February 10, 2014

I am Ron Buel, addressing you because I live in East Portland and am greatly affected by the use of I-205 and I-84. If you have read the Investment Grade Analysis prepared for the Columbia River Crossing, you are aware that CDM Smith, who prepared the analysis for the CRC, is projecting that, after construction is complete, there will be 50,000 DAILY TRIPS using the Glenn Jackson Bridge on I-205 instead of I-5, which is their freeway of choice today. That's obviously because of tolls that would be levied on the CRC. That's more than one-third of the 124,000 average trips across the existing I-5 bridges today, and that is nothing like the diversion numbers you were given for the CRC in the 2013 session (3.4% and 14%), when many of you voted for HB 2800.

These diverted trips will bring the Glenn Jackson and I-205 to capacity during rush hour every weekday. They will further clog the Banfield or I-84, and make the very important economic trip from Downtown Portland to the Portland Airport a nightmare every workday afternoon and evening. These new trips will also bring heavy new traffic to the (alternative) east-west arterials running through NE Portland – I refer particularly to Fremont, Sandy Blvd., Halsey, Glisan and Burnside. That means more congestion, and more health-damaging air toxics and air pollution in my neighborhood.

I am aware that the Speaker of the House, Tina Kotek, is pushing for a House vote on this matter. But I don't think you should have to vote. Peter Courtney has at least 20 members of his chamber who either are going to vote against this Oregon Only project or who don't want to have to vote. A vote in the House is not going to change that situation – check for yourself – talk to Senators on the CRC committee who took in the January 14 hearing and asked questions – Johnson, Steiner-Heyward, Monroe and Shields for example, or talk to almost anyone in the Republican Senate caucus.

None of us who have fought so hard to stop the CRC are resting our case on the diversion to I-205. Our case that the CRC goose is cooked rests on the January 9, 2014 letter of State Treasurer Ted Wheeler to legislative leaders, in which he writes, "extra diligence is required to ensure that Oregon taxpayers are protected under an Oregon-led scenario, including ensuring that Oregon *can unilaterally set toll rates and can collect them.*" (emphasis added). In his responsibility given him by the Oregon Legislature in HB 2800 to assure that the CRC's finance plan isn't too risky, Wheeler has long held that this ironclad assurance will be necessary for bond buyers to have the confidence that Oregon can raise toll rates if necessary to obtain the funds to repay bond buyers with interest. He has further said publicly that he won't sell bonds without such an assurance that will withstand the political winds over the 35 to 40 years of bond repayment.

It became quite clear during the January 14 hearing that such an assurance will NOT be forthcoming in time for a vote on the Oregon Only Plan in this February session. Assistant Attorney General Ethan Hasenstein, un-contradicted by project lead Kris Strickler, testified that he was in negotiation with the Washington State Department of Licensing to obtain such an agreement. When asked when the agreement would be forthcoming, the ODOT counsel responded that Washington parties wanted to wait to see what would happen in Oregon's upcoming legislative session.

The fact is that the agreement won't be forthcoming at all from Washington State. Governor Inslee definitely wants his Transportation Budget to finally pass, and neither he nor agencies of his administration can afford to promote the Oregon-led CRC. The Majority Caucus Coalition of the Washington State Senate, in a letter sent to the Governor and signed by caucus-leading Senators Shoesler, Tom, King and Rivers, said, and I quote, "WSDOT does not have the statutory authority to enter into an existing agreement to authorize tolls to be collected on the existing bridge or on a newly constructed bridge…The worst case scenario, which it appears your office is considering, is to adopt by fiat taxation without representation. Oregon would set toll rates and collect billions of dollars in tolls from

Washingtonians with little or no ability for them to influence rates by expressing their displeasure at the ballot box with any ultimately responsible official in their state…We respectfully request that you not put us in a circumstance in which legal action is necessary to protect the constitutional prerogatives of the legislature (to set toll rates)."

