



COMMONWEALTH of VIRGINIA

Office of the

SECRETARY of TRANSPORTATION

## Update to the House Appropriations Committee Downtown Tunnel/Midtown Tunnel/MLK Extension Project

June 17, 2013

Sean T. Connaughton

Secretary of Transportation



# Introduction

- This presentation covers:
  - A brief history of tolling in Virginia
  - PPTA toll road projects
  - Other toll roads in the Commonwealth
  - Federal and state laws granting authority to toll
  - History of the Elizabeth River tunnels
  - Overview of Downtown Tunnel/Midtown Tunnel/MLK Extension Project
  - Overview of Meeks case
  - Potential impact of ruling in Meeks
  - Next steps in Meeks

# Tolling in Virginia

- Turnpikes (e.g., toll roads) have been used in Virginia since the 18th century\*
- Early History:
  - In 1772, Virginia's legislature enabled development of what probably was the first toll road in America – Augusta County was authorized to build a highway between Jennings's Gap and Warm Spring and to establish a toll gate; toll revenue was to be spent for upkeep of the road and to construct housing for travelers visiting the springs
  - In 1785, the legislature appointed a commission to erect toll gates on existing roads in the Alexandria area to increase revenue for roads

\*Virginia Department of Transportation, *A History of Roads in Virginia*, (2006), available at <http://www.virginiadot.org/about/resources/historyofrds.pdf>.

## Tolling in Virginia (continued)

- In 1811, the Little River Turnpike Company completed a turnpike between Alexandria and Little River in Fairfax County – the turnpike operated as a toll road for nearly a century
- In 1816, the legislature established a state board of public works and created a fund for improvements, money from which was to be used to match private capital in financing improvements – essentially, promotion of public-private partnerships
- In 1834, the legislature authorized the Valley Turnpike Company to improve the route between Winchester and Harrisonburg – the improvements, completed in 1840, were financed largely with \$25 shares sold to private citizens

## Tolling in Virginia (continued)

- Modern examples:
  - Chesapeake Bay Ferry Commission (now known as Chesapeake Bay Bridge and Tunnel Commission) created in 1954 to acquire and improve existing ferry service and later to develop a fixed crossing to be funded via toll revenue bonds
  - Richmond Petersburg Turnpike Authority created in 1955 to build a new toll highway parallel to the existing Routes 1 and 301 between Henrico County and Dinwiddie County – today, the former turnpike forms 30 miles of I-95 (tolls removed in 1992)
  - Construction of original Hampton Roads Bridge-Tunnel, which opened in 1957, was financed using toll revenue bonds issued by the State Highway Commission (toll each way when facility opened was \$1.25, which would be \$10.34 in today's dollars)
  - Toll revenue bonds were issued by the State Highway Commission in 1949 to finance a bundle of improvements, including the Coleman Bridge and the purchase of the James River Bridge System
  - Virginia Beach Expressway (State Route 44), which opened in 1967, was financed using toll revenue bonds (outstanding bonds defeased and tolls removed in 1995; road renumbered as I-264 in 1999)

## Tolling in Virginia (continued)

- Toll facilities in place coincident to adoption of current version of Constitution of Virginia (1972):
  - Chesapeake Bay Bridge-Tunnel
  - Elizabeth River Tunnels (e.g., Midtown Tunnel and Downtown Tunnel)
  - Richmond-Petersburg Turnpike
  - Virginia Beach Expressway
  - Coleman Bridge
  - Jordan Bridge (old bridge)

## Tolling in Virginia (continued)

- Toll facilities in place following adoption of current version of Constitution of Virginia (1972):
  - Dulles Toll Road
  - Dulles Greenway
  - RMA System (Downtown Expressway/Powhite Parkway and Boulevard Bridge)
  - 895 (Pocahontas Parkway)
  - Chesapeake Expressway\*
  - I-495 Express Lanes
  - Jordan Bridge (new bridge)

\*Facility part of Chesapeake Transportation System, along with what will be the improved Dominion Boulevard corridor; Chesapeake City Council approved initial toll rate schedule for Chesapeake Transportation System in July 2012

