AASHTO/ACEC JOINT COMMITTEE MEETING
Springs Ballroom F — Palm Desert, CA
Thursday, October 22, 2009 FROM 6:00 PM TO 9:00 PM

1. Call to Order ................................................................. Co-Chairs Paul Mattox, WV and David Oates, ACEC
   a. Self Introductions (Roster Enclosed) ................................................................. Joint Committee and Guests
   b. Joint Committee Membership Updates ............................................................. Co-Secretaries: Ken Kobetsky and Michelle Maggiore, AASHTO
      Vivian Moeglein and Matthew Reiffer, ACEC
   c. Approval of the Minutes from May 14, 2009 ................................................ Co-Chairs Mattox and Oates
2. American Recovery and Reinvestment Act (ARRA) ........................................... Co-Chairs Mattox and Oates
3. Discussion Item – Impact of Economic Conditions on Program Management .............. D. Oates
   a. Cost Cutting Initiatives at State DOTs and Firms
   b. Long-range Project Planning
4. Legislation ......................................................................................... John Horsley, AASHTO
   b. Authorization Update .................................................................................. Janet Oakley, AASHTO
5. Performance and Program Management .......................................................... Co-Chairs Mattox and Oates
   a. International Performance Management Scan ................................................. K. Gee, FHWA and Tony Kane, AASHTO
   b. AASHTO Performance Management Initiatives .............................................. J. Horsley
      i. SCOPM and Pavement / Bridges/ Safety Metrics ........................................ Tony Kane, AASHTO
      ii. Performance-based Planning and Programming Peer Exchange ............ M. Maggiore, AASHTO
      iii. AASHTO-AMPO Performance Workgroup ............................................. J. Oakley, AASHTO
   c. FHWA Office of Innovative Program Delivery ............................................... K. Gee, FHWA
6. Design and Construction Discussion .................................................................. Co-Chairs Mattox and Oates
   b. FHWA Rulemaking on Regulations Governing Administration of Engineering and Design Contracts...... V. Moeglein, ACEC
7. Audit Guide .......................................................................................... Co-Chairs Mattox and Oates
   a. AASHTO Uniform Audit & Accounting Guide For Audits of Architectural and Engineering (A/E) Consulting Firm ........................................ Jerry Jones, MI DOT; J. Basso, AASHTO; Lynda Konomas, ACEC
   b. Educational Initiative on Audit Guide Updates ................................................... Vivian Moeglein, ACEC
8. Old Business ....................................................................................... Co-Chairs Mattox and Oates
   b. Improving the Quality of Environmental Documents .................................... Shannon Eggleston, AASHTO
   a. Charting the Course – Highway Safety Manual (HSM) ...................................... K. Kobetsky, AASHTO
10. Next Meeting — date and place to be determined for spring 2010.
11. Adjourn
The meeting was called to order by Co-Chairs Paul Mattox, WV and David Oates, ACEC. Introductions were made. In attendance were the following

**Members Present:**
- Paul Mattox, West Virginia Dept. of Transportation/Division of Highways
- Dave Oates, Oates Associates
- Ken Kobetsky, AASHTO
- Matt Reiffer, ACEC
- Michael Baker, Pennsylvania Department of Transportation
- Kevin Chesnik, Wisconsin Department of Transportation
- King Gee, FHWA
- Hal Kassoff, PB
- Lynda Konomos, HNTB Corporation
- John Kurgan, Michael Baker Jr., Inc.
- Marvin Murphy, West Virginia Dept. of Transportation/Division of Highways
- Jerry Stump, Willbur Smith Associates

**Guests and Speakers:**
- Allen Biehler, Pennsylvania Department of Transportation, AASHTO President
- John Horsley, AASHTO, Executive Director
- Neil Pedersen, MD DOT, SCOH Vice-Chair
- Bob Close, PB, AASHTO/ACEC Joint Committee Past Chair
- Allen Chester, Gannett Fleming, Inc.

**Sherry Appel, AASHTO, Speaker**
- Jack Basso, AASHTO, Speaker
- Janet Oakley, AASHTO, Speaker

**AASHTO**
- Anthony Kane
- Michelle Maggiore
- Joel McCarroll
- Jim McDonnell
- Marty Vitale
- AMRL Steve Lenker

**Joint Committee Membership:** Ken Kobetsky and Matt Reiffer reported the Updates
- Full membership from AASHTO, newest from Region 3, Kansas, Kyle Schneweis, SCOP Member
- ACEC membership no change

The October 16, 2008 Minutes was presented by the Co-Chairs Mattox and Oates
- Motion and second, Al Biehler and John Kurgan
- Approved

**AASHTO Report was presented by John Horsley, AASHTO**

Highlights of this report included:

