

Joint Transportation Committee

Columbia River Crossing Oversight Subcommittee

January 8, 2014

The 2013 Legislature directed the Joint Transportation Committee to reconvene the Columbia River Crossing Oversight Subcommittee to review project and financing information, and to coordinate with the Oregon legislative oversight committee (ESSB 5024, Sec 204(3)).

Subcommittee members included Rep. Judy Clibborn, Subcommittee Chair; Rep. Ed Orcutt, Rep. Jim Moeller, Rep. Paul Harris, Sen. Curtis King, Sen. Tracey Eide, Sen. Ann Rivers, Sen. Annette Cleveland, citizen representative Rhonda Boni-Burden, and Secretary of Transportation Lynn Peterson. Others participating in the 2013 Subcommittee included Rep. Linda Kochmar, Rep. Luis Moscoso, and Rep. Dean Takko.

The Subcommittee met once at Vancouver City Hall on October 8, 2013.

Secretary Lynn Peterson provided a summary of the project shut-down in Washington, which began at 10:00 AM on July 1, 2013, after the Governor vetoed \$81.7 million appropriated for the project in May, saying he saw “no wisdom in expending these funds if the state of Washington does not contribute its share of funding necessary to complete the project”. In subsequent 2013 special sessions, the Legislature did not appropriate additional project funds. Secretary Peterson reported WSDOT has spent \$1.2 million to-date on the shut-down, which will be completed by the end of 2013.

Dan Mathis, Washington Division Administrator of the Federal Highways Administration, discussed the likelihood of Washington and Oregon being required to reimburse the federal government for federal funds expended on preliminary engineering for the project. No reimbursement will be expected before April, 2014, a date that represents 10 years since the first federal funds were obligated on the project. It’s unclear whether any reimbursement will be required; however, if the project moves forward as an Oregon-led project, no reimbursement would be required.

Washington’s Legislative Auditor Keenan Konopaski updated the Subcommittee on the forensic accounting audit the Joint Legislative Audit and Review Committee (JLARC) was directed to undertake in the 2013-15 Transportation Budget. The audit will be conducted by the State Auditor’s Office under a contract with JLARC, and is expected to be completed by April, 2014.

Kris Strickler, Oregon DOT’s Columbia River Crossing Project Director, updated the Subcommittee on Oregon efforts to contemplate constructing the project in a phased approach, with Oregon taking the lead. Doing so would require a number of intergovernmental agreements with Washington state and local agencies. Oregon would construct the project including modifications to the SR 14 interchange in Washington, issue the debt, and be responsible for tolling implementation. Oregon’s \$450 million equity contribution to the project has lapsed, and therefore additional legislative action is needed to appropriate the funds. It is unclear at this point whether Oregon will move forward with the project.

Strickler also reported that the US Coast Guard has approved the General Bridge Permit and mitigation agreements have been signed with all three metal fabricators located upstream from the bridge.

Assistant Attorneys General Bryce Brown (Washington) and Ethan Hasenstein (Oregon) described their legal analysis of potential fatal flaws in the Oregon-led phased project implementation. In summary, Brown

concluded that WSDOT has existing authority to authorize Oregon to construct, operate, and maintain a bridge over the Columbia River and on Washington lands, and he sees no fatal flaws that would preclude Oregon's lead on the project. Hasenstein concluded that a viable legal pathway exists for the Oregon-led project to be constructed, but that it relies on a joint endeavor of both states; that Oregon has authority to toll the project, but that toll enforcement issues still require resolution with Washington to prevent toll revenue leakage. Hasenstein also concluded that Oregon has the legal authority to enter into agreements with Washington to construct an Oregon-financed initial phases of the CRC in Washington and that toll revenue and other state highway funds may be expended on Washington highway improvements that directly facilitate the use of the Oregon highway system.