## PPTA Toll Roads

Facility	Approx. Contract Amount	Toll Rates (Cars)	Tolls Collected Through FY 2012
895	\$364 million (construction, including Airport Connector)	\$3.25 (peak) \$1.50 (Airport Connector)	\$246 million
I-495 Express Lanes	\$1.7 billion	Variable	(opened to traffic in FY 2013)
I-95 Express Lanes	\$0.925 billion	Variable	Under construction
Midtown Tunnel	\$2.1 billion	\$1.59 (off peak) \$1.84 (peak)	Under construction
Route 460	\$1.393 billion	\$0.07/ mile (2018)	Under construction



## Other Virginia Toll Roads

Facility	Year Tolling Commenced	Toll Rates (Cars)	Tolls Collected through FY 2012
Dulles Toll Road	1984	\$1.75 (mainline) \$1.00 (ramps)	\$1.1 billion
Dulles Greenway (privately owned)	1995	\$2.55 to \$5.10 for E-ZPass, depending on length of trip	Not available
RMA System (Downtown Expressway/Powhite Parkway/Boulevard Bridge)	1973	\$0.15 to \$1.50, depending on length of trip; \$0.25 for Boulevard Bridge	\$646 million

## Other Virginia Toll Roads (continued)

Facility	Year Tolling Commenced	Toll Rates (Cars)	Tolls Collected Through FY 2012
Coleman Bridge	1952-1976 1996-present	\$2.00 (\$0.85 for commuters)	\$120 million
Chesapeake Bay Bridge-Tunnel	1964	\$12.00	\$1.3 billion
Chesapeake Expressway	2001	\$3.00; \$6.00 during peak & weekends	\$77 million
Jordan Bridge (privately owned)	2012-present (new bridge)	\$2.00 (E-ZPass) (new bridge)	New bridge opened to traffic in FY 2013

## Federal Laws Authorizing Tolling

- SAFETEA-LU (Pub. L. 109-59), which was signed into law in August 2005, was in effect when agreement was signed for Midtown Tunnel Project:
  - Interstate System Reconstruction and Rehabilitation Pilot Program, which allowed tolling on up to three existing interstate facilities
  - Interstate System Construction Toll Pilot Program, which allowed up to three toll pilot facilities on the interstate for the purpose of constructing new interstate highways
  - Value Pricing Pilot Program
  - Authority to convert HOV lanes to HOT lanes
  - Established express lanes demonstration program

# State Laws Authorizing Tolling

- State statutes that authorize imposition of tolls:
  - Va. Code § 15.2-4829, *et seq.* (Northern Va. Transportation Authority)
    - Authority empowered to set the amount of tolls for use of facility in the area embraced by the Authority when facility is newly constructed or reconstructed solely with revenues of the Authority or solely with revenues under the control of the Authority
  - Va. Code § 15.2-7000, *et seq.* (Richmond Metropolitan Authority)
    - Authority empowered to fix, charge and collect tolls
    - Tolls to be used to pay bonds and to maintain and operate facilities
  - Va. Code § 33.1-12(15) (Powers of CTB)
    - CTB empowered to establish user fees for the systems of state highways
    - CTB can enter into agreements with localities, authorities, and transportation districts to establish highway user fees

## State Laws Authorizing Tolling (continued)

- Va. Code § 33.1-253 (Chesapeake Bay Bridge and Tunnel District)
  - Commission authorized to fix tolls for use of the facility
  - Tolls to be used to pay revenue bonds and costs of maintaining, repairing, and operating the facility
- Va. Code § 33.1-267, *et seq.* (State Revenue Bond Act)
  - CTB authorized to fix tolls for use of project or projects for which revenue bonds are issued
  - Tolls to be used to pay revenue bonds and costs of maintaining, repairing, and operating project or projects
- Va. Code § 56-535, *et seq.* (Va. Highway Corporation Act)
  - Operator empowered to charge tolls
  - State Corporation Commission has authority to approve and revise toll rates