1. **American Recovery and Reinvestment Act (ARRA)**
   a. FHWA has thermometer, 40% as of today has been obligated
   b. Half of allocation has to be spent by June 30, looks like we’re on track
   c. At least a dozen states have passed 50%
   d. Now entering phase where activity is moving forward, next phase of reporting
e. If there are events we can collaborate on, let us know
f. 1/3 of funds goes to counties and cities, but they are not under the same timelines as states
h. Stimulus is producing jobs and great projects
i. Oberstar has called for second round of data tomorrow (due the 15th)
j. AASHTO wants to ask Oberstar if current reporting to FHWA is not enough to satisfy needs
k. IG, GAO, OMB, state auditors, others are watching the roll-out carefully
l. Caterpillar has launched a nationwide effort to try to get another round of stimulus money
m. FHWA has done a great job during the stimulus effort, HQ and Division offices are problem-solving and working with the states to deliver the program
   i. Most of the work for engineering firms is in construction engineering, inspection and management; not much heavy design work due to emphasis on “shovel ready”
   ii. also, stimulus is helping projects get through design that might not have moved as quickly
   iii. Q: Stimulus demonstrated that having projects on the shelf was useful, but now the shelves are clean – transportation community has an argument that $50 billion per year is needed to ensure that the economy doesn’t slow down – To the DOTs, what level of “waiting projects” is needed?
   iv. Penn: For the past several years, they’ve been jettisoning big projects that had big lead costs, were projecting $5-8 million in soft costs getting the projects ready and didn’t see a way to get that amount of money; to have a bunch of stuff on the shelf is foolish – don’t need the ups and downs, need a steady stream of funding
   v. WV: has plenty of work on the shelf ready to go
   vi. MD: cut 2.1 billion from their program, ARRA has restored some of that but they have more left to do
   vii. WI: has a commitment to keep some level of over-programming to keep things flexible, they have about 30% on the shelf;

2. Authorization Update
   a. With the democrats came the environmental and transit crowds. Don’t assume anything about this congress.
      i. TEA for America proposal, coalition of environmental groups, main thrust is transit and keeping highways as is
      ii. Environ community has strong reach with democratic members of congress
      iii. High speed rail effort has many excited
      iv. Unless we communicate better, there is a good chance of a significant increase in transit and high speed rail funding at the expense of highways; they do not see the need for highway capacity. We need to articulate the needs.
   b. Oberstar, Chair of House T&I, has proposed structure of bill, but does not have the money; He wants to get to $450 billion; currently have around $250 billion through traditional sources
      i. Can’t run a bill through T&I without money coming from the ways and means committee
      ii. AASHTO is working with House and senate staff to articulate what is needed,
      iii. Question is how soon can the bill move? Are reforms agreeable to all? Has the money been figured out?
   c. In the senate, AASHTO is communicating short and long term needs, at beginning stages of discussions.
      i. Senate not moving as quickly as House wants to move. House wants bill on floor in two weeks, but not likely to happen. Senate may move 3-6 months later
   d. Pretty sure that performance management and reform will be a major focus of the next bill
   e. AASHTO has worked with ACEC members for ways to accelerate project delivery
      i. Need to find ways to deliver faster; get smarter on “doing things right”
      ii. Oberstar has said he would like an office of project expediting within USDOT; Mica FL has taken this on as his number 1 cause; Revenue and Policy Study Commission had recommendations; AASHTO has been helping them put language together
      iii. A lot of progress was made in SAFETEA-LU, such as 4f reform and the 180-day statute of limitations for lawsuits, but more is still needed
      iv. Congressional committee may stage hearings and will need witnesses to support fuel tax increases
      v. Streamlining the process would save money
f. Kassoff: would there be some virtue in advocating a model approach for streamlining related to the high speed rail effort that could potentially be transferred to highways at a later time
   i. Yes, AASHTO is interested and has ideas
   ii. High speed has to be on a new alignment; how do you get through the environmental process for hundreds of miles?
   iii. Collaboration on linear right of way acquisition is needed
   iv. FRA has a small staff; will need consultants to help manage the construction program

**Status of the Highway Trust Fund (HTF) was presented by Jack Basso, AASHTO**

A chart was handed out to the committee and J. Basso referred to the major areas on the chart as follows:

Orange line is when HTF crashed in 2008; blue line (2009) is same place orange line was last year. Receipts are down 9% from same time last year, and outlays 5% higher. HTF is in crisis and needs money. This may end the fiscal year with $950m. The Holy Grail in program has been the funding guarantees and firewalls. All are predicated on funding coming from a user fee, however if funds come from the general fund, these protections fall away. The Office of Management and Budget (OMB) propose $5 billion from HTF and $35 billion from general fund, but acknowledge that placeholder for reauthorization.

