

**RECORD OF PROCEEDINGS**

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**MINUTES OF THE SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE  
HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (HPTE)**

Held: Thursday, June 25, 2015; 2:00pm

4201 E. Arkansas Ave, Denver, CO 80222

A special telephonic 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 Gary Reiff  
Doug Aden Trey Rogers

Chair Gagen called the meeting to order @2:00pm in the Headquarters Auditorium: Roll call was taken to establish a quorum, and it was noted that the absence of Board Director Gilliland was excused.

Director's Report: HPTE Director Michael Cheroutes gave a general overview of the agenda, including discussion of policies related to motorcycle use of HOV lanes, and approval of a fee-for-service intra-agency agreement with CDOT. He described the grand opening ceremony for Phase 1 of US 36, and said there was good representation of all the participating stakeholders. He then thanked Board Director Aden for his years of service and said that he will be greatly missed.

Motorcycles on HOV Policy Discussion: HPTE Director Cheroutes introduced this item for discussion only, and described the discussion over several weeks by staff and stakeholder groups. He noted that state statute and federal regulation allows motorcycles to utilize HOV lanes. He further noted that the Concession Agreement between HPTE and Plenary Roads Denver for operation of the US 36 ExpressLanes allows motorcycles to ride for free. In order for the tolling equipment to correctly detect a motorcycle, a non-revenue transponder is required. Without the transponder, the toll equipment is unable to distinguish the motorcycle from any other two axle vehicle. Outreach with affected motorcycle groups has been conducted, and public informational materials describe this nuance in use of ExpressLanes by motorcycles. He said further effort is needed to get the word out about establishing an account to obtain the free transponder.

Board Director Marostica noted the public information materials are very clear about this, and that group riders are in agreement that the transponder is needed. He noted most motorcyclists already have established accounts with E-470 for their other vehicles, and that obtaining a motorcycle transponder should be easy to do. He said that it is preferable from his point of view to affix a transponder to the motorcycle windshield rather than on the headlamp, where it may come loose during pressure-washing.

HPTE Communications Manager Megan Castle reported on a meeting staff held with the ABATE motorcycle group, and noted that they reached common ground and some follow-up is needed. She said the CDOT motorcycle education and safety liaisons would help disseminate information about the new transponder protocol. HPTE Director Cheroutes said that HPTE is seeking to improve from lessons learned during the US 36 experience, and that the motorcycle transponder issue was identified early and steps taken to connect with affected stakeholders.

Approval of Fee-for-Service IAA with CDOT Resolution #170: HPTE Director Cheroutes introduced this action item as a significant matter. He said that after relying on loans from the Transportation Commission for operational funding the previous five years, there was a need for a sustainable source of funding for the operations of the Enterprise. Staff and consultants have developed a rationale for the implementation of a fee-for-service relationship with CDOT. He noted that

the HPTE works full time to deliver projects for CDOT, and is seeking an exchange transaction with CDOT for compensation without TABOR implications to CDOT or jeopardizing HPTE's enterprise status. It is meant to be a long-term relationship between CDOT and HPTE that will enable repayment of the prior Transportation Commission loans. It is important that the HPTE delivers on what it says it will, and maintain documentation for auditing purposes. He noted the IAA will assure that the HPTE is acting as a business. The key to going forward is perform specifically identified services for CDOT in exchange for compensation.

Without divulging privileged communications, Director Rogers thanked the Attorney General for the informal opinion provided in support of the fee-for-services arrangement. Assistant Attorney General Brent Butzin noted that the recitals in the agreement also set forth the legal basis for the fee-for-service model. He then presented the general terms of the agreement, and described the consultant materials provided in support of the HPTE scope of work and the valuation of the services to be performed. HPTE Director Cheroutes noted in particular that the agreement and materials provided to the Board were supported by the advisory memorandum from KPMG, also included in the Board packet. Assistant AG Brent Butzin requested a minor amendment to the scope of work noting the annual report delivery is to occur in April, rather than May as presented.

Board Director Smith said the IAA is very substantial. She asked for clarification on the outstanding \$6.9M outstanding loan balance noted in the Stifel report. HPTE Accountant Kay Hruska said this is attributable in part to the way loans were accounted for by the Colorado Tolling Enterprise, which were assumed by HPTE at its creation. She noted that CTE was instructed by the State Controller's Office to record the loans as transfers that are reflected in the fund balance from previous years. There were no agreements between the CTE and CDOT for the transfers; however, agreements are in place for all new loans that originated after 2010. Director Smith said that if the money is recorded as a transfer, it is not a liability. Board Director Rogers agreed this is important for TABOR reasons. Director Smith said that the Board will need an update to the report.

Following the discussion, upon a motion by Board Director Marostica and second by Board Director Smith, Resolution #170 was approved by all present as amended.

Other Business            HPTE Director Cheroutes said that the Board meetings in July and August will be important for setting toll rates on other corridors.

Adjournment:            There being no further business to come before the Board, the meeting was adjourned.