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Memorandum

TO: Transit Finance Working Group DATE: April 6, 2011

FR: Ross McKeown

RE: Regional Toll Credit Policy for MTC-Managed Federal Funds

Background

Section 1111(c) of the Transportation Equity Act for the 21st Century (TEA21), and 23 U.S.C., Section 1044 of the Intermodal Surface Transportation Efficiency Act (ISTEA) under Section 120(j) allows states to use certain toll revenue expenditures as a credit toward the non-federal matching share of certain programs authorized by Title 23 (referred as toll credits) and for transit programs authorized by Chapter 53 of Title 49 (also referred as transportation development Credits).

During the period from FY 1991-92 through FY 2005-06, California collected approximately $18.2 billion in toll revenue receipts, of which over $7.1 billion was invested to build and/or improve public highway facilities. Based on federal statutes, the Federal Highway Administration (FHWA) approved approximately $5.7 billion in toll credits from investments during this time period. Now approved, these toll credits do not lapse, and are available until used by the state.

To date there are five regions with toll revenues qualifying for toll credits:

Region	($millions)	
MTC	$3,492	60.8%
OCTA	$2,040	35.5%
SANDAG	$113	2.0%
LAMTA	$61	1.1%
SACOG	$39	0.7%
Total	**$5,744**	**100.0%**

To be able to earn a credit, a state must satisfy the Maintenance of Effort (MOE) determination, which covers a state's non-federal transportation capital expenditures over a 4-year period. To be eligible for toll credits, the expenditures in the last year of the 4-year period must exceed the annual average of the expenditures in the preceding three years of the 4-year period.

Toll credits do not provide additional revenues, but rather allow the use of federal funds without a required non-federal match.

Current State Toll Credit Policy

Caltrans has established an interim toll credit policy covering the three-year demonstration period of FY 2009-10 through FY 2011-12. The policy will be evaluated prior to implementation of a final policy for FY 2012-13 and beyond. The state policy allows the use of toll credits in lieu of the required non-federal match anywhere in the state for selected federal programs. With few exceptions, toll credits may be used by Caltrans for all federal funds in the SHOPP and STIP - including Transportation Enhancement (TE) funds. Earmarks, FHWA discretionary funding, FTA funds managed by Caltrans, Highway Bridge Program (HBP) funds for local bridges off the federal-aid system, FHWA Planning funds, and FTA 5303 planning funds are eligible as well. The use of toll credits for STP/CMAQ and FTA 5307/5309 FG funds is at the discretion of the RTPA/designated recipient. Caltrans is not allowing the use of toll credits for any project programmed in the local 'on federal-aid system' bridge and safety programs it manages (HBP, HSIP, HR3 and SRTS) because this would require the de-programming of projects because toll credits do not provide additional revenue.

For fiscal year 2009-10, a total of $241.3 million in toll credits was used for 333 projects statewide, with 38 projects in the MTC region.

Proposed Regional Policy

Considering that toll credits do not provide additional revenue and result in fewer projects delivered with the same amount of federal funding, the use of toll credits should be carefully considered to avoid reductions in overall funding available for transportation projects. Furthermore, a sponsor may not have has much 'ownership' in the implementation and delivery of the project if they do not have their own funds on the project. However, using toll credits can be beneficial for project implementation in special situations. It is therefore proposed that toll credits only be used under the following limited circumstances, on a case-by-case basis for federal funds managed by MTC (such as FTA 5307 and 5309 FG and STP/CMAQ):

- **Maximize Efficient Use of Federal Funds:** Consider applying toll credits on large federalized projects where non-federal funding may be redirected to other transportation projects not requiring federalization. This would focus federal funds on fewer, larger projects, while redirecting more flexible funding to other transportation projects that may have difficulty proceeding through the federal-aid process. The redirected funds would be used to supplement rather than replace existing funding.

- **Facilitate Funding Exchanges:** Consider the use of toll credits if needed to facilitate the exchange of non-federal funds. Often local fund sources, such as county transportation measure funds, rely on bonding to expedite delivery due to projects being ready to implement sooner than funding becomes available. Under such situations it may be advantageous to make federal funds available (with toll credits) early, in exchange for local funds later. Using toll credits would facilitate such an exchange by maximizing the local dollars available for the exchange that would otherwise be required as match to the exchanged federal funds. This would help expand the 'pool' of non-federal funds with which to implement a broader range of regional transportation strategies, consistent with MTC's existing exchange program.

