



September 6, 2023

Ms. Alexandra Edwards, Deputy Treasurer for Debt Management  
Council for Bond Oversight  
2300 N. Lincoln Blvd., Room 217  
Oklahoma City, OK 73105

Dear Council of Bond Oversight,

We respectfully request your denial of the recent proposal by the Oklahoma Turnpike Authority (OTA) for approval of \$500 million in revenue bonds for the OTA's ACCESS program on the grounds that 1. these projects are still pending litigation, 2. the OTA is under an investigative audit issued by the Oklahoma Attorney General, 3. the OTA continues to willfully violate their Trust Agreement and 4. the Federal Bureau of Reclamation (BoR) denied passage of one of the OTA's proposed new alignments through fee title lands and flowage easements and a new route has not yet been announced.

The Council of Bond Oversight (COBO) is required to look at all factors to ensure that the OTA is complying with the requirements outlined in the Oklahoma Bond Oversight and Reform Act in 62 O.S. 2021 Sec 695.11A. Clearly, with major Trust Agreement violations as well as three pending lawsuits, an investigative audit, plus a failure to complete a required traffic and revenue study or any impact studies for route justification and federal agencies denying OTA passage on proposed routes, the OTA should be forced to tap their brakes and wait until all these issues are resolved before entering the bond market.

### **Pending Litigation**

The OTA currently has THREE lawsuits pending

1. OTA bond application: Case No. O-120619, Petition for Re-Hearing
2. Qui Tam Litigation: Tortorello et al on behalf of the Oklahoma Turnpike Authority v. Poe and Associates, Inc. et al., Cleveland County Case No. CV-2023-64
3. Open Meetings Act Case, Hirschfeld et al. v. OTA et al, Cleveland County Dist. Ct. Case No. CV-2022-1905 and Okla.S.Ct.Case No. SD120981. Petition for Re-Hearing

The COBO should remind the OTA that their application for bond approval REQUIRES them to be under no pending litigation matters when applying for permission to sell bonds. Clearly, they cannot check that box on the application.

### **Investigative Audit and Trust Agreement Violations**

On March 15, 2023, Attorney General Gentner Drummond asked State Auditor Byrd to conduct an investigative audit of the Oklahoma Turnpike Authority pursuant to 74 O.S. Sec 18f because of "concerns include[ing] but not limited to improper transfers between the OTA and the Department

of Transportation; improper contracting and purchasing practices and inadequate internal financial controls.” **Specific concerns that have already come to light include, but are by no means limited to, (1) non-compliance with a statutory requirement for the OTA to make sure that the purchase price of its bonds in the open market is as close to par as possible, and (2) use of funds in the OTA’s reserve maintenance fund for purposes not authorized in the OTA’s Master Trust Agreement.**

For example, in 2011, the Oklahoma Turnpike Authority issued \$440,240,000 of 5% revenue bonds, maturing from 2014 through 2028. The remaining bonds of \$83,770,000, maturing from 2012 through 2028, had interest rates beginning at 0.2% increasing to 4%. This pricing of the bonds generated a premium of \$68,581,151 at the time of issuance. In 2017, the Authority issued \$275,680,000 of revenue bonds which were priced from 100.076 to 125.687 of par. This pricing generated a premium of \$48,963,023 upon issuance. This raises material concerns of non-compliance with 69 Section 1709 D.4 & E.2.

A second example of persistent non-compliance with the OTA Master Trust Agreement is budgeting reserve maintenance funds for projects that are not “maintenance” (Trust Agreement Sections 504 Provisions for the Reserve Maintenance Fund, 505 Provision Related to Annual Budget and 510 Use of Reserve Maintenance Fund). Section 510 of the Trust Agreement says that

*“Moneys held for the credit of the Reserve Maintenance Fund shall be disbursed by the Depositary...only for the purpose of paying the costs of*

- (a) Resurfacing the Turnpike System or any part thereof,*
- (b) Unusual or extraordinary maintenance or repairs, maintenance or repairs not recurring annually, and renewals and replacements, including major items of equipment,*
- (c) Repairs and replacements resulting from an emergency...*
- (d) Engineering expenses incurred under this Section...”*

There are three types of projects identified in Table 1 which are not maintenance projects. (1) OTA began a program of adding cable barriers (positive barriers) between opposing lanes of traffic in 2019 and the program will continue through 2024. This is a new program to enhance safety of the turnpike systems. It is not a maintenance item of existing infrastructure. (2) Addition and/or improvements to storage sheds, maintenance buildings and the OHP building on the Turner should not be considered maintenance projects but capital projects. (3) OTA began implementing All Electronic Tolling (AET) of the turnpike system in 2020. As part of the program, construction contracts are let to change infrastructure to accommodate the cashless tolling program along with removal of existing tolling lanes and purchasing of new gantries to accommodate cashless tolling. All the changes to infrastructure and new signage are for implementing a change in operations which has nothing to do with maintenance of existing assets. Modifications are not maintenance. Therefore, the items noted as (1), (2) and (3) in Table 1 were incorrectly funded from the Reserve Maintenance Fund. **Allowing non-maintenance items to be paid from the OTA reserve maintenance funds are not in compliance with the provisions of the Trust Agreement and the OTA should not issue bonds for new turnpikes until sound internal financial controls are properly established.**