The fears expressed in the two letters I submitted to you in advance with my testimony -- about Oregon setting toll rates and collecting billions of dollars from Washingtonians -- were certainly confirmed in the hearing January 14. After Kris Strickler said that "Oregon would have the responsibility for any cost over-runs" on the project, Rep Bentz asked him a hypothetical question about where we would get the money if there were a billion dollar cost over-run on the project, and Strickler replied that first the state would turn to "increased tolls". Mr. Ryan, from CDM Smith, testified Oregon had plenty of room to increase tolls – to as high as $7 each way – without reducing toll collections because of too much diversion to I-205.

Why are you pushing the CRC forward in an Oregon Only version when it is so clear that you're not going to be able to get a partnership with the Washington State Legislature, and Oregon's State Treasurer therefore won't sell the toll revenue bonds in an Oregon Only version? And you can't pass any legislation in the Senate.

Ron Buel
East Portland

Washington State Senate

Senator Ann Rivers
18th Legislative District

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December 19, 2013

Pat Kohler, Agency Director
Department of Licensing
PO Box 9020
Olympia, WA 98507-9020

Dear Director Kohler,

As I'm sure you are aware, the leadership of my caucus in the Senate has deep concerns about recent efforts reported in the media to revive the Columbia River Crossing Project without substantial changes to its current design and financing plan. I have included a copy of the letter sent to Governor Inslee earlier this year outlining the policy concerns from a constitutional and legal perspective with a proposal that surfaced in news reports in September that would allow Oregon to proceed with the project "alone" - with substantial assistance from Washington State agencies. As I'm sure you are also aware, Washington and Oregon have an interstate agreement that allows one state to take action and enforce traffic laws against a person who is licensed to drive in that state, but commits a traffic infraction in the other state.

I understand that Oregon may be in the process of amending its law to allow for enforcement of tolls by having it designated as a moving violation. Even if this occurred, any attempt to enforce these violations in Washington State is legally problematic because even it would not immediately subject Washington resident's car registration renewals to a hold. The Washington Department of Licensing (DOL) would still need to (1) amend its agreement with Oregon to reflect that reciprocal action could be taken against a vehicle registration instead of a driver's license; and (2) DOL would need to adopt a rule defining a Washington toll violation as a moving violation. I am writing to strongly urge your agency against taking these steps for the following reasons:

(1) In 2010 in ESSB 6499, the Washington Legislature reclassified toll violations as a "civil penalty", purposefully removing them from the designation of a "traffic infraction" in Washington. There is no legal authority for DOL to administratively define a toll violation, as a moving violation. This action would require legislation.

(2) There is no authority for DOL to amend its agreement with Oregon under RCW 46.23.020 to include violations that are not traffic infractions in Washington. The language authorizing the agreements only references "traffic infractions" and "moving violations", not offenses classified by the Legislature as civil penalties. Again, the Washington Legislature reclassified non-payment of a toll as a violation subject to civil penalties in 2010, expressly removing it as a traffic infraction, so these violations do not meet the type of offense that the Legislature specified that DOL could enter into reciprocal agreements.

(3) Further the language in RCW 46.23.020 (2) specifies that the person's license shall be suspended, not a vehicle registration. The Legislature's use of the phrases a "person licensed by either state" and "his or her license shall be suspended or renewal refused by the state" indicates the consequence of non-compliance affects a person's driver's license, not the vehicle registration.

(4) A final point on the "moving violation" topic is that under RCW 46.20.2891 which gives DOL the authority to define "moving violations," the Legislature limited that authority to defining moving violations for purposes of the 2012 act. The bill in question was dealing with the effect of a failure to appear or a failure to pay a traffic infraction and under what circumstances DOL would suspend a person's driver's license. The act had nothing to do with the enforcement of tolls for a neighboring state and taking action against the vehicle registration. Using the grant of rulemaking authority to define "moving violations" for a purpose beyond that in the 2012 act is arguably going beyond the authority granted to DOL under this statute.

