

RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR BOARD OF DIRECTORS OF THE
HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (HPTE) (Room 225 and HQ Auditorium)

Held: Wednesday, September 17, 2014; 11:00
4201 E. Arkansas Ave, Denver, CO 80222

A meeting of the Board of Directors of the HPTE was convened in accordance with applicable statutes of the State of Colorado, with the following Directors present:

Attendance:	Tim Gagen, Chair	Don Marostica	Brenda Smith
	Kathy Gilliland, Vice Chair	Gary Reiff (excused)	
	Doug Aden	Trey Rogers (by phone)	

Chair Gagen called the regular meeting to order @11:00pm in Room 225

Roll call was taken to establish a quorum, and it was noted that Director Reiff was excused for the 11:00 discussion. Director Rogers was on the phone for the 11:00 discussion, but would be unable to attend the 12:00 discussion in the Auditorium.

General Discussion

The HPTE Board engaged in discussion of matters relating to subsequent agenda items, upcoming projects, and administrative and budget matters.

Director Cheroutes reported on the following:

Assistant Attorney General Jordan Chase reported that AG Pat Sayas filed a motion today to dismiss the Hammer/Drive Sunshine Institute lawsuit, and that the timeline for when the judge would address the motion is uncertain. He also noted that Ms. Hammer has filed a temporary restraining order regarding items 11 and 12 on today's agenda.

Director Cheroutes introduced the topic of increased rates for license plate tolls (LPT), which is covered by agenda item 12. He said the US 36 Concession Agreement with Plenary allows them to send requests to the Board to increase toll rates. The Board has the authority to either approve or deny the increase. Plenary has made this request to offset their costs relating to LPT revenue leakage resulting from customers not paying their bills. Chair Gagen noted that he felt there was insufficient information to make a decision today, and recommended the staff get additional information and set a plan of action, including a strategy to steer LPT customers to get transponders. Director Cheroutes recommended tabling the item this month and have a Board workshop on this in October, with possible reconsideration in November.

Director Cheroutes said agenda item 11 was an amendment to the US 36 Amended and Restated Concession Agreement that consist of clarifications and clean-ups so that all parties are on the same page. He noted that one of Plenary's lenders has yet to agree to the amendment, and that it might be best to table that matter today as well until Plenary receives confirmation from its lender.

Director Cheroutes reported Director Smith is participating in the legislative audit, which will be an on-going effort over the next nine months. He thanked Director Smith for her assistance.

Director Cheroutes discussed the many public outreach and engagement activities currently under way, particularly those fulfilling the Transparency Policy requirement for having a town hall meeting covering the I-70 East Project prior to the release of a request for qualifications (RFQ). He said the Board would attend a joint workshop with the Transportation Commission in November. The plan is then to hold a Special Meeting in early December for the Board to consider whether to authorize the release of the RFQ.

The Installment Purchase Agreement with CDOT is also under Board consideration, which will allow CDOT to purchase tolling software and hardware and grant HPTE the right to use the equipment. In

exchange, HPTE will pay CDOT back through toll revenues. This item will also be before the Transportation Commission on Thursday.

Director Cheroutes said the \$30 million commercial bank loan for the I-70 Eastbound Peak Period Shoulder Lane (PPSL) was receiving interest from the banking industry, and that he thought he would have a term sheet by the end of October.

Meeting Break
(12:00)

Regular Board meeting moved from Room 225 to the Auditorium.

Chair Gagen reconvened the regular meeting @12:05pm in the Auditorium.

Board reconvened and roll was called to re-establish a quorum after a short break. All directors present with the exception of Director Rogers. Director Reiff came into attendance after roll was called.

Approval of minutes
[Resolution #138:](#)

Director Marostica moved approval of the August 20, 2014 meeting minutes; Director Rogers earlier stated that the letter from Hammer Law Firm should be attached as comments to the July and August minutes. Upon a second by Director Smith, the minutes were approved by all present.

Public Comment @
1:10pm:

David May, representing the NCLA (Northern Colorado Legislative Alliance), explained to the board that the NCLA is a joint public policy advocacy arm of the Fort Collins, Greeley and Loveland Chambers of Commerce and the Northern Colorado Economic Development Corporation. The NCLA is the leading voice in northern Colorado influencing local, state and federal policy on issues affecting the unique business interests of Northern Colorado. May stated that Northern Colorado officials and business leaders are pursuing every avenue in lobbying for the widening of Interstate 25 between Fort Collins and Longmont. May introduced The Fix North I-25 Business Alliance, informing the Board that it is an initiative of the area chambers of commerce and economic development organizations devoted to widening North I-25 to 3 lanes between Highway 14 and Highway 66.

