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The Honorable Mark DeSaulnier
Chair, Senate Committee on Transportation and Housing
State Capitol, Room 2209
Sacramento, CA 95814

Dear Senator DeSaulnier:

After a very busy August that included the end-of-session rush of bills and a major earthquake in Napa County, I write today to provide my written response to issues raised in your August 5, 2014, committee hearing entitled, "Bay Bridge Lessons Learned: Receipt of Final Reports."

During the hearing, we discussed the recommendations made in the various reports produced by and for your committee. You requested written responses from me and the state Department of Transportation (Caltrans) to the recommendations. With this transmittal, I provide my responses to recommendations made in the committee report known collegially as the "DeWolk Report." Under separate cover, Director Dougherty is providing the Caltrans responses to recommendations made in the more technical "Senate/LAO Peer Review Panel" report.

I also want to use this transmittal to address another issue raised at the hearing, but about which we spent little time discussing: cultural change at Caltrans. On this issue, I want to assure you that Agency and Department leadership are in agreement on the need for improvement, and we are working together toward that end.

The Caltrans Improvement Project:

The Brown Administration is the first one in twenty years to invest the time and resources necessary to assess the performance of the department. We contracted with the State Smart Transportation Initiative (SSTI) to conduct an eight-month review of the department and make recommendations for improvement. That assessment and set of recommendations was made public in February, 2014. Since that time, Director Dougherty and I have convened five separate workgroups, consisting of Agency staff, department staff, and other stakeholders, to consider and implement recommendations to improve departmental performance, accountability and communication. The five workgroups we formed are focusing on the following areas for improvement:

1. Performance Management and Human Resources
2. Smart Investment and Resource Alignment
3. Strategic Partnerships
4. Innovation, Flexibility and Risk Management
5. Communications

The SSTI recommendations come on the heels of an internal department performance review process undertaken by Director Dougherty beginning in 2012. The workgroups are reviewing recommendations for improvement and formulating implementation strategies. Some can be done in the short-term while others will take more time.

One important early success of our reform effort is the adoption of new Mission, Vision and Goals for the department. This effort is an important prerequisite to implementing change in any organization. Before you start to implement change, you have to know what you want to become. The department, working with Agency, has taken steps to modernize its mission, express its vision and adopt goals against which it is willing to be measured:

Mission: Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability.

Vision: Be a performance-driven, transparent and accountable organization that values its people, resources and partners, and meets new challenges through leadership, innovation and teamwork.

Goals:

Safety and Health: Provide a safe transportation system for workers and users, and promote health through active transportation and reduced pollution in communities.

Stewardship and Efficiency: Money counts. Responsibly manage California's transportation-related assets.

Sustainability, Livability and the Economy: Make long-lasting, smart mobility decisions that improve the environment, support a vibrant economy, and build communities, not sprawl.

System Performance: Utilize leadership, collaboration and strategic partnerships to develop an integrated transportation system that provides reliable and accessible mobility for travelers.

Organizational Excellence: Be a national leader in delivering quality service through excellent employee performance, public communication, and accountability.

We are working hard to improve Caltrans, and I appreciate your leadership and support in this endeavor. Working with you, the department has issued its second edition of *The Mile Marker*, which will provide a regular performance report to reflect how well the department is doing in meeting its new goals and objectives. I will continue to update you, your colleagues and the public as we continue on our path toward achieving organizational excellence at Caltrans.

Now let me turn to my response to the set of recommendations contained in the committee's "DeWolk Report." I provide below responses to each recommendation contained in the report. Please note, some of the recommendations are really made to the legislature, and I would reserve further comment until any legislative proposal is forthcoming. Finally, some of the recommendations are quite general, and would benefit from further dialogue with the committee to better understand the specific matter at issue.

Response to DeWolk Report Recommendations:

1. *Transparency in the affairs of the public is paramount and leads to accountability, which leads to better results.*

I agree. This is particularly true with respect to the Bay Bridge project. As I said at the committee hearing, the legislative exemptions from open meeting laws granted to the Toll Bridge Program Oversight Committee (TBPOC) were a mistake because they deprived the public of the opportunity to see how Caltrans and its partners fixed problems over time, and they provided for management of the project in too insular a fashion. They did not serve the public, the department or TBPOC well.