- **Target Federal Funds to Specific Phases:** For smaller projects it is often advantageous to use federal funds only for the construction phase while using local funds for the preliminary engineering and right of way phases. However, it is often difficult to obtain federal approval to consider local funding spent on earlier phases as match to federal funds in later phases. Sponsors tend to over-match smaller projects as a result. Toll credits could be used on a case-by-case basis for the construction phase, where local funds have been expended in excess of the required match in the earlier phases. The overall project would still have a local match to the project, while facilitating project delivery by targeting federal funds to only one phase.

This policy only applies to federal funds managed by MTC (such as FTA 5307 and 5309 FG and STP/CMAQ) and will be re-evaluated following issuance of Caltrans' final toll credit policy in FY 11-12.

Attachment:

- Caltrans Toll Credit Policy – June 30, 2010

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CALIFORNIA DEPARTMENT OF TRANSPORTATION
TOLL CREDIT USE POLICY

Background:
Section 1111(c) of the Transportation Equity Act for the 21st Century (TEA21), and 23 U.S.C., Section 1044 of ISTEA under Section 120(j) allows states to use certain toll revenue expenditures as a credit toward the non-federal matching share of programs authorized by Title 23 (except for the emergency relief programs) and for transit programs authorized by Chapter 53 of Title 49.

During Fiscal Year (FY) 1992 through FY 2006, California has collected approximately $18.2 billion in toll receipts, of which over $7.1 billion was invested to build and/or improve public highway facilities. Based on federal statutes, the State applied for approximately $5.7 billion in toll credits from investments during this time period. Now approved, these toll credits do not lapse until used by the state.

These guidelines apply to the $5.7 billion which was approved by the FHWA for the State of California[1] until the end of FY 2011-2012. This two year period represents the demonstration period, permanent program policy to be in place for the FY 2012 and beyond.

Guiding Principles for use of Toll Credits:

- Compliance with state and federal statutes,
- Maximize the use of federal funds,
- Toll credits should not result in the redirection of non-federal funds away from transportation.

Constraints/requirements:

- Use of toll credits does not generate additional federal funding and is limited to the non-federal match required for Apportionments and Obligational Authority (OA) available in any given year.
- All projects proposed to use toll-credits should be fully funded at the maximum allowable federal reimbursement rate.
- Use of toll credits will require amendments to current programming documents.
- FTIPs still need to be financially constrained.
- Toll credits may not be applied to projects funded with FHWA Emergency Relief funds or Appalachian Development Highway System (ADHS).
- The State must establish a special account to track toll credits.
- Processes for the tracking of toll credit usage must be established.

[1] On June 1, 2005, the Department received approval from FHWA for $104.026 million in toll credits from private entity expenditures on State Route 91. Until the policy for toll credit use in 2012-13 is developed, this $104.026 million will be kept separate for use within Orange County.

Distribution Process:

1. Toll credits will be made available statewide to the RTPAs for federal match to any eligible federal program, to the Highway Bridge Program Projects for off federal-aid system projects and to the Department to match federal funds used for STIP and SHOPP. Toll credits will not be used for any programmed project in the local safety programs.
   a. RTPAs will provide the Department with an estimate of the total need for toll credits for the FTIP period by programming year.
   b. In order for the State to implement the usage of toll credits statewide, the RTPA must submit to the Department on or before October 1 of each federal fiscal year, a list of programmed FTIP projects that are planned to use the credits for the upcoming federal fiscal year (starting October 1).
2. Prior to the end of the two-year demonstration period the policy will be re-evaluated and if necessary changes will be made to the methodology and process for the disbursement of toll credits to take effect in FY 2012-2013.

Monitoring and Reporting of Toll Credit Usage and Balance

In accordance to the FHWA February 8, 2007 Memorandum on Tolling and Pricing Program, Caltrans will establish and maintain a special account to track the use and balance of toll credits for FHWA funded projects.

Prior to using toll credits for projects funded through the FTA, RTPAs and local agencies shall develop and maintain a special account to track the use and balance of toll credits, acceptable to FTA and FHWA. The obligations of funds through FTA constitute final use of toll credits as FTA funds are not de-obligated but are amended through the FTA.