A gas tax increase is not expected. By having a big ramp-up from stimulus and then falling off abruptly is bad for the economy. Thus, the best option is to put enough money in to cover FY 09 ($12-14B), then shore up as legislation is passed with long-term solution. Congress needs to take action by its recess in early August and we need to act by July 2009.

The question is: Does economic stimulus package being from general fund affect payout of trust fund over the summer? The answer is probably not. DOTs have to pay out the same amount from HTF due to maintenance of effort provision; Member departments are not slowing down regular programs to accomplish stimulus projects. Furthermore, AASHTO and ACEC need to stay in close communication to press for people to vote for the right thing at the right time.

**Scan and NCHRP Topics was presented by Ken Kobetsky, AASHTO**

NCHRP approved projects for 2010 Program include 35 new projects equaling $16 m and 19 continuations equaling $11 m. The NCHRP staff identifying panel members to steer research projects, need public and private members. For 2009-2010 International Scan Topics it was determined that private sector invited on scans would pay their own way. A typical scan takes about two weeks. Domestic Scan Topics for 2009-2010 developed a newer program focusing on learning from each other. Private sector also invited to participate.

**ACEC Update presented by Matt Reiffer, ACEC**

ACEC is celebrating 100th anniversary this year. ACEC dates predecessors back to 1909. Its annual convention a few weeks ago in DC, incorporated Capitol Hill visits. The main concern was to educate members on HTF shortfall and support funding for a robust transportation bill. At its celebration annual meeting, US DOT Secretary LaHood reiterated opposition to gas tax increase during a recession.

**FWHA Report was presented by King Gee, FHWA**

K. Gee announced that Victor Mendez was nominated to be FHWA Administrator; John Porcari nominated as Deputy Secretary for the US DOT, however neither nomination was confirmed yet. The nomination of Roy Keinitz was confirmed as Undersecretary for Policy. Roy Keinitz was a staffer for ISTEA and formerly of STPP and Chief of Staff in Pennsylvania. Mr. Keinitz will be key architect for administration’s reauthorization bill.

US DOT Secretary LaHood has four key focus areas
   v. Safety across all modes
   vi. Economic health
   vii. Sustainability
   viii. Livability

Secretary LaHood has said “For too long we’ve funded transportation in a piecemeal fashion; need to treat them holistically.” The Secretary wants a cross-model team working on Authorization.
ARRA partnership worked well between states and feds and implementation of guidance and apportionments went out quickly. Additional oversight has begun and OIG has targeted 17 states. Review teams are looking for things that are not going well before they go bad. The OIG is working off a broad list – FHWA’s list is topic-oriented based on risk management assessments. K. Gee commented that if there are issues where AASHTO and ACEC can work cooperatively and proactively together to address some issues, FHWA would like to do so. OMB has been adding additional requests to the initial reporting requirements.

RADS (Recovery Act Database System) is a web-based reporting product that has been automated; seems to be going pretty well.

Question: Does RADS provide an automated approach for the consultants for ease of reporting? Answer: Contractor forms are automated; consultants will need to work through the states.

There is a 120-day redistribution coming soon. FHWA does not anticipate any states losing money. A multi-modal $1.5 B discretionary program coming out of Secretary’s office is expected to be rolled out this month; solicitation is in the works but FHWA has no information thus far. FHWA has gone to weekly monitoring of HTF; have action plan to provide weeks of notice but expect a problem this summer.

Old Business

OIG Report on Oversight of Design and Engineering Firms’ Indirect Costs Claimed on Federal-Aid Grants (Summary Enclosed) – Jack Basso, AASHTO and Dave Oates, ACEC

Basso: It took four years to put out the OIG Report on Oversight of Design and Engineering Firms’ Indirect Costs Claimed on Federal-Aid Grants report which was not well received and now we have to deal with it. Workshop were conducted this past week with FHWA, AASHTO, ACEC, and ARTBA representatives to work through possibilities for implementation of audit findings and how to address recommendations.

Oates: Stated that all agree that results are minimal in relation to the overall program, even though the report was quite negative. Now we need to deal with the solution: education, clarification of rules, etc. On cost recovery the FHWA and DOTs are going to work with firms involved to determine the correct amounts; recovery is not going to go beyond that which is noted in report; we should expect to publicize final amount recovered to show true and accurate unallowable costs, not IG estimates. Finally, CPAs need more education to do audits properly

AASHTO Uniform Audit and Accounting Guide – Jack Basso, AASHTO and Lynda Konomos, ACEC

Basso: Finishing update of AASHTO Uniform Audit Guide; shooting for summer for final product for balloting, with publication by end of year 2009.