## State Laws Authorizing Tolling (continued)

- Va. Code § 56-556, *et seq.* (PPTA)
  - PPTA empowers private entities to impose user fees for qualifying transportation facilities (Va. Code § 56-565(A))
  - A comprehensive agreement is to provide for such user fees, which are to be set at a level that takes into account the compensation to a private entity specified in the comprehensive agreement (Va. Code § 56-566(B))
  - Execution of a comprehensive agreement constitutes conclusive evidence that user fees provided for in a comprehensive agreement comply with the PPTA (Va. Code § 56-566(B))
  - “User Fee” is defined as “the rates, tolls, fees, or other charges imposed by the private entity for use of all or a portion of a qualifying transportation facility pursuant to the interim or comprehensive agreement” (Va. Code § 56-557)

## History of Elizabeth River Tunnels

- General Assembly created Elizabeth River Tunnel Commission (ERTC) in 1942
- Purpose of ERTC was to develop vehicular connections between Portsmouth and Norfolk
- ERTC authorized to charge and collect tolls
- First tube of Downtown Tunnel completed in 1952 (toll rate was \$0.15 per axle or \$0.30 per passenger car; \$2.63 in today's dollars)
- Midtown Tunnel completed in 1962 (toll rate was \$0.20 per axle or \$0.40 per passenger car; \$3.08 in today's dollars)
- Both projects financed using toll revenue bonds; tolls collected at Downtown Tunnel used to help fund Midtown Tunnel

## History of Elizabeth River Tunnels (continued)

- In 1976, General Assembly authorized State Highway and Transportation Commission to continue collecting tolls at Downtown and Midtown Tunnels (1976 Va. Acts ch. 237)
- Tolls at both facilities were to be used to help fund buses providing commuter service between the cities and to fund design and initial construction of a third vehicular crossing
- Tolls were taken off the Midtown and first Downtown Tunnel in 1986
- Second tube of Downtown Tunnel (e.g., third vehicular crossing) completed in 1987
- Following completion, upgraded Downtown Tunnel complex designated as I-264



## History of Elizabeth River Tunnels (continued)

- HB 3202 (2007), created the Hampton Roads Transportation Authority (HRTA) and empowered HRTA to impose regional fees and taxes to fund transportation improvements
- HRTA designated as a responsible public entity under PPTA and General Assembly expressed its intent that private investment be encouraged to participate in developing projects identified in the statute
- HB 3202 provided that the Downtown and Midtown Tunnels were to be considered a single transportation facility and that both tunnels could be tolled if improvements were made to either facility
- General Assembly dissolved HRTA in 2009, but transferred HRTA's toll powers to CTB (2009 Va. Acts ch. 864, § 4)
- Comprehensive Agreement for Midtown Tunnel Project, which provides for imposition of tolls, was approved and ratified via resolution by CTB in March 2012

# Midtown Tunnel Project – Scope



## Midtown Tunnel Project – Federal Involvement

- Federal government was involved extensively during VDOT’s development of the project and the project required a number of federal approvals, including:
  - FHWA approval of the required environmental studies (which addressed, among other things, the impact of tolling), including a Finding of No Significant Impact for the project (August 2011)
  - FHWA approval of a “Cooperative Agreement” with VDOT, which permits tolling of the project (September 2009)
  - FHWA approval of Interim Agreement and use of federal funds for development work (January 2010)
  - FHWA approval of Comprehensive Agreement (December 2011)
  - Federal approval of project funding, including:
    - USDOT approval of a PABs allocation (June 2011)
    - USDOT approval of a TIFIA loan (April 2012)
    - FHWA authorization of federal funds for construction (April 2012)

