

**High Performance Transportation Enterprise  
Board of Directors Meeting Minutes  
October 13, 2009  
CDOT Headquarters Building, Conference Rm. 225**

Acting Chair Michael Cheroutes opened the meeting at 10:30 a.m.

**PRESENT:** Michael Cheroutes  
Doug Aden  
Heather Barry  
Dan Cleveland  
Tim Gagen (via phone)  
Charlotte Robinson

**ALSO PRESENT:** Russell George, CDOT Executive Director  
Peggy Catlin, Deputy Executive Director and Former Acting Director of Tolling Enterprise  
Harry Morrow, Chief Transportation Council  
Marina Krasny, HPTE Accountant  
Pam Hutton, Chief Engineer  
Jennifer Finch, Transportation Development Director

**AND:** Carla Perez, Governor's Office

**AND:** Other organization representatives, the public, and the news media.

1. Michael Cheroutes called the meeting to order and stated that the meeting is going to be recorded for the purpose of minutes. He started with introductions of the board members and staff around the table.
2. Acting Chair Cheroutes reported on the conference call that Board held on September 23. During that call board members had an opportunity to introduce themselves. Carla reported on the history of FASTER and the legislative intent of the act. It was decided on the schedule of the first meeting to take the steps to getting organized and meeting face to face.
3. Executive Director George thanked the Board members for the willingness to donate their time and talents to CDOT on this important step forward into Colorado Transportation future. He discussed his view of the Mission of the Board and its interaction with the Transportation Commission. Colorado is one of the few states that take this innovative approach to transportation. The concept is that there is more to transportation than paying fuel tax and building roads. The next piece comes with more integrated and connected way of doing things between the private sector and various public sectors.

Over the last decade, the legislature and the Transportation Commission have been laying down a solid foundation for us to be headed in this direction. The most recent

example is the Colorado Tolling Enterprise and all it has set in motion. The facilities that are in the State today, mixing the public funding with the private funding, management of lanes and pricing lanes come together here. We can be as creative as the Board wants to be.

He pledged CDOT staff support, and stated that as the official employee of the CTE, Marina Krasny would continue to be the primary staff person to the HPTE Board. Additionally, Peggy Catlin would be available as a resource. He suggested Carla Perez from the governor's Policy office would be heavily involved as the HPTE was one of the Governor's key policy goals.

Acting Chair Cheroutes added that there are enormous corridor needs out there and he hopes HPTE can help the State to move along with those needs. Carla Perez reiterated that there is a great interest from the Governor to explore the Private Public Partnerships as a way of doing some of the corridors and the focus may not be exclusively on Tolling.

No comment from the public.

4. Mike Cheroutes thanked Peggy Catlin for putting together a great resource book for the Board. Prior to her report, Peggy mentioned that more information is available should any question arise from the materials provided. Deputy Executive Director Peggy Catlin reported on the activity generated by the Colorado Tolling Enterprise. She went over the current and past legislature that provided foundation for the Colorado Tolling Enterprise. Peggy reviewed the nature of the CTE, its funding sources, Transportation Commission transfers for North I-25 HOV/HOT conversion and other potential projects, and repayments terms for the transfers.

Carla Perez asked about the total amount of obligation to Transportation Commission at this time. Peggy provided her and the Board with the timing and the breakdown of the transferred amounts and current balance as well as the repayment schedule. Director Doug Aden added that in FY2008 larger prepayment was made due to the success of the I-25 HOV/HOT Lanes. Peggy emphasized that CTE General portion of the obligation amount cannot be repaid until there is another revenue producing project. The proceeds from I-25 HOV/HOT Lanes cannot be used to repay that portion of the outstanding balance due to the limitation of use of revenue agreement with FHWA.

Under the new legislature, toll projects are no longer restricted to new capacity and toll projects must be approved by all local communities involved. The bill also emphasizes and encourages Public Private Partnerships. Director Dan Cleveland asked if it means that every single big or small community involved in the project has to agree to it and one little community can turn it down. Peggy stated that it is meant to be a consensus based process. Acting Chair Cheroutes clarified that it depends on whether it is a new or existing capacity.

Peggy reported that in late 2004, there was initial traffic and revenue feasibility study conducted for CTE. The primary focus at that time was more financial feasibility as oppose to operation or congestion management focus. The assumption at that time was

that 100% of ongoing operations and maintenance obligations would be met by collected tolls and 80% of the capital costs. As a result of this study the following corridors were listed financially feasible to toll: US36, I-25 north of the existing HOT lanes, I-270, I-70 east of I-25, I-225, C-470, North West corridor, Eisenhower tunnel, Johnson's tunnel, Twin tunnels and Powers/ Banning Lewis Parkway in Colorado Springs.