The Subcommittee also received a September 26, 2013, letter from Oregon State Treasurer Ted Wheeler to Oregon legislative leaders in which he states "It is premature to conclude that the (Oregon-led) project can work, financially. The answer will ultimately depend on required negotiations and agreements that are not completed."

Strickler also spoke about the \$850 million Federal Transit Administration New Starts Grant anticipated to fund the light rail construction component of the project. The project is still in line to receive the funds, but TriMet is now the grant recipient rather than WSDOT. C-TRAN Board Vice-Chair and Clark County Commissioner Steve Stuart spoke about an agreement C-TRAN has entered into with TriMet to fund light rail operations.

WSDOT staff worked with ODOT and FHWA staff to answer a number of questions that remained at the conclusion of the October 8th meeting, including the extent to which work already completed on the project may be usable if the project moves forward in the future. Their answers are attached.

Subcommittee materials are available at <http://www.leg.wa.gov/JTC/Pages/CRCOversight.aspx>

Update on Oregon-lead CRC phased project

On October 25, 2013, the Oregon Legislature appointed a 24-member Joint interim Committee on the Interstate 5 Bridge Replacement Project. While it was originally expected to meet in October or November, no meetings took place in 2013. The Office of Governor John Kitzhaber announced on November 20, 2013, that there would be no hearings in 2013 on the Columbia River Crossing project. Plans currently are underway for the Joint Committee to meet on January 14, 2014, in advance of the Oregon legislative session which begins on February 3, 2014.

The Columbian newspaper reported on November 19, 2013, that the Oregon Department of Transportation said planners are now looking at a possible 2015 construction date, not the 2014 construction start date originally contemplated in an Oregon-led phased project.

An important factor in the delayed start-date is the issue of toll enforcement. Buyers of any toll-backed bonds sold by Oregon to finance the project would need assurances that sufficient toll enforcement capacity existed to require Washington drivers to pay their tolls. Oregon does not have full authority to enforce tolls on Washington drivers, who comprise most of the traffic on the existing bridge. Oregon Treasurer Ted Wheeler said in a September 25, 2013, letter to Oregon legislative leaders that "if the project is to proceed to the state of financing, you will need ... (a) toll collection reciprocity agreement that ensures tolls, surcharges and any associated late payment fees and penalties incurred by Washington drivers who use the new bridge will be collected in full on Oregon's behalf by the State of Washington." Such an agreement currently does not exist.

ODOT reports that enforcement discussions are underway with both states' legal counsel, and are expected to be finalized before the sale of toll-backed bonds.

WSDOT's Follow Up Questions and Answers
from the October 8th Meeting of the JTC Columbia River Crossing Oversight Subcommittee
October 22, 2013

- 1) Re: Dan Mathis' presentation. Members want to know the status of federal funds obligated and expended on the project, what may need repayment and what may not; what the various repayment or nonrepayment options are, and the differing requirements of the various sources of funding.**

Through June 2013 WSDOT has obligated \$78,999,717 of federal funds administered by Washington State on the CRC project. With the 13—15 funding for the project being vetoed through the biennial budget development approval process, WSDOT is de-obligating all the non-expended portion of the federal funding obligated through June with the exception of the portion of the \$2.9 million estimated closeout costs that will be supported with federal funds. Of the \$2.9 million, \$2.725 million is federal and \$175,000 is state. The department estimates that at project closure a total of \$56.94 million of federal funds will have been expended on the project by WSDOT.