As I conveyed at the hearing, the Administration has pushed for a more open process. As of May 6th of this year, TBPOC meetings are now public.

Moreover, it is also true that the Bay Bridge project management team, while making millions of pages of documents available to the public over the last 15 years, would have done well to develop an automated record-keeping program for this mega-project. Not only would such a program have improved record retention, it would have assisted the department with response to media and public inquiries about the project.

The department recognizes the importance of transparency in its operations. Caltrans has adopted a new vision for its operations in which the organization will work to become a "performance-driven, transparent, and accountable organization."

2. *No public agency should be exempt from basic open government laws such as the Ralph M. Brown Act and the Bagley-Keene Open Meeting Act.*

As noted above, it is clear that the legislatively authorized exemptions from both local and state government open meeting laws for the TBPOC were a mistake. I support the oversight committee's recent decision to open its meetings to the public.

- 3. The state Legislature and the top tiers of the state executive branch should swiftly investigate the alleged pattern of quashing dissent.*

I took the allegations raised in the January 24, 2014, hearing seriously and asked the California Highway Patrol to investigate. It is important to gather these facts about events that occurred between 5 and 7 years ago to find out exactly what happened before reaching conclusions. When the investigation is complete, I will act accordingly based on the findings of the CHP report.

- 4. All public agencies and their officials should formally require communications take place in some permanent, retrievable media such as writing. This protects everyone. Naturally, correspondence regarding negotiations, personnel, or litigation should remain appropriately protected.*

In the operations of government, good communication is necessary in many forms. It is neither practical nor efficient to require every communication to be in writing. To the extent this recommendation is suggesting important actions affecting the public and taxpayer funds should be documented, I agree. The California Public Records Act (CPRA) does provide protections for certain types of correspondence and deliberations. I agree those protections are worthwhile and necessary.

- 5. Partisans of major projects such as the Bay Bridge – whether they are engineers, lawyers, or academics – should not be in charge of hiring public information officers for enterprises that are bound to be of great public interest and likely controversial. Rather, an independent panel of experts with a grasp of what news media, office holders and especially the paying public want to know should make these key decisions.*

It is unclear to me what is meant by "partisans" in this recommendation. In my view, the hiring of public information officers (PIO's) should be done by the agency or department in charge of the project. Caltrans districts hire PIOs according to the state civil service system and the current Bay Bridge PIO is a state civil service employee. Public information officers have an important role to play in the timely dissemination of information about the project to the public, media and elected officials. The agency or department shall rightly be held responsible for the actions of its PIO's, just as it should for all of its employees. I do not find it particularly efficient to establish a new independent panel of experts for the hiring of PIO's. I think those panels are best used for opinions and review in highly specialized fields like engineering.

6. *Given the controversy regarding the quality of the welds, especially on the deck panels and portions of the OBGs, it would be prudent to ensure that a truly independent party – accompanied by credible critics – perform definitive testing of the welds.*

The welding challenges for the Bay Bridge project, which occurred between 2008 and 2010, have been reviewed by the Toll Bridge Seismic Safety Peer Review Panel, the QA/QC Expert Peer Review Panel, and to some extent by the state Senate's handpicked peer review panel known simply as the "LAO Panel."

Collectively, the panels have concluded: 1) the department's actions to identify and repair those welds requiring repair prior to the bridge decks being installed on the bridge were sufficient to meet the requirements of national welding standards and contract requirements; and 2) the department should incorporate inspections of the welds for the steel SAS structure as part of its inspection and maintenance program for the new Bay Bridge going forward. I have no basis from which to challenge the conclusions of these engineering experts, nor have I been advised of any additional review that should be performed at this time.

7. *A deeper look into the 100 NCRs on the tower and its welds should be conducted.*

All pertinent weld NCRs on the tower are available online at:
<http://www.dot.ca.gov/NCRs/>.

8. *Repeated allegations that engineering decisions were made by non-engineers should be investigated.*

As discussed at the committee's August 5, 2014, hearing, the program management team endeavored to leave engineering decisions to engineers and contract compliance or amendment decisions to the program manager and oversight committee. The discussion during the hearing between the committee, the program manager and the Chief Engineer on the project was an attempt to lay out how those roles, responsibilities and decisions were executed to assure engineering decisions were made by qualified and licensed engineers.