Director Gilliland stated that it was good to hear business community coming together as they have in Northern Colorado.

Attorney Karen Hammer of Hammer Law spoke at length about her views on the legality of the Board's prior actions and possible future actions, including specific items on the Board's agenda today. Ms. Hammer believed these actions did not comply with the State's "transparency and accountability laws." In particular, regarding Resolution 140 (Master Installment Purchase Agreement), she objected to letting HPTE and CDOT initial schedules with financial information without having that information come through the public and be disclosed and open for public comments. Regarding Resolution 141, (the Amended and Restated Concession Agreement), she objected to its ratification because the February 19, 2014 Board meeting was flawed and the Amended and Restated Concession Agreement was never duly authorized. She said the agreement is not legally effective but her concern is that HPTE can't ratify and affirm now without following the correct steps. Relatedly, Ms. Hammer also spoke about her concerns regarding Resolution 142 (Revised Toll Schedule for I-25 Managed Lanes).

Director's Report:

Director Michael Cheroutes reported over the last month HPTE has spent time dealing with public outreach responsibilities and issues in connection with ongoing projects. With continuous effort to keep the public advised about the I-70 project.

Megan Castle reported HPTE has been supporting the C-470 Coalition at events that are focusing on the Environmental Assessment. So far, three telephone town halls were held on September 9, 10, and 11. Ms. Castle reported that there were more than 15,000 people on the telephone and 76 questions were answered live at all three telephone townhalls. This week there will be four in-person town hall meetings on September 15, 16, 17 and 18. For the I-70 East project, HPTE is planning to be present at all the Supplemental Draft Environmental Impact Statement (SDEIS) meetings. HPTE is also conducting personal outreach in Aurora as well as with the Globeville-Elyera-Swansea area and the Denver City Council.

- OMPD Report: Acting Director Peter Kozinski spoke about the I-70 Mountain Corridor Eastbound Peak Period Shoulder Lanes and indicated that HPTE and OMPD are investigating a commercial loan to fund a funding gap. On the US 36 Project, the team is developing transponders for HOV users and working through cost and distribution issues. On August 29, the I-70 East Project released the SDEIS, a study that has been in progress for over a decade. Last week, Kozinski updated the STAC on the progress of the project and will continue to update them quarterly. On the C-470 Project, the Level Two Traffic and Revenue analysis was released.
- North I-25 Report: On the North I-25 Corridor, Region 4 RTD Johnny Olson described how it and other north/south corridors in the region were shut down when the September 2013 flood disaster struck. RTD Olson also described how CDOT is trying to leverage FHWA Risk and Resiliency funding through the Presidential challenge and through Block Grants to assist in keeping that roadway open in the future. RTD Olson also described how that money could be leveraged into getting a managed lane on North I-25. Myron Hora, the Region 4 corridor manager, briefly spoke about how to package creative financing and what different options are available for the North I-25 managed lane.
- Master Installment Purchase Agreement
[Resolution #140:](#) Director Cheroutes introduced the Master Installment Purchase Agreement, saying that CDOT would buy tolling software and hardware equipment for HPTE's use on three corridors that will come on line soon and that the cost of the equipment would be paid back by HPTE through installment payments using corridor revenues. He said this matter will be presented to the Transportation Commission on Thursday. Director Reiff requested confirmation from Director Cheroutes regarding the \$5M cap to the Agreement. Director Cheroutes indicated that the cap for the cost of the equipment is \$5M and that he would not have the authority to increase that cap. Director Marostica made a motion to approve Resolution #140, seconded by Director Gilliland and approved by all present.
- Amendment #1 to the Amended and Restated Concession Agreement
[Resolution #141:](#) Director Cheroutes suggested tabling this item until Plenary's lender, Bank of New York, has concurred with this matter. With a motion to table by Director Marostica, seconded by Director Smith, it was approved by all present.
- Revised Toll Schedule for the I-25 Express Lanes
[Resolution #142:](#) Director Cheroutes said the Board needs more information on this matter before consideration. He recommended a toll rate workshop for the October meeting, with possible reconsideration in November. With a motion to table until additional information is presented to the Board for its consideration by Director Aden, seconded by Director Gilliland, it was approved by all present.
- Adjournment: There being no further business to come before the Board, the meeting was adjourned.