State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

TAB 52

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: April 9-10, 2007

Reference No.: 2.5e.
Action Item

PASSED BY CTC APR 10 2008 CALIFORNIA TRANSPORTATION COMMISSION

From: CINDY McKIM
Chief Financial Officer

Prepared by: Rachel Falsetti
Acting Division Chief
Transportation Programming

Subject: **ALLOCATION FOR SUPPLEMENTAL FUNDS FOR PREVIOUSLY VOTED PROJECTS RESOLUTION FA-07-10**

RECOMMENDATION:

The Department of Transportation (Department) recommends that the California Transportation Commission (Commission) approve Resolution FA-07-10, allocating an additional $2,325,000 for two State Highway Operation and Protection Program (SHOPP) projects identified below.

ISSUE:

Additional funds are needed for two previously approved projects in order to settle construction claims and close out the contracts.

RESOLUTION:

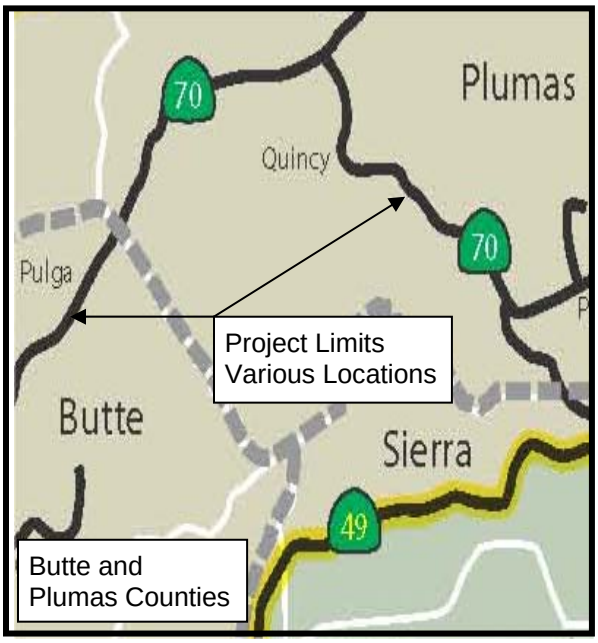
Resolved, that $2,325,000 be allocated from the Budget Act of 2007, Budget Act Items 2660-302-0042 and 2660-302-0890 to provide additional funds for the projects identified below.

Project	Dist-Co-Rte	Original Vote/G11 Amount	Original Award Amount	Current Allocation	Allocation Adjustment	Revised Allocation	% Increase Above Current Allocation
1	02-Plu-70	$16,150,000	$23,290,000	$25,040,000	$2,300,000	$27,340,000	9.2%
2	07-LA-5	$5,767,000	$6,498,000	$6,929,000	$25,000	$6,954,000	0.4%

Project # Allocation Amount Recipient County Dist-Co-Rte Postmile	Location Project Description Reason for Supplemental Funds	EA PPNO Budget Year Prgm Codes Program	State Federal Current Budget Amount	State Federal Additional Allocation	State Federal Revised Total Amount
2.5e.	**Supplemental Funds for Previously Voted Projects**				**Resolution FA-07-10**
1 $2,300,000 Department of Transportation Plumas 02N-But, Plu-70 Various	In Butte and Plumas Counties, at various locations. Bridge deck rehabilitation. Supplemental funds are needed to close out the contract.	3016U1 02-5100 2000-01 302-0042 302-0890 20.20.201.110 SHOPP	$4,420,000 $18,870,000	- -	$4,420,000 $18,870,000
		2004-05 302-0042 302-0890 20.20.201.110 SHOPP	$332,000 $1,418,000	- -	$332,000 $1,418,000
		2007-08 302-0042 20.20.201.110 SHOPP	-	$2,300,000	$2,300,000
			$25,040,000	$2,300,000	$27,340,000

RECOMMENDATION:

The Department recommends that this request for $2,300,000 be approved to allow the Department to settle the construction claim and close out the contract.



PROJECT DESCRIPTION:
The project is located on Route 70 in Butte and Plumas Counties at various locations. The project is to rehabilitate five bridges including seismic retrofit, strengthening, bridge deck rehabilitation, approach and bridge rail upgrade, as well as painting the structures.

FUNDING STATUS:
This SHOPP project was voted in June 2001 for $16,150,000 under 2 separate projects (EAs 301601 and 259321). These projects were then combined for construction and awarded in August 2002 for $23,290,000 using $7,140,000 in supplemental funds. The supplemental funds were approved in February 2002 for $4,350,000 to re-advertise the project and in July 2002 for $2,795,000 to award the contract. In May 2005, supplemental funds for $1,750,000 were obtained in order to complete construction. The contract was accepted in November 2006. An additional $2,300,000 in supplemental funds is needed to resolve all remaining claims with the contractor and close out the construction contract. This request for supplemental funds results in an overall increase of 9.2 percent over the current allocation.