If federal funds are required to be repaid, the total of repayment would be the funds expended which are estimated at \$56.94 million. FHWA has indicated that all of the expended funds are subject to repayment if the project does not move to construction. Of these funds:

- \$12.167 million are high priority/demo funds earmarked for the CRC project and can only be used on a CRC project. These funds do not expire unless rescinded by Congress or USDOT;*
- \$20.278 million are discretionary funds earmarked for the CRC project and can only be used on a CRC project. If not used on a CRC project within the federal fiscal year they are repaid, these funds will lapse;*
- \$24.497 million are formula federal funds and can be used on any eligible project. If not used within the federal fiscal year they are repaid, these funds will lapse.*

- 2) Re: Dan Mathis' presentation. Rhonda Boni Burden requested a copy of the federal aid agreement. Attached are the four federal-aid agreements for the project. For mega-projects it is not unusual to have more than one agreement. Prior to 2009, FHWA required any project receiving "demonstration" funds (i.e. a federal earmark or competitive grant) to have a separate agreement for each type of demonstration funding. That is why there are four project agreements, which were established prior to 2009.**

- 3) Secretary Peterson promised to provide SR 520 diversion numbers, including both projections and actuals, for diversion to I-90 and SR 522.**

During the first year of tolling on the SR 520 bridge, both revenue and changes in SR 520 traffic volumes met projections. An average of 68,000 weekday trips crossed the SR 520 bridge, down from 103,000 in 2011. This 34 percent decrease in traffic is less than the 48 percent drop in SR 520 traffic volumes that was forecasted for the first year of tolling.

Peak-hour, peak-direction diversion rates on SR 522 and I-90 met, or were lower than projected. The majority of diversion is occurring during off-peak times when SR 522 and I-90 have extra capacity to absorb more traffic volumes.

The I-90 bridge carried 153,000 vehicles during average weekday traffic volume in 2012, 11 percent higher than a typical weekday in 2011. This growth in vehicle volume tends to occur during the off-

peak periods, when additional roadway capacity exists. SR 522 carried 44,500 vehicles during average weekday traffic volume in 2012, nine percent higher than a typical weekday in 2011. This growth in vehicle volume is spread fairly evenly throughout the day.

SR 520 traffic and revenue continue to meet projections and are on track to providing more than \$1 billion in funding to help pay for the construction of a new bridge. Approximately 20 million trips were taken during tolling hours (5 a.m. to 11 p.m.), generating approximately \$55 million in expected gross toll revenue.

Attached you will find more details in the “SR 520: Toll Operations and Traffic Performance Summary Report – 2012”. The report can also be found online at:

http://www.wsdot.wa.gov/NR/rdonlyres/7FC29FC9-8576-4197-BF45-4B22ABD390C4/0/SR520_TollOperationsandTrafficPerformanceSummaryReport_2012.pdf.

- 4) Kris Strickler’s presentation. Senator King made a statement that Kris didn’t respond to, but which I think a response would be helpful. Senator King said that if light rail ridership is too low, the toll may need to be raised to cover the shortfall. Please clarify.**

Under the Oregon State constitution highway tolls cannot be used to pay for light rail transit (LRT) construction, operations or maintenance. Any deficit in operations and maintenance funding due to a shortfall in ridership would need to come from C-TRAN and TriMet, the two transit agencies that are jointly responsible for operating and maintaining the LRT line.

- 5) Rep. Orcutt specifically asked how much of the work done to-date could be used going forward should funding be made available in Washington.**

If Washington made funds available in the near future all of the work done to date would be used. However, the longer the wait, work would need to be redone or updated, for instance some environmental work and permitting would need to be updated.



**I-5 Bridge Columbia River Crossing
Managing Tolling, Collection and Enforcement**

With a phased construction of the I-5 Bridge Columbia River Crossing project, ODOT will be responsible for managing the tolling system on the existing I-5 bridge and on the new bridges after their completion. ODOT is integrating industry expertise and standards as it increases organizational capacity by establishing a Toll Operations Group. The agency is developing a multifaceted approach to toll collection and enforcement.

Toll collections

Tolls will be collected electronically for the I-5 bridges. Drivers will be able to set up pre-paid transponder accounts or rely on a pay-by-plate system to pay for their toll. A bill would be sent to vehicle owners that use the pay-by-plate system, and these users would incur an additional administrative fee. Collecting tolls from users relying on pay-by-plate would be accomplished through a surcharge incorporated into the toll rate schedule.