Planning Partners had a concern that this was a proposal to toll all the above facilities rather than just a review of the feasibility. As a result, Ad Hoc Committee on Tolling was convened with the planning partners, the transportation planning regions impacted by the corridors and MPOs. Committee developed means by which any of these toll projects can be amended into the Long Range Plans. Also as a result DRCOG adopted their 1148 process. US 36 managed lanes proposal was the first project tested and amended into the plan using this process.

There was a renewed focus on different benefits to pricing (congestion pricing, toll pricing) that wasn't just financially focused. As circumstances change, no longer financial feasibility can be justified for paying for entire capital construction as well as long term operations and maintenance. It could pay for part of it and mainly for long term operation and maintenance.

Deputy Executive Director Catlin gave historic overview of the North I-25 HOV/HOT conversion project and why CTE was the logical entity to implement and operate that facility. Peggy explained that since the original construction was partly paid by Federal Transit Administration Fund, the agreement had to be reached with FWHA and FTA for the operational use of the facility as well as the use of revenues generated by the facility. Any excess revenue was supposed to go back towards transit use. However, there was an agreement reached with RTD that excess revenues would stay in CTE for the long term maintenance, reconstruction of the lanes, emergency repairs, etc. Those revenues cannot be used other than salaries and expenses that directly benefit the operations of the lanes. The agreement remains in place today.

Acting Chair Cheroutes asked if the Enterprise has a repayment obligation to the Federal Government for original construction money. Peggy answered that we don't have such obligation and our only obligation remains strictly to Transportation Commission. Acting Chair Cheroutes asked how much revenues we are collecting on an annual basis. Deputy Executive Director Catlin stated that we budgeted conservatively around \$2.2 M but we might see somewhere around \$2.4 M this year. It covers snowplowing and sweeping done by a private contractor for roughly \$400,000. RTD use to provide and pay that service. We repay Region 6 for its other maintenance activities which include signing, striping, guard rail repair, deck repair, joint replacement, etc. Region 6 provides Capital plan for the Board's consideration every year.

Deputy Executive Director Catlin pointed out that the Enterprise is required to report its annual budget and expenditures to RTD for their review. The staff prepares Monthly Progress report to provide the Board with the updated performance measures and financial information.

Director Barry asked for an update on hybrid vehicles' use of the lanes. Deputy Executive Director Catlin reported that the state law permitted free use of any HOV lanes for hybrid vehicles and this law is subject to the federal law that says only certain hybrid vehicles could have access. Based on the list established by the Federal Government, CDOT issues permits allowing free access for hybrid vehicles in the lanes subject to further federal legislation. At this time the original federal bill had expired and we are on the month to month basis for continuing these policies. CDOT had notified the owners that it might change as depending on the new federal legislation.

Deputy Executive Director Catlin stated that we have 1800 permitted vehicles for HOV lanes in the State. Director Aden noted that the limit of 2000 vehicles was set at the time the law passed. It doesn't seem that we up to that number yet. The Board's concern at that time was that if there were too many additional vehicles in the lanes it would interfere with our agreement with RTD for on time performance of the busses. That hasn't happened either, so we are still meeting the RTD' on time percentage for the busses. Director Cleveland pointed out that new types of hybrid vehicles are coming out every month making it difficult to keep up. Deputy Executive Director Catlin responded that EPA publishes a list that CDOT follows.

Deputy Executive Director Catlin reported on some of the other Enterprise activities including US 36 preferred alternative agreed upon by mayors and commissioners that includes managed lanes. PPP alternative was looked at for this project but the anticipated revenues from collecting tolls are not high enough to attract traditional type of tolling PPP. However, the Board could still pursue other opportunities.

Plan amendment was completed for the Colorado Springs Toll road through the City Council. This amendment was initiated by the private sector developer and they would like to do the PPP on the Colorado Springs Toll road. However, this plan is on hold for now due to their financials situation. She went over the timeline for pursuing Public Private Partnership.

Deputy Executive Director Catlin pointed out that Toll agreement with Federal Government needs to be in place for any new toll facility. It is not a complicated process but it will require some time to obtain.

Next, she briefed the Board on the challenges CTE faced over time. Among those challenges are the perception that CDOT is too focused on tolling, issues with regional equity, the perception that induced congestion is required in order for tolling to work on competing facilities and there will be an impact to local roads, concern over who is on the hook if the bonds cannot be repaid, and 1041 ordinances passed by local governments.

