

2-12-14 JOHN F. BRADACH, SR. TESTIMONY TO HOUSE
TRANSPORTATION AND ECONOMIC DEVELOPMENT
COMMITTEE RE: COLUMBIA RIVER CROSSING.

My name is John F. Bradach, Sr. I am a thirty-three year Construction Law attorney, licensed in Oregon and Washington. I am an Oregon citizen and taxpayer, and a resident of Northeast Portland.

First, I request that your Committee incorporate in its deliberations the Legislative Record developed for HB2800, last session.

I submitted to the Record for this hearing, yesterday, my Friday, February 7, 2014 email to all Legislators regarding the Columbia River Crossing and submit here, a copy of my written testimony, almost a year ago, to the Joint Legislative Committee on the CRC.

CRC admits that the Risk in the approach embodied in the proposed Amendments is all on Oregon's taxpayers. My email last week addressed some significant Risk Factors nested in key legal issues.

First, is the Oregon Constitution's limitation at Article IX, Section 3a, that gas and vehicle user taxes may be used "exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in this state."

The Assistant Attorney General, who spoke for ODOT at the January 15, 2014 Joint CRC Committee hearing, referenced his September 12, 2013 memorandum, essentially opining that "in this state" does not preclude spending on the order of a HALF A BILLION DOLLARS on the other side of the State Line, in Washington.

Under normal rules of statutory interpretation a Court will not look beyond the language for intent, if the language is unambiguous, and

truly capable of having only one meaning. “In this state” unambiguously can mean only “in this state”. It does not mean “in that state”. A court would apply the rules here, and disregard and void any legislative abrogation of Oregon’s Constitution. The “in this state” issue should be should be subjected to independent legal review, preferably by an outside attorney with public financing bond experience, but at least by Legislative Counsel, before any action is taken to pass these Amendments.

Second, is the exercise of the power of eminent domain by Washington public agencies, to take the land of Washington citizens, whose elected representatives declined participation in CRC, to facilitate ODOT’s construction public improvements in a foreign State. This issue affects both the highway and light rail portions of the proposed Oregon-only plan. Expect a nest of litigation to the Washington Appellate courts, if anything like this occurs. Matt Garrett’s January 27, 2014 letter suggests Oregon will not own the acquired land, but be some sort of a licensee or tenant. Can WSDOT charge rent? Is Oregon on the hook for long-term maintenance and liability to persons injured thereon?

Third, tolling Washington residents, without returning to their Legislature for authorization, will set off World War III, there. “Taxation Without Representation” is a tried and true battle call in America. Further, Oregon-only tolling system proposed would be a massive ground-up software effort, like Cover Oregon, in an area where ODOT has no experience.

Finally, notwithstanding that high-level political pressure, a false drop-dead deadline and debatable representations of authority from the Assistant Attorney Generals in both States resulted in the Coast Guard’s issuance of a Bridge Permit, the proposed CRC Bridge’s navigation clearance, absent addition of a bascule draw span, will cripple one of the Great River Highways of America, in perpetuity.