ODOT will use the services and expertise of two contractors – a Toll Collection System (TCS) vendor and a Customer Service Center (CSC) vendor – to collect tolls and manage customer accounts. The TCS vendor is responsible for roadside toll equipment operations and maintenance (for example, gantries, video cameras, transmission of data to customer service center, and other related infrastructure and services). The CSC vendor maintains the toll accounts and invoices for payment. ODOT, via the Toll Operations Group, will add agency resources to oversee all tolling operations.

Deterrence and Enforcement

The most reliable stream of toll revenue will come from account-based users. Oregon will conduct a robust education and outreach plan to promote use of transponders based on the benefits of holding an account and ease of use.

Communication of clear, timely information regarding toll rates, fees, and payment deadlines will be the most effective tool in securing toll payments from bridge users who lack an account. Oregon will put in place invoicing and notice procedures that provide current, user-friendly means of paying tolls and resolving toll and fee deficiencies. ODOT will use license plate photo recognition systems to identify registered owners of vehicles required to pay tolls. The added costs of deploying this technology will be offset by surcharges and other fees billed to users.

Increased penalties will accrue to those users who fail to pay tolls, despite invoicing and notification. For repeat violators, ODOT proposes to stiffen the penalties for toll violations. In addition, using existing legal authority for vehicles registered in Oregon, ODOT will impose vehicle registration holds for toll violations. As we move through the process of legal review, legislative concepts, and policy and technical refinement, we continue to develop additional tools to deter toll violations.

To augment the enforcement tools available to the state of Oregon, ODOT is pursuing a pathway with the state of Washington to take advantage of both states' authorities in mutual toll violation enforcement. Such an agreement is desired by the bond market and the state treasurer as a way

to reduce financial risks and lower the cost of borrowing. This pathway, or iterations of it, may require legislative action and/or rulemaking by one or both states. Discussion between both states' legal counsel is ongoing, and is expected to be finalized in advance of the sale of toll-backed bonds.

ODOT's management approach

ODOT will ensure the resources needed to implement a state-of-the-art tolling structure for the project will be made available. ODOT is building on previous technical and policy work on tolling in the state to build a Toll Operations Group. Agency and CRC staff, in addition to the Oregon Transportation Commission (OTC), have developed an extensive knowledge base over the past years while planning for the bridge replacement project and researching industry standards. A request for proposals is being developed for consultant expertise in the areas of tolling program development and implementation. This process will supplement ODOT's technical and staffing resources as the ODOT toll operations group is built. The tolling consultant is expected to be on board in early/mid-2014. Additional, outside technical resources also will be sought to monitor and assess performance over time.

ODOT will implement policy direction, provide program direction, and oversee system operations. ODOT will also procure and manage all services needed for successful tolling operations that could include accounting, technical expertise, and public outreach staff.

The Toll Operations Group will work closely with the OTC to provide support as it sets toll rates. The OTC will be responsible for monitoring toll collections and setting rates at required levels to meet debt service, operational costs, and traffic objectives. To facilitate the OTC's decision making, the plan includes (during the period in which toll-backed bonds are outstanding) a Traffic and Toll Revenue Consultant specializing in toll revenue forecasts. The Traffic and Toll Revenue Consultant will provide ODOT and the OTC with ongoing toll revenue forecasting and other assistance to ensure toll-setting and collections are responsive to revenue needs. Engineering expertise specializing in toll collection and facility operations will also be retained to monitor and forecast operations and maintenance costs associated with tolling and facilities to ensure they are in line with industry standards.

Significant progress has been made to plan for the organizational and management structure to support ODOT toll collections. With assistance from industry experts, ODOT is preparing a Request for Proposals (RFP) for a tolling consultant for release within the next few months. Once onboard, this tolling consultant will support ODOT as it builds and manages the Toll Operations Group. The Toll Operations Group would be fully functioning prior to the start of toll collection.