Pueblo Maintenance Section | | Y | 719,313 | | 719,313 |
| R25MS-010 | Pueblo Traffic | | Y | 170,763 | | 170,763 |
| R32MS-010 | Grand Junction Maintenance Section | | Y | 1,708,837 | | 776,449 |
| R36MS-010 | Craig Maintenance Section | | Y | 132,830 | | 132,830 |
| R38MS-010 | Grand Junction Traffic | | Y | 16,001 | | 16,001 |
| R41MS-010 | Greeley Maintenance Section | | Y | -195,437 | | |
| R45MS-010 | Greeley Traffic | | Y | 713,260 | | 713,260 |
| R53MS-010 | Durango Maintenance Section | | Y | -177,405 | | |
| R55MS-010 | Reg 5 Traffic | | Y | 245,783 | | 245,783 |
| R57MS-010 | Alamosa Maintenance Section | | Y | -58,359 | | |
| Subtotal of MLOS Roll Forward Request | | | | 5,340,325 | | 5,000,000 |
| Grand Total for Round 1 and 2 plus MLOS Cost Center Balances | | | | | | 10,612,734 |

Note: The MLOS cost center roll forwards will be used to fund the roll forward maintenance projects below.

| Roll Forward Amounts for Maintenance | \$ Amount Requested | Staff Recommends |
|---|---------------------|------------------|
| Route Optimization Analysis | 1,000,000 | 1,000,000 |
| Avalanche Gazex Equipment | 2,500,000 | 2,500,000 |
| Diagnostic Equipment | 500,000 | 500,000 |
| Tow Plow Equipment | 1,000,000 | 1,000,000 |
| Subtotal of Maintenance Roll Forward Request | 5,000,000 | 5,000,000 |