## Midtown Tunnel Project – Federal Involvement (continued)

- FHWA-VDOT Cooperative Agreement (Exhibit L to Comprehensive Agreement):
  - Federal authorization required to toll the project
    - Project “regionally significant,” per Federal law
    - Downtown Tunnel (I-264) is part of the interstate system
    - Midtown Tunnel (Route 58), an urban principal arterial, included on the National Highway System and thus considered a Federal-aid highway
  - FHWA approved tolling of the project under the Value Pricing Pilot Program (pilot program requires congestion pricing)
  - Agreement requires toll revenues to be used first for operating costs of the project (which include debt service and a reasonable rate of return for any private entity financing the project)
  - Agreement permits tolling during construction
  - VDOT and FHWA to monitor project for 10 years to determine the impact of congestion pricing on driver behavior, traffic volume, transit ridership, air quality, and the availability of funds for transportation programs

## Midtown Tunnel Project – Federal Involvement (continued)

- Value Pricing Pilot Program:
  - Initially authorized under ISTEA; renewed under SAFETEA-LU and again under MAP-21
  - Encourages implementation and evaluation of value pricing pilot projects to manage congestion on highways through tolling and other pricing mechanisms
  - Program limited to 15 slots reserved for states (each state can have multiple projects)
  - Projects involving tolls include charges for road use that vary by demand
  - Tolls may vary by time of day or dynamically in response to real time changes in demand

## Midtown Tunnel Project – Key Business Terms

- ERC to operate and maintain project for 58 year concession term
- Total project costs of approximately \$2.1 billion
- ERC arranging approximately \$1.4 billion in financing (equity, PABs, TIFIA)
- VDOT contributing approximately \$420 million (includes funding to defer the start of tolling until February 1, 2014) – GARVEE bond proceeds are the source of almost all VDOT funds being used for project
- Base case tunnel toll rates for cars are \$1.59 (off peak) and \$1.84 (peak)
- ERC to deliver construction work via a lump sum, date-certain design-build contract
- ERC to pay liquidated damages for late completion
- ERC financing (including PABs, TIFIA, and equity) is non-recourse to Commonwealth



## Midtown Tunnel Project – Key Business Terms (continued)

- ERC IS NOT guaranteed any profit or return on investment
- Tolls increase annually authorized following substantial completion of the new Midtown Tunnel (scheduled for 2016)
- Toll escalation limited to the greater of 3.5% or changes to CPI
- VDOT can suspend tolling for emergencies
- Modifications to toll points along MLK Extension will provide relief from tolls for certain trips along the MLK Extension – drivers who exit on either London Boulevard or High Street and do not re-enter MLK Extension within 10 minutes will be classified as “local trip” and not charged a toll for use of MLK Extension

## Midtown Tunnel Project – Status

- Comprehensive Agreement signed in December 2011; financing closed in April 2012
- ERC assumed operations of existing tunnels in July 2012
- Over \$360 million worth of design-build work completed as of April 30, 2013, including:
  - Design work approximately 90% complete
  - ROW acquisition work, utility relocation work, and construction of drainage systems underway
  - Dredging underway for Portsmouth approach
  - Work underway at Sparrows Point facility (located in Maryland) to prepare for new tunnel segment fabrication
- Toll collection scheduled to begin on February 1, 2014



## Meeks – Background

- Plaintiffs filed suit in City of Portsmouth Circuit Court on July 12, 2012, against VDOT and ERC Opco
- Plaintiffs' suit had a number of counts, including:
  - Tolls collected at existing Downtown Tunnel and Midtown Tunnel used to help fund construction of new Midtown Tunnel operate as a tax because it is not truly part of the same project. General Assembly is prohibited from delegating the power to impose tax to unelected bodies (Count 1).
  - VDOT does not have and cannot be delegated the power to: (a) redefine the "statutory term" for a particular "project" that has been previously defined by the General Assembly; (b) fix tolls at amounts not directly related to the cost of the facility being used; (c) allow private parties to change toll amounts based on the time of day; (d) classify vehicles with specific toll categories without legislative standards; (e) exempt or partially exempt from taxation; (f) refund taxes; (g) require revenue reimbursement due to construction of competing facility; (h) authorize return by private party of 13.5%; (i) authorize annual increase in tolls of 3.5%; (j) require payment of tolls by electronic method or penalize; (k) restrict authority to impose taxes or construct new facilities; and (l) delegate legislative power (Count 1).
  - VDOT lacks the authority to enter into an agreement that would: (i) redefine a term ("project") previously statutorily defined by the General Assembly; (ii) fix the amount of financial exactions on vehicles for the use of facility not directly related to the facility; (iii) classifies vehicles related to exactions; (iv) exempts a private party from taxation; (v) provides for refunds of taxation; or (vi) mandates toll payments by electronic method or penalty (Count 2).