(5) Additionally, under RCW 46.20.270(3) the statute generally addressing the reporting of toll violations, the authority of the DOL to enter into certain reciprocal agreements is limited to standing, stopping and parking violations. However, toll violations are not standing, stopping or parking violations. The Legislature could have amended this statute and included toll violations in those violations that were permissible to report to other jurisdictions and has not done so at this date.

I will not retrace the constitutional arguments previously addressed in the attached letter to the Governor on this same project on similar strained interpretations of executive authority under existing law even though those arguments are clearly applicable in this context as well. Rather than attempt to use tactics of questionable legality, constitutionality, or merit to attempt to solve the problems presented by this project, I am hopeful you and others responsible in the executive branch would sit down with legislators and seek consensus and agreement consistent with common sense and good government. To take the contrary path will only lead to public bitterness, legal challenges, and other unnecessary and avoidable repercussions.

I appreciate your consideration of my concerns and look forward to receiving a response.

Sincerely,

Ann Rivers

Senator Ann Rivers

Cc: Governor Inslee

Majority Coalition Caucus
of the Washington State Senate

September 26, 2013

Governor Jay Inslee
Legislative Building
Olympia, WA 98504

Governor Inslee,

On behalf of the leadership of the Senate Majority Coalition Caucus, we are writing to express our deep concern for the alarming policy implications contained within the recent Attorney General (AG) letter and accompanying memorandum to the Coast Guard. These purport to provide a legal rationale for the Washington State Department of Transportation (WSDOT) to proceed with the multibillion dollar Columbia River Crossing (CRC) Project without any specific legislative authority. It is important for both you and the Coast Guard to know that we vehemently disagree with this position.

There are significant flaws in the specific logic and arguments undergirding the letter which we will discuss further. However, the larger issue is the basic constitutional principle that the Legislature controls the purse strings and sets policy, while the executive acts to implement it. While these roles are dynamic and fluid, in order for the constitutional system to work, it is premised on each branch having a common respect for the fundamental authority of the other branches.

This respect is lacking in the letter from the Attorney General's Office. At its core the letter implies that the Legislature is a problem which a state agency can simply contract around. This will damage our future efforts to collaboratively move forward on a variety of issues necessary for the good of our state -- including transportation.

Here are some specific reasons that the Attorney General's memo is flawed:

Transportation Budget: The memo makes no mention of the transportation budget. The budget represents the clearest expression of legislative intent regarding transportation policy in our state. The memo does not reference any of the provisions related to the CRC project in the budget.

Instead, the letter references WSDOT's general authority to enter into agreements with Oregon, provisions which cannot be considered in isolation from the specific budgetary law enacted regarding this project. For the past ten years the Legislature has selected projects that it wants built by affirmatively identifying the projects' scope on a list in the transportation budget. To have the executive use general statutory grants of authority to push a project that the Legislature did not advance or fully fund contravenes the long-established project funding process. It is particularly disturbing that this could happen with a multi-billion dollar mega-project that Washington citizens will be paying for via tolls over the next 30 to 40 years.

Another problematic issue is the position that because another government is paying for WSDOT to conduct work, the agency is somehow avoiding doing work not authorized in the budget. Any work performed on the project under the direction of Oregon Department of Transportation (ODOT), even if the time and resources devoted to this mega-project may be reimbursed later, is still an allocation of resources subject to the Legislature's purview.

The Legislature did not authorize the work WSDOT would like to perform on the CRC. The AG's memo is flawed when it argues that WSDOT may perform this work as long as it is reimbursed by the State of Oregon.

The Legislature did not choose to allocate those resources to the delivery of this project beyond the design phase. The executive branch cannot simply ignore provisions of the law which do not comport with its particular policy goals. Such a posture ignores the constitutional doctrine of separation powers.

We urge you to carefully consider the ramifications of such a course.

