



To: HPTE Board of Directors
Date: August 7, 2015
From: Maria Sobota, Chief Financial Officer
Subject: Update on Current Recording of Transportation Commission Loans

Purpose:

This memo provides information to the High Performance Transportation Enterprise (HPTE) Board of Directors regarding staff efforts to clarify the Enterprises liability. This update is intended to address concerns raised at the previous Board meeting regarding the difference of the recorded HPTE liability on audited financial statements and the Transportation Commission (TC) loan balance reflected on Stifel's proforma cash flow projection report.

Action:

No Board action is required this month and the purpose of this memo is informational only.

Background:

The Colorado Tolling Enterprise (CTE) was established as a government-owned nonprofit business operating within, and as a division of the Colorado Department of Transportation (CDOT). The Colorado Tolling Enterprise was authorized by House Bill 02-1310 and created by the Transportation Commission, Department of Transportation, State of Colorado, pursuant to Section 43-4-803(1), C.R.S., by a resolution adopted on August 15, 2002.

The CTE requested a Transportation Commission (TC) loan of \$1,000,000 and interagency agreement (IAA- attached and approved March 2003) from CDOT which was approved by the TC to pay for start-up costs in connection with the formation and operation of the CTE. The loan was to be repaid by the CTE when it receives sufficient bond proceeds or toll revenues. When the loan and IAA were approved, an Attorney General (AG) opinion was obtained which considered the transfer as a contingent liability. The contingent liability was not characterized as a loan, thus not recording the transfer as an actual liability to the CTE. The following statute C .R.S 43-4-805 is the primary reason of the accounting treatment of the recording of the TC loans as a transfer and not a liability. "When the enterprise receives sufficient bond proceeds or toll revenues, the enterprise shall reimburse the state highway fund for the full amount of any transfer made by Commission plus interest at a rate set by Commission".

Since the terms of the repayment were not clearly defined which created the possibility that it could take decades for the CTE to repay the Commission or not being able to repay at all, the State Controller at that time did not want to carry a liability on the financial statements for an undetermined period of a time, thus characterized the transfer as a contingent liability (with no liability booked). Per the State Controller's office and the AG's office, it was the only way to comply with both Generally Accepted Accounting Principles (GAAP) and the intent of the statute. The CTE was disqualified as an enterprise due to this transfer being more that 10% of revenue in Fiscal Year 2003.

The second and third transfers from CDOT to the CTE took place in FY 2006: \$2,000,000 and \$4,000,000 were recorded the same way. CTE was disqualified as an enterprise for Fiscal Year 2006 due to this transfer being more that 10% of revenue. When the HPTE was created in 2009, the CTE's powers, duties, functions and financial balances were transferred to the HPTE and the CTE was abolished.

When the HPTE was created by C.R.S 43-4-806 (please see below), the legislation language was drafted specifically to deter the HPTE from losing its enterprise status as the CTE did, due to the recording of TC loans as revenue.

C.R.S. 43-4-806

(4) The commission may transfer moneys from the state highway fund created in section 43-1-219 to the transportation enterprise for the purpose of defraying expenses incurred by the transportation enterprise prior to the receipt of bond proceeds or revenues by the enterprise. **The transportation enterprise may accept and expend any moneys so transferred, and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer shall constitute a loan from the commission to the transportation enterprise and shall not be considered a grant for purposes of section 20 (2) (d) of article X of the state constitution.** As the transportation enterprise receives sufficient revenues in excess of expenditures, the enterprise shall reimburse the state highway fund for the principal amount of any loan made by the commission plus interest at a rate set by the commission. Any moneys loaned to the transportation enterprise pursuant to this section shall be deposited into a fund to be known as the statewide transportation enterprise operating fund, which fund is hereby created, and shall not be deposited into the transportation special fund. Moneys from the transportation special fund may, however, be used to reimburse the state highway fund for the amount of any loan or any interest thereon.

During the subsequent years some of the transfers from CDOT to the CTE have been repaid. Table 1 below shows a current CTE repayment summary.

Table 1: CTE Repayment Summary

	Total CTE Loan Balance	\$7,000,000	
Fiscal Year	2008	<i>(\$ 2,500,000)</i>	Repayment Amount
	2008	<i>(\$ 930,000)</i>	
	2009	<i>(\$ 301,822)</i>	
	2010	<i>(\$ 301,822)</i>	
	2011	<i>(\$ 905,464)</i>	
	Remaining Unpaid Balance*	\$2,060,892	

*CTE loans were not charged interest

Following the creation of the HPTE and the abolishment of the CTE, the HPTE took out additional TC loans of \$1,000,000 annually for Fiscal Years 2012, 2013, 2014 and 2015. The TC loans of \$4,000,000 were recorded as a liability based on the C.R.S 43-4-806 and reflected in the HPTE’s annual financial statements. Until the HPTE has a sufficient revenue stream to allow it to repay the outstanding balance of CTE balance of \$2,060,892, the outstanding balance is being manually tracked by the Enterprise Accountant.

The total outstanding balance of \$6,947,692 (interest included) was used as the basis for the calculations provided in the Stifel proforma cash flow projections and was used to determine the current Fiscal Year 2016 repayment amount of \$750,852.

Current Status:

The Chief Financial Officer (CFO), CDOT Controller, and Enterprise accounting staff researched this issue and have contacted the Office of the State Controller, KPMG as well as the Attorney General’s office. All parties agreed that the CTE transfers were recorded properly in regards to GAAP, legislation and legal interpretation of the agreements. The Chief Financial Officer, CDOT Controller, CDOT Deputy Controller,

Enterprise Accountant, Enterprise Budget Analyst had a meeting with Director Smith to address her concerns regarding the recording of the CTE transfers and the HPTE financial statements. After discussing the loan agreements, GAAP requirements, and the legislation of HPTE and CTE, Director Smith agreed that the CTE transfers were recorded properly and that HPTE owes the remaining unpaid balance from the CTE transfers of \$2,060,892. Additionally, it was agreed that a footnote should be included in the Fiscal Year 2015 financial statements, disclosing the CTE loan balance as a contingent liability.

Next Steps

As directed by the Office of the State Controller, staff will include a footnote in the Fiscal Year 2015 financial statements that discloses the contingent liability of \$2,060,892. Additionally, when HPTE issues their budgeted repayment of \$750,852, this payment will be applied to the outstanding CTE loan balance of \$2,060,892. This transaction and future payments that are applied to the CTE loan balance will be recorded as transfers between CDOT and HPTE, using the same methodology that was applied to the payments made in Fiscal Years 2008, 2009, 2010, and 2011. After the CTE loan balance of \$2,060,892 has been paid in full, all future loan payments will not be treated as transfers and will be applied towards HPTE's \$4,000,000 liability to CDOT.

Staff has confirmed with the Office of the State Controller and the Attorney General that HPTE and CDOT will not have TABOR implications due to loan payments being processed as transfers. The loan payment is not considered as new revenue to the State, which therefore exempts the transaction from being reflected as TABOR revenue to CDOT or HPTE.