## Meeks – Background (continued)

- VDOT’s authority to enter into an agreement under the PPTA that includes a provision treating a “Tax Imposition” as a “Compensation Event” is unconstitutional (Counts 3, 4, and 5).
- Plaintiffs’ right to due process violated — PPTA and Comprehensive Agreement gives VDOT and ERC unfettered discretion to exact money from users of transportation facilities that is unrelated to the benefit received by those users (Count 6).
- Parties stipulated to underlying facts; trial (held on May 1, 2013) was oral arguments on parties’ cross motions for summary judgment
- Circuit Court ruled for plaintiffs on Counts 1 and 2 and for defendants on remaining counts
- On May 21, 2013, Circuit Court denied defendants’ motion to stay effect of judgment pending appeal

# Meeks – Circuit Court’s Final Order

VIRGINIA:  
 IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

DANNY MEEKS, et al., )  
 Plaintiffs, )  
 v. ) Case No. 740-CL-12001705-00  
 VIRGINIA DEPARTMENT OF )  
 TRANSPORTATION, et al., )  
 Defendants. )

**FINAL ORDER**

**THIS ACTION** came before the Court on May 1, 2013, on the parties' cross-motions for summary judgment, filed pursuant to the Consent Order entered by the Court on December 19, 2012, and upon consideration of the pleadings, the exhibits submitted in support of the motion for summary judgment and cross-motion for summary judgment, the legal memoranda submitted on behalf of the parties, and the argument of counsel, and

IT APPEARING TO THE COURT, for the reasons state from the bench, that the motions should be resolved as follows, it is, therefore,

ORDERED that:

- Defendants' motion for summary judgment is granted as to Counts 3-6, and Plaintiffs' cross-motion for summary judgment is denied as to those counts; Count 6 is dismissed with prejudice, and Counts 3-5 are dismissed without prejudice.
- Defendants' motion for summary judgment is denied as to Counts 1-2, and Plaintiffs' cross-motion for summary judgment is granted as to those counts to the extent that the General Assembly has exceeded its authority by ceding the setting of toll rates and taxes in the circumstances of this case for the use of facilities that have been bundled for revenue-producing

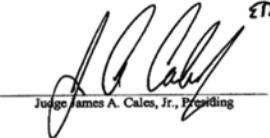
1

*ETG/h*  
*SM*  
*SA*

purposes in violation of Article IV, § 1 of the Constitution of Virginia and to the extent that the General Assembly has given unfettered power to the Virginia Department to set toll rates without any real or meaningful parameters in violation of Article IV, § 1 of the Constitution of Virginia.


**THIS ORDER IS FINAL.**

**ENTER.**

Dated: 5/21/13   
 Judge James A. Cales, Jr., Presiding


WE ASK FOR THIS WITH RESPECT TO COUNTS 1 AND 2 AND PRESERVE OUR OBJECTIONS TO THE DENIAL OF SUMMARY JUDGMENT ON COUNTS 3, 4, 5 and 6.


PLAINTIFFS, DANNY MEEKS, et al.

By:   
 Patrick M. McSweeney (VSB 5669)  
 3338 John Tree Hill Road  
 Powhatan, VA 23139  
 (804) 937-0895  
 (877) 598-4668 (fax)  
 pmsweeney.esq@gmail.com

Robert J. Cynkar (VSB 23349)  
 Cuneo, Gilbert & LaDuca, LLP.  
 106 A South Columbus Street  
 Alexandria, VA 22314  
 (703) 350-4052  
 (202) 789-1813 (fax)  
 rcynkar@cunoolaw.com