Acting Chair Cheroutes asked for more details with regards to 1041 ordinances. Harry Morrow provided an overview of the law and the current situation regarding this process. He mentioned the litigations with Douglas County and the City of Idaho Springs that CDOT was involved in and lost. CDOT took it to the Court of Appeals and the Court of Appeals stated that the law says local governments have the right to impose ordinances that would require the state to comply in order to build the projects.

So CDOT lost. Acting Chair Cheroutes stated that since HPTE would need consent from all local governments anyway, it would eliminate 1041 as an issue. Harry Morrow said that it definitely seems that way.

Deputy Executive Director Catlin went over the remaining documents in the binder she provided for the Board including 2004 Executive Summary of the Traffic and Revenue feasibility study, report and recommendations of the Ad Hoc Committee on Tolling, list of current contracts and agreements HPTE assumes, annual Internal Audit reviews required by RTD, HPTE Draft Budget prepared in March, previous Articles of Incorporation and Bylaws, and two expired Transportation Commission resolutions that had put a temporary moratorium on the receipt of unsolicited proposals for toll projects.

Harry Morrow stated his opinion that most of these contracts become the obligations and rights of HPTE by operation of law. All assets and obligations of CTE transfer to HPTE. We could do a novation agreement if necessary. As we renew the contracts we would make amendments at that time.

Director Cleveland asked to look at the contracts. Director Barry asked for the expiration on the Financial Advisors contract. Marina Krasny reported that the contract was signed in 2008 with the five year term. Acting Chair Cheroutes expressed his opinion that this contract provides the opportunity to use their services but doesn't bound HPTE from working with other vendors. Harry Morrow stated that he would have to review the contract before he agrees with that statement. Acting Chair Cheroutes stated that the Board needs to look at all contracts to decide which ones to modify or keep. Deputy Executive Director Catlin said all contracts will be provided the Board for review.

Deputy Executive Director Catlin continued that In 2006, there was a public opinion survey conducted regarding pricing and tolling. The results are available if the Board is interested. Acting Chair Cheroutes requested a copy of the survey. He stated that there was a study conducted by Denver Chamber of Commerce on tolling that produced some very interesting results. Director Barry requested a copy of that study for review. Deputy Executive Director Catlin stated she will explore the opportunity of posting the documents on former CTE web site.

Director Charlotte Robinson asked if there is no moratorium now. Deputy Executive Director Catlin stated that there was no resolution passed to lift it, but the expiration date of the resolution establishing the moratorium was 2004. Director Robinson stated she had received numerous calls asking is there is a moratorium on PPP. Deputy Executive Director Catlin clarified that there was never a moratorium on PPPs, it was on unsolicited proposals. Director Robinson mentioned there is a perception that it was on PPPs in general. This concluded Deputy Executive Director Catlin's report.

5. Acting Chair Cheroutes addressed some of the board organizational issues. He requested a copy of materials provided to the Board to be nailed to Director Tim Gage and Director Stan Matsunaka.

Next, Acting Chair Cheroutes stated he will work with Harry Morrow to prepare the articles of Incorporation and Bylaws to be presented to the board for adoption next

meeting. With the permission of CDOT, HPTE will use CDOT's address. Acting Chair Cheroutes discussed the following items:

- Expense Reimbursement form for the Board following the CTOT's format.
- Meetings locations and times - Tuesday before Commission meetings at CDOT. Director Gagen stated that he will not be able to attend if the meeting falls on the second or the fourth Tuesday of the month due to his city council meetings, unless it is in the morning and is over before 3 pm.
- Election of the customary officers (Chair, Vice chair and Secretary) to be done at the next meeting.
- Staffing requirements – interim as suggested by Russ, but seek to hire a full time high level executive with experience in PPPs recognizing that the salary funding would need to come from the reserves in the enterprise fund that had been loaned originally from the Commission and might not get paid back. Director Barry agreed that the Board needs a person with the knowledge and expertise in PPP but we also need to stay in compliance with the statute. Director Gagen agreed as well. Director Aden stated that the statute says the Board appoints the Executive Direct with the concurrence of the CDOT Executive Director. Director Robinson agreed to work with Mike on developing a position profile.
- Budget to be refined and adopted at the next meeting. Deputy Executive Director Catlin when over draft budget by line item and assumptions used to prepare it.
- Ratification resolution approving business activities conducted since the bill was signed in March.

6. No Other business.

7. Next meeting is set for November 17<sup>th</sup> at 10:30 am at CDOT Headquarters Building, Conference Room 225. Mike Cheroutes thank everybody and adjourned the meeting.