From: John F. Bradach
To: oregon.treasurer@state.or.us; "Sen.HermanBaertschiger@state.or.us"; "Sen.AlanBates@state.or.us"; "Sen.LeeBeyer@state.or.us"; "Sen.BrianBoquist@state.or.us"; "Sen.GinnyBurdick@state.or.us"; "Sen.BetsyClose@state.or.us"; "Sen.PeterCourtney@state.or.us"; "Sen.RichardDevlin@state.or.us"; "Sen.JackieDingfelder@state.or.us"; "Sen.ChrisEdwards@state.or.us"; "Sen.TedFerrioll@state.or.us"; "Sen.LarryGeorge@state.or.us"; "Sen.FredGirod@state.or.us"; "Sen.MarkHass@state.or.us"; "Sen.BetsyJohnson@state.or.us"; "sen.timknopp@state.or.us"; "Sen.JeffKruse@state.or.us"; "Sen.LaurieMonnesAnderson@state.or.us"; "Sen.RodMonroe@state.or.us"; "Sen.AlanOlsen@state.or.us"; "Sen.FloydProzanski@state.or.us"; "Sen.ArnieRoblan@state.or.us"; "Sen.DianeRosenbaum@state.or.us"; "Sen.ChipShields@state.or.us"; "Sen.BruceStarr@state.or.us"; "Sen.ElizabethSteinerHayward@state.or.us"; "Sen.ChuckThomsen@state.or.us"; "Sen.DougWhitsett@state.or.us"; "Sen.JackieWinters@state.or.us"; "Rep.JulesBailey@state.or.us"; "Rep.JeffBarker@state.or.us"; "Rep.PhilBarnhart@state.or.us"; "Rep.BrentBarton@state.or.us"; "Rep.CliffBentz@state.or.us"; "Rep.VickiBerger@state.or.us"; "Rep.DeborahBoone@state.or.us"; "Rep.PeterBuckley@state.or.us"; "Rep. KevinCameron@state.or.us"; "Rep.BrianClem@state.or.us"; "Rep.JasonConger@state.or.us"; "Rep.JohnDavis@state.or.us"; "Rep.MargaretDoherty@state.or.us"; "Rep.SalEsquivel@state.or.us"; "Rep.ShemiaFagan@state.or.us"; "Rep.LewFrederick@state.or.us"; "Rep.TimFreeman@state.or.us"; "Rep.JoeGallegos@state.or.us"; "Rep.SaraGelsler@state.or.us"; "Rep.VicGilliam@state.or.us"; "Rep.DavidGomberg@state.or.us"; "Rep.ChrisGorsek@state.or.us"; "Rep.MitchGreenlick@state.or.us"; "Rep.BruceHanna@state.or.us"; "Rep.ChrisHarker@state.or.us"; "Rep.WallyHicks@state.or.us"; "Rep.PaulHolvey@state.or.us"; "Rep.VallHoyle@state.or.us"; "Rep.JohnHuffman@state.or.us"; "Rep.BobJenson@state.or.us"; "Rep.MarkJohnson@state.or.us"; "Rep.BillKennemer@state.or.us"; "Rep.AlissaKenyGuver@state.or.us"; "Rep.BettyKomp@state.or.us"; "Rep.TinaKotek@state.or.us"; "Rep.WayneKrieger@state.or.us"; "Rep.JohnLively@state.or.us"; "Rep.GregMatthews@state.or.us"; "Rep.CaddyMcKeown@state.or.us"; "Rep.MikeMcLane@state.or.us"; "Rep.NancyNathanson@state.or.us"; "Rep.AndyOlson@state.or.us"; "Rep.JulieParrish@state.or.us"; "Rep.TobiasRead@state.or.us"; "Rep.JeffReardon@state.or.us"; "Rep.DennisRichardson@state.or.us"; "Rep.GregSmith@state.or.us"; "Rep.SherrieSprenger@state.or.us"; "Rep.KimThatcher@state.or.us"; "Rep.JimThompson@state.or.us"; "Rep.CarolynTomei@state.or.us"; "Rep.BenUnger@state.or.us"; "Rep.JessicaVegaPederson@state.or.us"; "Rep.JimWeidner@state.or.us"; "Rep.GeneWhisnant@state.or.us"; "Rep.GailWhitsett@state.or.us"; "Rep.JenniferWilliamson@state.or.us"; "Rep.BradWitt@state.or.us"; "rep.annlininger@state.or.us"; "rep.barbarasmithwarner@state.or.us"
Subject: NO OREGON-ONLY COLUMBIA RIVER CROSSING
Date: Friday, February 07, 2014 11:04:48 AM

DEAR OREGON LEGISLATORS AND OREGON STATE TREASURER TED WHEELER:

I am an Oregon Citizen and Taxpayer. I live in Northeast Portland.

I write to highlight some important points, in reaction to recent press coverage of the Oregon-only CRC, culminating with the opinion piece in this morning's Oregonian, "Time's Nearly Up for the CRC":

1. Starting with today's article, I note that key past Message Message Points advanced by CRC have been toned-down, or are completely missing: sunk costs (which must now be far in excess of \$170MM); seismic frailty of the existing I-5 bridges (now called only "inadequate" and misidentified at the "bottleneck"), air conflict with Pearson Air Park, construction employment, and most importantly, traffic safety. CRC has trumpeted safety as a key justification for spending Billions, but always at a high altitude, without statistics for fatalities on the existing I-5 Bridges. I was able to find the following blurb addressing fatalities, at page 3-20 of the Final Environment Impact Statement:

"Three fatalities occurred during the 5-year study period from 2002 to 2006, representing 0.1 percent of all crashes. The three fatalities involved either a pedestrian or a bicyclist being struck by a vehicle or truck. Two of the three crashes occurred on southbound I-5 near the Interstate Bridge crossing, one near the Hayden Island southbound on-ramp, and one near the southbound SR 14 on-ramp. The third fatality occurred along northbound I-5, near the Victory Boulevard off-ramp."

2. The Oregon Constitution, Article IX, Section 3a., provides in relevant part:

"Section 3a. Use of revenue from taxes on motor vehicle use and fuel; legislative review of allocation of taxes between vehicle classes. (1) Except as provided in subsection (2) of this section, revenue from the following shall be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in this state:

(a) Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles; and

(b) Any tax or excise levied on the ownership, operation or use of motor vehicles.

(2) Revenues described in subsection (1) of this section:

(a) May also be used for the cost of administration and any refunds or credits authorized by law.

(b) May also be used for the retirement of bonds for which such revenues have been pledged.

(c) If from levies under paragraph (b) of subsection (1) of this section on campers, motor homes, travel trailers, snowmobiles, or like vehicles, may also be used for the acquisition, development, maintenance or care of parks or recreation areas.

(d) If from levies under paragraph (b) of subsection (1) of this section on vehicles used or held out for use for commercial purposes, may also be used for enforcement of commercial vehicle weight, size, load, conformation and equipment regulation."