Christopher I. Kachouff (VSB 44216)  
 Dominion Law Center, P.C.  
 13649 Office Place, Suite 101  
 Woodbridge, VA 22192  
 (703) 365-9900  
 (703) 365-9593 (fax)  
 ck1@trialjustice.net




A copy, Teste: Cynthia P. Morrison  
 Clerk of the Circuit Court of the  
 City of Portsmouth, Virginia  
 By: 

# Meeks – Circuit Court’s Final Order (continued)

SEEN AND OBJECTED TO FOR THE REASONS STATED ON THE RECORD,  
INCLUDING IN DEFENDANTS’ PLEADINGS AND LEGAL MEMORANDA AND  
DURING ORAL ARGUMENT, INCLUDING THE SLIDES PRESENTED BY COUNSEL  
FOR ERCO AT THE MAY 1, 2013 HEARING (filed May 17, 2013):

**VIRGINIA DEPARTMENT OF  
TRANSPORTATION**

By:   
E. Duncan Getchell (VSB 14156)  
Solicitor General of Virginia  
egetchell@oag.state.va.us

Richard F. Neel (VSB 26775)  
Deputy Attorney General  
rneel@oag.state.va.us

J. Kennely Davis, Jr. (VSB 18179)  
Deputy Attorney General  
kdavis@oag.state.va.us

Jeffrey R. Allen (VSB 17710)  
Senior Assistant Attorney General  
jrallen@oag.state.va.us


Ellen M. Porter (VSB 71373)  
Assistant Attorney General  
eporter@oag.state.va.us

Norman A. Thomas (VSB 20632)  
Senior Appellate Counsel  
nthomas@oag.state.va.us

Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219  
(804) 786-3748 (phone)  
(804) 692-1647 (fax)

*Counsel for Defendant  
Virginia Department of Transportation*

**ELIZABETH RIVER CROSSINGS OPKO,  
LLC**

By:   
Stuart A. Raphael (VSB 30580)  
Hunton & Williams LLP  
1751 Pinnacle Drive, Suite 1700  
McLean, Virginia 22102  
(703) 714-7463 (phone)  
(703) 914-4015 (fax)  
sraphael@hunton.com