REASONS FOR COST INCREASE:
The project cost increase is due to extensive design changes that were necessary during the administration of the project. The original contract length was 400 working days. The design changes delayed the work an additional 239 working days for a total of 639 working days. The amount of unresolved claims is $12,200,000. The primary claim exposure includes:

- Field and home office overhead for both the prime contractor and the painting contractor during the delay. The Contractor was not fully compensated for these overhead costs when the Contract Change Order (CCO) payments were submitted.
-Liquidated damages were withheld due to late completion of the project beyond the 639 working days. However, the project's dispute review board and an independent scheduling consultant have recommended additional time extension days be granted to the contractor due to the design changes. Therefore, an arbitrator is likely to direct the Department to return all liquidated damages to the contractor.

After a series of meetings and discussions with the Contractor, a settlement in the amount of $3,800,000 has been reached. This settlement amount includes the prime contractor as well as the subcontractor claims. The available funds and this request for $2,300,000 in supplemental funds will be used to pay for this settlement and close out the construction contract.

FUNDING OPTIONS:
OPTION A: Approve this request for supplemental funds, as presented above, for $2,300,000 to settle the construction claim and close out the construction contract.

OPTION B: Deny this request and allow the contractor to pursue the contract claim through legal action.

RECOMMENDED OPTION:
The Department recommends that this request of $2,300,000, as presented in Option A above, be approved to allow the current construction contract to be closed out.

Project # Allocation Amount Recipient County Dist-Co-Rte Postmile	Location Project Description Reason for Supplemental Funds	EA PPNO Budget Year Prgm Codes Program	State Federal Current Budget Amount	State Federal Additional Allocation	State Federal Revised Total Amount
2.5e.	**Supplemental Funds for Previously Voted Projects**				**Resolution FA-07-04**
2 $25,000 Department of Transportation Los Angeles 07S-LA-5 46.5/R77.1	In Burbank and the city of Los Angeles, from Providencia Avenue overhead to south of Calgrove Boulevard undercrossing. Replace concrete pavement at various locations. Supplemental funds are needed to close out the contract.	202501 07-2656 2000-01 302-0042 302-0890 20.20.201.120 SHOPP 2007-08 302-0042 302-0890 20.20.201.120 SHOPP 2007-08 302-0042 302-0890 20.20.201.120 SHOPP	 $548,000 $5,950,000 $37,000 $394,000 - -	 - - - - $3,000 $22,000	 $548,000 $5,950,000 $37,000 $394,000 $3,000 $22,000
			$6,929,000	$25,000	$6,954,000

RECOMMENDATION:

The Department recommends that this request for $25,000 be approved to allow the Department to pay the arbitration decision and close out the construction contract.

PROJECT DESCRIPTION:

The project is located on Route 5 in the cities of Burbank and Los Angeles, from Providencia Avenue to south of Calgrove Boulevard. Heavy traffic has severely deteriorated the freeway pavement over time. This rehabilitation project was to replace broken concrete pavement slabs with fast setting hydraulic cement concrete.

FUNDING STATUS:

This SHOPP project was voted in July 2000 for $5,767,000. The project was awarded in October 2000 for $6,498,000 using supplemental G-12 funds. The field construction work was completed in May 2002. A project claim went to arbitration before the Office of Administrative Hearings. Supplemental funds in the amount of $431,000 were approved by the Commission in November 2007. An additional $25,000 in supplemental funds is needed to fully pay the arbitration decision and close out the construction contract. This request for supplemental funds results in an overall increase of 0.4 percent over the current allocation.

REASONS FOR COST INCREASE:

This cost increase is due to a difference in interpretation by which the interest amount was calculated to implement the arbitrator's decision. The contractor received a payment on August 8, 2007, and another payment on December 7, 2007. These two payments included interest, as calculated and understood by the Department. A letter was sent to the Department by the law firm representing the contractor disagreeing with the State's final payment. The law firm contends that the State miscalculated the interest amount owed to the contractor. The Department concurs with their contention and is requesting $25,000 in supplemental funds to make the final payment and close out the contract. This requested amount includes any outstanding balance for interest owed and payment of any additional legal costs for the contractor's attorney.

FUNDING OPTIONS:

OPTION A: Approve this request for supplemental funds, as presented above, for $25,000 to close out the construction contract.

OPTION B: Deny this request and require the contractor pursue payment from the Department through further legal action.

RECOMMENDED OPTION:

The Department recommends that this request of $25,000, as presented in Option A above, be approved to pay the arbitration decision and allow the construction contract to be closed out.