9. *In California today there should be mandatory websites that do not simply promote projects such as the Bay Bridge but have room for disclosure, discourse, critiques, inquiries and more.*

The department has posted thousands of documents related to the project on its website and <http://www.baybridgeinfo.org>. Additionally, the department has invited critics of the project to meet with engineering and management staff. A public forum was conducted in February of this year where critics had an opportunity to question Caltrans presenters and provide their own presentations. The video of that forum is available online at: <http://baybridgeinfo.org/rods/briefing>.

10. *The Legislature should consider establishing a fully independent bureau of inquiry modeled on inspector general offices, whether for Caltrans or other state departments.*

Accountability does matter. Caltrans currently has an Audits and Investigations Division (A&I) that conducts its audits, both external and internal, in accordance with the International Standards for the Professional Practice of Internal Auditing, which mandate independence on the part of the division. Additionally, as part of the Caltrans Improvement Project, A&I is currently bolstering its investigative unit through the reclassification of the auditor positions within the investigations unit to special investigator positions and through the addition of permanent intermittent positions for the purpose of maintaining high-quality, timely, independent investigations of relevant issues and for continuing its statewide investigative training of Caltrans managers and supervisors, all of which assists in fostering accountability throughout the department. Moreover, A&I follows up on all its audits and investigations to ensure that corrective action is implemented.

11. *Public agencies should routinely collect, consolidate, and curate studies, reports and audit by subject and make them readily available to the public online. This would include best practices, as suggested by UC Berkeley's Karen Trapenberg Frick at the January 24, 2014 state Senate hearing.*

This is a reasonable recommendation.

12. *The Legislature should consider a policy allowing estimates for future large projects to include best and worst case scenarios, accompanied with risk assessments for each.*

I agree that robust risk assessments as well as enhanced risk mitigation programs are essential for projects of this size and scope. Enhanced risk management was part of the reform program enacted in 2005 to improve the management of the Toll Bridge Seismic Safety Program. To a great extent, the reforms were helpful in delivering the completion of the seismic safety program within the schedule and budget adopted nearly ten years ago. As the recommendation is calling for legislative action, I will not comment further until I can review the specific legislative proposal.

13. *The Legislature should consider creating a formal change manager role on large projects. The position would be responsible for tracking all change orders, non-conformance reports, and the like. These, too, should be readily accessible online to the public.*

The tracking of the identified documents is important. That can be accomplished through improved record retention practices, personnel focused on the task, or both.

As the recommendation is calling for legislative action, I will not comment further until I can review the specific legislative proposal.

14. *The Legislature should consider creating oversight committees for large projects that might be modeled after the strong points of the TBPOC. As TBPOC Chairman and MTC Executive Director Steve Heminger states, it would be wise to have these oversight committees in place before projects begin, not afterwards when they are chartered to fix errors that are sometimes irreparable.*

I agree. As the recommendation is calling for legislative action, I will not comment further until I can review the specific legislative proposal.

15. *The Legislature should consider conferring oversight powers to the California Transportation Commission, which last year alone doled out \$5.1 billion, but has no real role in making sure the money is spent the way the commission stipulates.*

I agree that the addition of the California Transportation Commission—along with the Bay Area Toll Authority—helped improve project oversight of the Bay Bridge. Through those legislative changes, and others, the project has been on time and within budget since 2005. As the recommendation is calling for legislative action, I will not comment further until I can review the specific legislative proposal.

16. *Caltrans should publish executed contracts between state agencies such as Caltrans and its many contractors. Aside from the fact that this involves the public's money, visible contracts will create competition, not concealment.*

Contract payment information is available online. Contracts can be searched by prime contractor (<http://www.dot.ca.gov/hq/asc/oap/payments/public/ctors.htm>), by contract number (<http://www.dot.ca.gov/hq/asc/oap/payments/>) or by District (<http://www.dot.ca.gov/hq/asc/oap/payments/public/ctnums.htm>).

As noted, Caltrans will independently respond to the recommendations made by the Senate/LAO Peer Review Panel. Director Dougherty and I, of course, welcome the opportunity to continue to work with the Review Panel on several of their recommendations. I am happy to coordinate that effort with you and your staff, as you see fit. Should you have any questions or wish to discuss these matters further, please do not hesitate to call me at (916) 323-5401.

Respectfully,



Brian P. Kelly