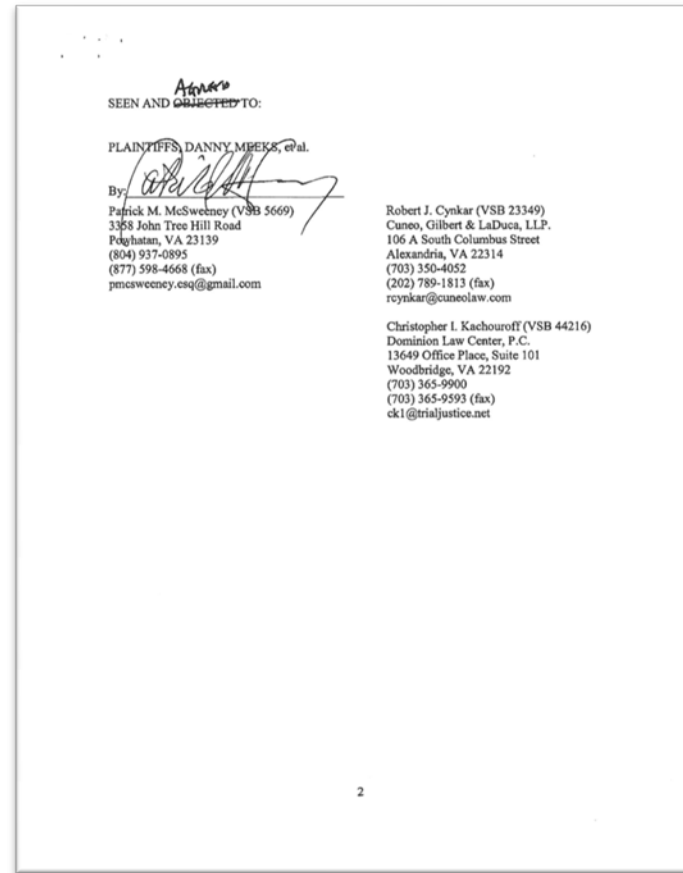
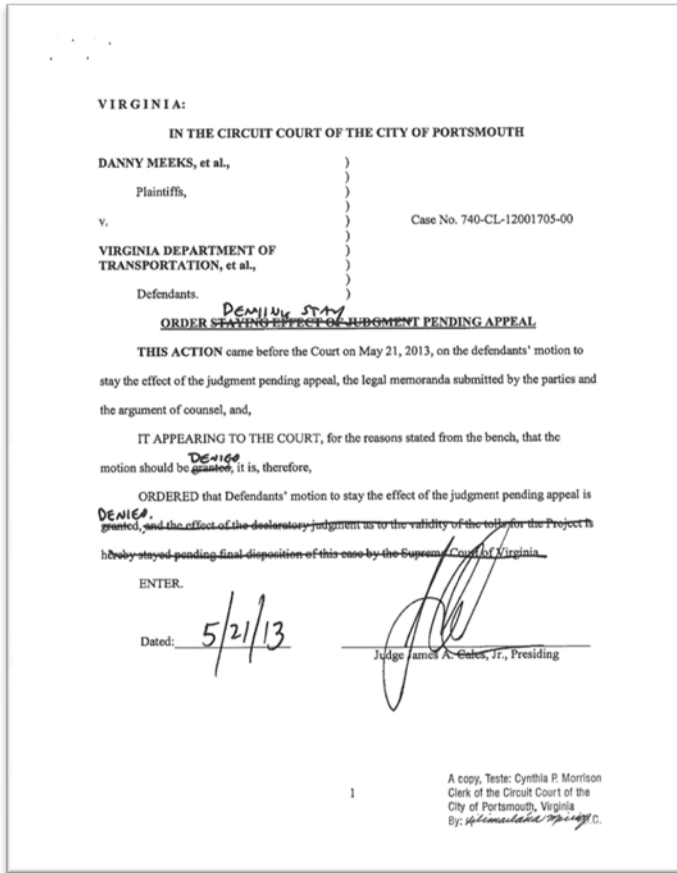
Robert M. Tata (VSB 30101)  
Hunton & Williams LLP  
500 East Main Street, Suite 1000  
Norfolk, Virginia 23510  
(757) 640-5328 (phone)  
(757) 625-7720 (fax)  
btata@hunton.com

- and -

J. Peter Coll Jr., Esq. (*pro hac vice*)  
Orrick, Herrington & Sutcliffe LLP  
51 West 52nd Street  
New York, New York 10019-6142  
(212) 506-5000

*Counsel for Defendant  
Elizabeth River Crossings OpCo, LLC*

# Meeks – Circuit Court’s Denial of Stay



# Meeks – Circuit Court’s Denial of Stay (continued)

SEEN AND OBJECTED TO: For all reasons stated  
WE ASK FOR THIS:  
to be record at oral argument

VIRGINIA DEPARTMENT OF  
TRANSPORTATION

By: Edna Getchell  
E. Duncan Getchell (VSB 14156)  
Solicitor General of Virginia  
egetchell@oag.state.va.us

Richard F. Neel (VSB 26775)  
Deputy Attorney General  
rneel@oag.state.va.us

J. Kennerly Davis, Jr. (VSB 18179)  
Deputy Attorney General  
kdavis@oag.state.va.us

Jeffrey R. Allen (VSB 17710)  
Senior Assistant Attorney General  
jralen@oag.state.va.us

Ellen M. Porter (VSB 71373)  
Assistant Attorney General  
eport@oag.state.va.us

Norman A. Thomas (VSB 20632)  
Senior Appellate Counsel  
nthomas@oag.state.va.us

Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219  
(804) 786-3748 (phone)  
(804) 692-1647 (fax)

*Counsel for Defendant  
Virginia Department of Transportation*

ELIZABETH RIVER CROSSINGS OPCO,  
LLC

By: Stuart A. Raphael  
Stuart A. Raphael (VSB 30380)  
Hunton & Williams LLP  
1751 Pinnacle Drive, Suite 1700  
McLean, Virginia 22102  
(703) 714-7463 (phone)  
(703) 914-4015 (fax)  
sraphael@hunton.com