Tolling: There are many complicated and significant policy issues regarding the collection of tolls, which are completely ignored or glossed over in the Attorney General's memo. It contemplates a scheme in which the State of Oregon would essentially serve as the toll setting authority for the CRC. To accomplish this, the memo argues that both WSDOT and the Transportation Commission can amend or enter into agreements without any prior specific legislative authorization. It is intriguing to note the lack of citation to any specific legal authority on this point; we assume none exist.

This proposition is problematic for three reasons. First, there is no legal authority for WSDOT to enter into or amend agreements with the state of Oregon regarding the collection of tolls on the existing and new facility on this project. The existing agreement with Oregon regarding the CRC expressly prohibits toll collection on that facility. The Legislature, as the only entity with the authority to authorize toll facilities in Washington, designated the CRC (existing and new facilities) as an eligible toll facility in ESSB 6445 in 2012. However, that bill contained contingencies that have not been met. WSDOT does not have the statutory authority to enter into an existing agreement to authorize tolls to be collected on the existing bridge or on a newly constructed bridge. The agency cannot enter into contracts authorizing activity that it does not have the authority to do on its own.

Second, the Legislature has already designated the Washington State Transportation Commission (whose members you appoint and for whom you are ultimately responsible) as the toll setting authority in our state. Oregon contemplates a very different role for the Commission with regard to toll setting on the CRC. It envisions that the Commission would travel to Oregon to advocate for our citizens during toll rate setting hearings in front of the Oregon Commission. This absurd concept is not in the interest of southwest Washingtonians and is without any statutory authorization by the Legislature.

Third, although the Legislature in ESSB 6445 authorized the Commission to enter into an agreement with Oregon's Commission regarding toll rate setting on this project, that agreement is now inapplicable. The scheme advocated by the State of Oregon is that its Commission would be the sole entity with toll setting and collection authority. However, the authority granted to the Washington Commission in statute was specifically limited to craft an agreement for the "mutual or joint setting" of tolls. Therefore, the Washington Commission is powerless to enter into any new agreement with the Oregon Commission that contravenes Washington State law.

The worst case scenario which it appears your office is considering to adopt by fiat is taxation without representation- Oregon would set toll rates and collect billions of dollars in tolls from Washingtonians

with little or no ability for them to influence rates by expressing their displeasure at the ballot box with any ultimately responsible elected official in their state.

Liability: The most baffling part of the legal analysis in the letter from the Attorney General's Office is the lack of any significant discussion of the potential legal liability of the State of Washington under the agreement proposed with the State of Oregon.

Oregon has sovereign immunity with significant caps on damages in tort and contract. Washington State has waived its right to civil immunity - - our state coffers are laid bare to anyone who decides to file a lawsuit.

Litigation is not inconceivable on multi-billion dollar construction projects or with complex multistate tolling agreements. It would be dangerous for our state to be exposed to liability through any of these agreements, especially if Oregon was immune and Washington was left as the only deep pocket.

It does not appear to us from the analysis provided by the Attorney General's Office that it has considered the legal consequences to which our state would be subjected under Oregon's proposal.

The Senate is currently engaged in a listening tour on transportation issues around our state in order to gauge Washingtonians' support for a transportation revenue package and reforms. By determining what the citizens want, we stand ready to work with the executive branch on any reforms and revenue which the people would support.

However, in order for the executive and legislative branches to negotiate it is necessary for them to recognize their positions as separate yet co-equal partners in the process. To be blunt, the ill-advised course suggested by the Attorney General would poison the ability of these efforts to bear fruit.

In conclusion we respectfully request that you not put us in a circumstance in which legal action is necessary in order to protect the constitutional perogatives of the Legislature.

Sincerely,

Senator Ann Rivers
18th District

Senator Rodney Tom
48th District

Senator Curtis King
14th District

Senator Mark Schoesler
9th District

Cc: United States Coast Guard