**Table 1:** Summary of the twelve-year budgeted projects in the Reserve Maintenance Fund by type.

<b>Budget Years 2012-2023 Summary</b>	<b>Amount</b>
Concrete Panel Lifting	\$9,990,000
Engineering	10,700,000
Maintenance Equipment	28,196,400
Surface Treatment & Restripe	16,500,000
Bridge Rehabilitation	63,189,228
Interchanges	20,604,000
Shoulder Rehab & Guardrail	8,365,000
Pavement Rehabilitation	206,047,140
Bridge Replacement	31,939,540
<b>Positive Barriers (1)</b>	<b>48,102,383</b>
<b>Storage Sheds (2)</b>	<b>1,548,000</b>
Bridge & Property Insurance	6,225,000
<b>Maintenance/OHP Building/Service Plaza (2)</b>	<b>9,320,000</b>
DBR Grind (Dowel Bar Retrofit)	36,747,779
<b>AET Conversion/Gantries (All Electronic Tolling) (3)</b>	<b>57,974,766</b>
Misc. (Const. Insp/Safety Impr)	<u>1,777,556</u>
Total	\$557,226,792
Less: Capital Projects not maintenance related	(116,945,149)
Total Maintenance Projects	\$440,281,643
Average Maintenance Projects per year	\$36,690,137

The Attorney General ordered investigative OTA audit is the first-of-its-kind, and significantly overdue. It is essential for COBO to wait for the formal results of this investigative audit to fully grasp the financial health of this public-private instrumentality of the state wielding the power of eminent domain before unleashing them to pursue their currently unlimited buying power of revenue bonds.

The third Master Trust Agreement violation is not completing a Traffic and Revenue (T&R) study prior to bond sale authorization. Trust Agreement Section 209(e) requires that the T&R study include an analysis of revenue and expenses for the new alignments that is reviewed and signed off by their Consulting Engineer.

“(e) in the case of any second senior bonds proposed to be delivered in accordance with this Section in respect of any Turnpike Project for which senior bonds have not been previously issued under Sections 208 or 209 hereof, *a certificate, signed by the Chief Executive Officer and approved by the Consulting Engineers, setting forth the Authority’s estimates in respect of such Turnpike Project of (1) the revenues and (2) the sum of the Current Expenses and deposits to the Reserve Maintenance Fund in the fifth complete bond year following the completion of construction or acquisition of such Turnpike Project and in each*

*bond year thereafter for which the second senior bonds then proposed to be delivered shall be outstanding;”*

**The failure to obtain and certify a valid T&R study is a major trust violation and indicates that OTA cannot issue bonds for a new turnpike until proper studies are completed and vetted.** This is only prudent. Why would the COBO allow the OTA to sell bonds on a project that might not even be financially justifiable? If the financial numbers don't support the Agreement requirements for issuing "revenue bonds," then OTA would have to issue junior obligations. The OTA should not be allowed to incur huge bond issuance costs until COBO is confident that Trust Agreement requirements are met.

This is not the first time that the OTA has FAILED to procure a T&R Study prior to bond sales. The 21-mile long Kickapoo Turnpike (the leg that would connect to the currently proposed south and east-west routes through Norman), did not have a valid T&R study PRIOR to route selection and has turned out to be a financial disaster.

The Kickapoo Turnpike T&R Study was published in January 2017 after the route was designed, all the right-of-way was purchased, land destroyed, and people displaced to show only a 1-to-3-minute time savings during rush hour with minimal local use. How can the OTA pick and construct a route without any kind of justification study? This practice might be why 8 of their 11 turnpikes lose money each year. Not only is the ‘choosing-a-route-prior-to-completing-justification-studies’ an engineering nightmare, it becomes a huge financial liability when toll revenues persistently underperform. These ‘after-the-road-was-built’ justification projections estimated that the Kickapoo would see ~12,000 vehicles per day however, in 2021, an average of 2,113 vehicles/day traveled the Kickapoo; nearly 5.5 times fewer vehicles/day. But, even if the Kickapoo does eventually see 12,000 vehicles/day and pays an average of \$1.46/vehicle/day (\$6.4M/yr), it would take more than 80 years (50 years after the bonds are due) to repay the \$25M/mile constructions costs (\$525M) owed to bondholders. Note, these calculations omit interest owed which, if conserved would take an additional 51 years (131 years total). This was NOT a financially sound investment within the Driving Forward Program; neither are the OTA’s currently proposed new alignment tollroads within the ACCESS program.