Robert M. Tata (VSB 30101)  
Hunton & Williams LLP  
500 East Main Street, Suite 1000  
Norfolk, Virginia 23510  
(757) 640-5328 (phone)  
(757) 625-7720 (fax)  
btata@hunton.com

- and -

J. Peter Coll Jr., Esq. (*pro hac vice*)  
Orrick, Herrington & Sutcliffe LLP  
51 West 52nd Street  
New York, New York 10019-6142  
(212) 506-5000

*Counsel for Defendant  
Elizabeth River Crossings OpCo, LLC*

3

## Potential Impact of Meeks – Midtown Tunnel Project

- VDOT currently reviewing contract documents for Midtown Tunnel Project to assess the implications of the Circuit Court’s ruling should the ruling not be reversed on appeal
- VDOT’s preliminary analysis shows that a final, non-appealable order prohibiting VDOT from tolling the project may allow ERC to assert the occurrence of a “Compensation Event” (which would entitle ERC to make a claim for cost and revenue impacts) and a VDOT default (which would entitle ERC to terminate the comprehensive agreement)
- VDOT also can terminate the Comprehensive Agreement for convenience

## Potential Impact of Meeks – Midtown Tunnel Project

- **Compensation Event - complete Project:**
  - VDOT estimate (as of May 1)
    - \$169 million annually for remaining term (57 years)
    - NPV \$1.99 billion
- **Termination for Department Default or Convenience – terminate Project: \$706 million**
  - VDOT estimate of termination damages as of May 1: \$380 million
  - VDOT cost incurred as of May 1: \$326 million



## Potential Impact of Meeks – PPTA Projects (continued)

- Circuit Court’s order may have implications beyond Midtown Tunnel Project – could potentially extend to other PPTA projects and toll roads operated pursuant to other statutes
- VDOT also reviewing contracts for all other toll roads developed pursuant to the PPTA
- Like Midtown Tunnel Project, VDOT’s preliminary analysis shows that a final, non-appealable order prohibiting VDOT from tolling PPTA projects currently operating and under development may allow concessionaires to assert the occurrence of a “Compensation Event” and a VDOT default under those contracts

## Potential Impact of Meeks – PPTA Projects (continued)

Project	Termination Damages (as of May 1)	VDOT Costs (as of May 1)	Total
Midtown Tunnel	\$380 million	\$326 million	\$706 million
I-95	\$458 million	\$102 million	\$560 million
460	\$71 million	\$42 million	\$113 million
I-495	\$1.55 billion	\$0	\$1.55 billion
895	\$502 million	\$0	\$502 million
<b>Total</b>	<b>\$2.97 billion</b>	<b>\$470 million</b>	<b>\$3.44 billion</b>

## Meeks – Next Steps

- City of Portsmouth Circuit Court's final ruling was entered on May 21, 2013
- OAG has filed Notice of Appeal with the Circuit Court
- Move forward expeditiously with petition to the Supreme Court of Virginia

## Conclusion

- Tolling has long been used in Virginia as a means to deliver transportation infrastructure, including the original Midtown and Downtown Tunnels
- Authorization to toll is found in a number of state and federal statutes, including the PPTA
- By leveraging private investment via the PPTA, VDOT has delivered over \$6 billion in transportation infrastructure improvements
- The Circuit Court's ruling in Meeks exposes VDOT to financial liability and threatens its ability to deliver the Midtown Tunnel Project
- Meeks potentially jeopardizes other PPTA and toll projects
- The Administration is appealing the Circuit Court's ruling to the Supreme Court of Virginia



COMMONWEALTH of VIRGINIA

Office of the

SECRETARY of TRANSPORTATION

## Update to the House Appropriations Committee Downtown Tunnel/Midtown Tunnel/MLK Extension Project

June 17, 2013

Sean T. Connaughton

Secretary of Transportation