Konomos: Consultants would like one overhead report, not multiple for each state. There are not a lot of CPAs and others out there who know about FAR. On June 1, 2009 a final draft will be ready for review; comments are due to AASHTO by June 15; then the report will be submitted in July to the Audit Subcommittee then through the balloting and publication process. There is an immense need to train people: consultants, auditors, and DOT personnel.

- Oates: talking about communication as well as education
- Horsley: It is vital to the credibility of the industry to get the little stuff right so that we can be trusted with the bigger stuff
- Gee: this effort is a model for future collaboration and will go a long way toward addressing the OIG report;
- Major kudos from numerous people on this effort


NCHRP report was finished in March 2009. Then eight State DOTs, two consultants, and FHWA were represented on the panel. Additional input was sought from ACEC members as a result of this group’s concerns. In 2005, FHWA noted that State DOT procedures for errors and omissions were done more on a case-by-case approach rather than a systematic process. Since 2005, several states have updated their E&O processes, policies, and procedures, and they share a number of common principles, though they are not identical. Variability stems from different management, legal, and institutional approaches to addressing errors and omissions. 12 of these states were surveyed in the research project. There is no standard definition of “errors and omissions,” but they share common ideas, including concepts of “standard of care” and of “negligence.”

The NCHRP study reviewed the AASHTO Guide for Consultant Contracting as well ACEC’s model cost recovery policy/process. The recommendations are generally consistent with both of these. The recommendations are
presented as a template or framework to establish key concepts and methods, but also to allow flexibility for agencies to tailor to their needs. The AASHTO Technical Committee on Preconstruction Engineering Management will take this report under consideration in determining whether further formal guidance is needed on this topic. AASHTO welcomes collaboration from ACEC (Greer agreed on behalf of AASHTO) in working with our technical committee on preconstruction management in developing guidance to further standardize the addressing of E&O across the states – some sort of guidance.

**National Marketing, “Are We There Yet?” – Sherry Appel, AASHTO**
AASHTO developed a National campaign sending a message to the Hill staffers and others. This Grass-tops campaign is not trying to reach the world but focusing on reaching the influencers of the transportation bill. Since its beginning 25,000 copies of the Rough Roads Report have been downloaded in first week. AASHTO expects a Series of reports in near future. There are tool kits available so a message can be customized. Available also is a one stop shop of information for authorization. The backbone of message are states are accountable and states are showing that they make an impact – local benefits, not references to other countries. Repeat “on time” and “on budget” as much as possible.

TransportationTV – AASHTO welcomes participation by state and private sector delegations when they come to DC to be interviewed to promote the cause for better transportation. Highlights include the stimulus efforts – based on survey, bids coming in 15-30% below engineer’s estimate. Web address: AreWeThereYet.transportation.org.

Comment: the work we have been doing in transportation has not been working, so anything we can do to use new words, recast our message, is welcome. The context of how you present the case for funding is also crucial; they have to understand how it applies to their own lives.

**AASHTO’s TRAC Program (Information) – John Horsley, AASHTO**
AASHTO’s TRAC program manager left about 3 months ago resulting in a flux currently. AASHTO would like to work with ACEC in future. Jack Basso is in charge of a group looking into the future viability of the program; need critical mass to make it work.

**New Business**

**Overview of the FHWA Workshop on Advancing the State of Practice of Consultant Services**

- **Gee:** FHWA hosted the workshop as a follow-through on commitment to OIG report. This is a day-long session to share ideas among the states, FHWA shared their action plan and obtained feedback
- **In the area of consultant services, the landscape has been changing and we need to catch up – workshop also focused on needed changes to other items, such as Brooks Act**
- **Looking toward a rule-making early next year with regard to these issues**
- **Oates:** additional issues include the additional oversight on ARRA projects; ensuring that QBS stays; ID/IQ contracts; conflict of interest regulations for design-firm contracting on various stages of project, e.g. if preliminary planning, no design; if design, no inspect – big problem for industry and state/local partners, inconsistency across states and FHWA division offices
- **Horsley:** let’s look for opportunity to study and share experiences of projects from a state that likes continuity for pros and cons and implications of restrictive conflict of interest rules
- **Kassoff:** negotiated rulemaking possible for further communication and collaboration with FHWA on revising regulations? Gee: will consider; already discussing possibility of open public meeting in advance of rulemaking process.

**Joint Statement on Principles of Reauthorization (Enclosed) – Janet Oakley, AASHTO and Matt Reiffer, ACEC**
For your consideration; purpose is to advocate for common positions and to demonstrate consensus among the organizations. The committee will take the language for a resolution from AASHTO’s and ACEC’s authorization positions.

- Move and second: Greer and Biehler
- Motion approved

**Next Meeting — Thursday, October 22, 2009 Desert Springs, Palm Desert, CA**

Adjourn
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