The Kickapoo Turnpike is a perfect example of why the residents of Oklahoma have lost confidence in the OTA’s ability to propose and construct financially responsible infrastructure. Further, this example, and many others, **show that the OTA fails to provide justification studies prior to selling bonds and constructing new alignments. They historically use inflated T&R projections to construct turnpikes that are not fiscally responsible and do not generate the revenue needed to pay back bond and loan holders and use these bonds/loans to repay old debts.**

### **Bureau of Reclamation Route Denial**

By their own admission at the 2022 Norman Townhall Meetings, the OTA and their project managers Poe & Associates were unaware that the proposed route includes areas with protected ecology, sensitivity of the watershed and Norman’s water supply including the Garber-Wellington Aquifer, and sites of archeological and geological significance. Completion of ecological,

geological, environmental, and archeological impact studies prior to route selection would have told them these necessities, but as you are aware from the OTA Bond Application, they still have not even started these studies. Moreover, the proposed routes cut through Bureau of Reclamation Title Fee and Flowage Easement land without any discussion or permissions. In December of 2022, the Bureau of Reclamation denied passage of both the East-West Connector and South Extension over their fee title and easement lands citing

*“Reclamation **is denying** OTA’s request for land use authorization for fee title lands at the Norman Project, for the following reasons: .... Perpetual use of Norman Project fee title lands for the proposed turnpike would not be compatible with the authorized project purposes as there would be detrimental impacts to recreation, and may be impacts to other project purposes such as conservation and development of fish and wildlife based on the limited data currently available..... The Proposed Project’s perpetual use of Norman Project fee lands is not compatible with public and the United States interest in the Norman Project..... and Reclamation has determined that the Proposed Project could be designed such that it does not interfere with the provisions of Reclamations’ Norman Project pipeline and flowage easements.”*

This denial affects the routes significantly. It would require the OTA to push the south extension nearly 3 miles west and the east-west connector nearly 1.5 miles north, affecting hundreds of new home and landowners. This is a significant issue and since the OTA has not released their new routes yet and have not come to an agreement with the BoR about flowage and pipeline easement crossings, the COBO should deny them their bond sale. These details must be worked out PRIOR to selling bonds, because any deviation or re-engineering of routes that could potentially be denied again would necessitate additional monies. Force the OTA to be financially prudent. Force them to show proof of BoR acceptance of any new proposed routes prior to allowing them to sell bonds.

The Council of Bond Oversight regulations require the OTA to certify that it has completed all required due diligence for issuing the bonds. The clear intent of this requirement is to make sure state agencies issuing bonds perform steps in the correct order to provide confidence that a project is feasible and may lead to a successful project. **The State of Oklahoma cannot have agencies issuing fiscally unsound bonds for major capital projects that turn out to be unfeasible. This should be a significant problem for the Council of Bond Oversight in addition to the pending litigation, multiple Trust Agreement violations and investigative audit.**

### **The Council Has ONE Job**

The Council for Bond Oversight is tasked with systematic oversight of proposed bond issues to protect the public welfare. **We respectfully ask that you, the Council of Bond Oversight, recognize that the OTA has not only violated their Trust Agreement and statutory obligations over and over, but failed to fulfill their required due diligence to ensure the feasibility of the proposed turnpikes.** Further, we request that you postpone future consideration of any credit line or bond request for a minimum of two years and until

1. the pending litigation and investigative audit are complete in favor of the OTA. Any unfavorable outcome in either makes the application null and void.
2. an accurate and verifiable traffic and revenue study that justifies the projects has been performed and reviewed satisfying the trust agreement.
3. completion of comprehensive studies to assess the ecological, environmental, humanitarian, and economic impacts the proposed turnpikes will have and to justify final route selection.
4. evidence of viable routes with BoR permission, if applicable, to flowage and pipeline easement crossings on both the east-west connector and south extension.

We also ask that you review the OTA's previous financial records where you will find that their existing turnpikes are not self-sustaining and continually require revenue from any and all future bond sales to stay afloat. This is not a viable business practice and should not be supported by the state of Oklahoma. It is not financially responsible to pay a credit card off with a credit card.

We are asking the Council for Bond Oversight to hold OTA accountable and carefully review the results of the State Auditor's investigative audit of the OTA's financial practices and their business model for the sake of the State of Oklahoma and her Citizens.

Sincerely,



Amy Cerato, Ph.D., P.E.

President

PIKE OFF OTA, Inc. and Oklahomans for Responsible Transportation