(Emphasis added)

An Assistant Attorney General who works with ODOT essentially opined, last September, that the "in this state" limitation allows construction of substantial highway improvements (I understand worth on the order of Half a Billion Dollars) by ODOT in the State of Washington. That opinion was a critical inducement for Coast Guard's issuance of the Bridge Permit. I think the plain meaning of "in this state" is "in this state". The issue deserves more than an eye-roll from Oregon's House Speaker, as was reported last week, when House Minority Leader Mike McLane mentioned constitutional problems with CRC. This issue should be independently reviewed, by qualified bond counsel, before any further CRC funding is approved.

3. Articles last week, in the Oregonian and Columbian, quoted Governor Inslee's and WSDOT's spokespersons, as indicating they are unaware of substantial discussions toward solution of the tolling enforcement and condemnation powers issues.

4. The eminent domain issue is not limited to the Tri-Met/C-Tran interface. Again, I understand that the Oregon-only plan includes the construction of on the order of half a Billion dollars for the first interchange and associated improvements in downtown Vancouver. One can imagine that some of the property owners in the path of those improvements will be reluctant to sell and that the State of Washington's power of eminent domain might be called upon to take that property and hand it over to ODOT for construction. The quote from Inslee's spokesman that there have been no recent substantive talks to address this issue and tolling enforcement is astonishing, and I think at variance with testimony ODOT gave at the recent Joint CRC hearing in the Oregon Legislature. Whether the power of eminent domain may be delegated in the manner contemplated is at least legally suspect, and will likely require attention of Washington's appellate courts.

5. Tolling Washington taxpayers, when their Legislature rejected the CRC last year, without returning to the Washington Legislature for express delegation of that authority to ODOT, will set off World War Three in Olympia.

6. Representative Tobias Read's flippant "we've got the wallet" comment to the Oregonian

misses so much. WSDOT has cost overrun disasters in progress on the SR-520 Floating Bridge and Bertha Tunnel, paralleling ODOT's own Eddyville debacle. Oregon's taxpayers must take all the risk, for the Oregon-only Rube Goldberg lash-up to proceed. Does no one remember WPPSS?

7. Characterization of the CRC opposition as Tea Party whackos misses the political diversity, spanning from Right to Left, of the many bright and informed individual opponents who have given CRC their focused attention over the years.

8. Notwithstanding the Coast Guard Bridge Permit, the planned CRC Bridge, absent a bascule lift, will cripple one of the Great River Highways in America, in perpetuity.

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2/18/13 Oregon Joint CRC Committee Testimony. My name is John F. Bradach, Sr. I am a thirty-three year Construction Law attorney from Portland. I am an Oregon citizen and taxpayer.

Eddyville (long pause)

I have had the good fortune (or curse) of having been involved, or observed at close hand, some of the great boondoggles of our era, including without limitation: the Trans-Alaska Pipeline, the Washington Public Power Supply System, the Pacific Coal Export Terminal at the Port of Portland and the Interstate Max Light Rail line. I have also paid keen attention through the news media, to the expansion of the Portland Convention Center, the Tram to OHSU and (pause) Eddyville.

I have focused my attention on assuring the CRC Bridge does not diminish the existing upriver navigability on the Columbia River, the more I learn, the less impressed I am about where we are. Columbia River Crossing, with its multiple unresolved issues and over \$150 Million already expended, smells to me like WPPSS.

They aren't making any more rivers. Forever is a long time. Who is to say that the upriver sections might not eventually be dredged to their full permitted depth of 25 feet, or that small ship touring might not emerge on the River, or that future shipbuilding technology might not result in low draft high load and profile vessels.

The CRC planning process and Final Environmental Impact Statement blew it on the question of upriver navigation. The

Coast Guard has been clear that it does not view a mid-level clearance bridge to be an acceptable solution.

I am submitting a package of select correspondence for the Record. It includes the January 31, 2013 letter to Washington Governor Jay Inslee from Washington Senate Transportation Committee Co-Chair Curtis King. Senator King comes very close to my current thinking about CRC Project, particularly his first section about bridge clearance. If the I-205 Glen Jackson Bridge 144' clearance is not preserved, the CRC Bridge must have a lift span. A bascule lift, like the Morrison Bridge in Portland, will be best.

As Senator King writes, "Pushing through the CRC project as currently conceived merely because a certain amount of money has been spent or a certain amount of time has passed would be foolish; especially in the face of the multitude of concerns attributable to this project."

While issuing the Permit is ultimately the Coast Guard's duty, this committee and body have a duty to understand what has gone on with the clearance issue and to protect the potential of the Columbia River.

I am also concerned about HB 2800 committing to Design/Build procurement for CRC. Traditional Design-Bid-Build, fixed price competitive bidding, assures the best bang for the taxpayer, gives more latitude to break the Project down into smaller biddable prime contract components and more clearly defines and separates design and construction responsibilities, so that it easier to sort out a mess like (pause) Eddyville.