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May 7, 2018

The Honorable Rob Franke
Chair, Regional Transportation Council
616 Six Flags Drive
Arlington, TX 76005

SUBJECT: Support of the RTC Recommended action on 635E

Dear Chairman Franke:

On behalf of the Board of Directors of the Dallas Regional Mobility Coalition, I want to express our collective support for the Regional Transportation Council's recommended position to accept the letter sent from Texas Transportation Commission Chairman, Bruce Bugg, dated April 30, 2018, concerning the path forward to resolve the funding, building and procurement process for IH 635 E in DFW.

We want to commend and thank Chairman Bugg and Governor Greg Abbott for their tireless work to keep Texas in the forefront of the world by providing the citizens of Texas the finest transportation system available.

We also want to commend the staff and particularly the leadership of the Regional Transportation Council for working with state, local and federal officials to see this project come to fruition.

We look forward to seeing the Texas Transportation Commission take action on the 635E procurement later this month to advance this critical project for the North Texas region.

Kindest Regards,

Steve Mitchell
Chair, DRMC
Council Member, City of Richardson



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 7, 2018

The Honorable Joseph C. Pickett
Chair, Committee on Environmental Regulation
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0197

Re: Whether Proposition 1 and Proposition
7 funds may be used on toll projects
(RQ-0192-KP)

Dear Representative Pickett:

You request an opinion regarding whether the Texas Transportation Commission (“Commission”) may use Proposition 1 and Proposition 7 funds on toll projects.¹

Proposition 1 refers to a constitutional amendment proposed by the Legislature in 2013 and approved by the voters in 2014.² That constitutional amendment revised article III, section 49-g of the Texas Constitution to require the Comptroller to transfer to the state highway fund revenue received from oil production taxes above a certain amount. *See* TEX. CONST. art. III, § 49-g(c). Relevant to your request, that section provides: “Revenue transferred to the state highway fund under this subsection may be used only for constructing, maintaining, and acquiring rights-of-way for public roadways *other than toll roads.*” *Id.* (emphasis added).

Proposition 7 similarly refers to a constitutional amendment proposed by the Legislature and approved by the voters in 2015.³ That constitutional amendment adopted article VIII, section 7-c of the Texas Constitution, which requires the Comptroller to transfer to the state highway fund up to \$2.5 billion in general sales tax proceeds in excess of \$28 billion. *Id.* art. VIII, § 7-c(a). It also requires the Comptroller to transfer to the state highway fund thirty-five percent of the net revenue above \$5 billion derived from the tax imposed on the sale, use, or rental of a motor vehicle. *Id.* art. VIII, § 7-c(b). That section restricts the use of the money transferred:

Money deposited to the credit of the state highway fund under this section may be appropriated only to:

¹See Letter from Honorable Joseph C. Pickett, Chair, House Comm. on Env'tl. Regulation, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Nov. 9, 2017), <https://texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

²See Tex. S.J. Res. 1, 83d Leg., 3d C.S., 2013 Tex. Gen. Laws 5049, 5049–50.

³See Tex. S.J. Res. 5, 84th Leg., R.S., 2015 Tex. Gen. Laws 5414, 5415–16.

- (1) construct, maintain, or acquire rights-of-way for public roadways *other than toll roads*; or
- (2) repay the principal of and interest on general obligation bonds issued as authorized by Section 49-p, Article III, of this constitution.

Id. art. VIII, § 7-c(c) (emphasis added).

Thus, in proposing each of these constitutional amendments, the Legislature plainly expressed its intent that the Commission not use the money transferred to the state highway fund under Proposition 1 or Proposition 7 on toll roads. *Id.* art. III, § 49-g(c); *id.* art. VIII, § 7-c(c). Furthermore, the language approved by the voters at each election acknowledged that any funds transferred pursuant to Propositions 1 and 7 would not be used on “toll roads.”⁴

Addressing your question requires a construction of the term “toll roads.” Texas courts construe constitutional provisions in the same manner as they construe statutes. *Harris Cty. Hosp. Dist. v. Tomball Reg’l Hosp.*, 283 S.W.3d 838, 842 (Tex. 2009). The guiding rule is to discern and give effect to the intent of the provision’s drafters. *Id.* Courts rely heavily on the literal text of a constitutional provision to give effect to its plain language. *Id.*; *Doody v. Ameriquest Mortg. Co.*, 49 S.W.3d 342, 344 (Tex. 2001).

The relevant constitutional provisions do not define “toll road,” nor has the Legislature defined the term for purposes of the Transportation Code. If the plain language of a constitutional provision is clear and unambiguous, courts give the language of the provision its common everyday meaning. *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625–26 (Tex. 2008); *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). The common understanding of the term “toll road” is “a road for the use of which a toll is collected.” WEBSTER’S THIRD NEW INT’L DICTIONARY 2405 (2002). Thus, the Commission may not spend state highway funds received under Propositions 1 and 7 to fund any road for the use of which a toll is collected. Construing the term “toll road” becomes more complicated, however, due to the realities of toll roads today.

⁴The language approved by the voters through Proposition 1 stated:

The constitutional amendment providing for the use and dedication of certain money transferred to the state highway fund to assist in the completion of transportation construction, maintenance, and rehabilitation projects, *not to include toll roads*.

Tex. S.J. Res. 1, 83d Leg., 3d C.S., 2013 Tex. Gen. Laws 5049, 5050 (emphasis added). The language approved by the voters through Proposition 7 stated:

The constitutional amendment dedicating certain sales and use tax revenue and motor vehicle sales, use, and rental tax revenue to the state highway fund to provide funding for *nontolled roads* and the reduction of certain transportation-related debt.

Tex. S.J. Res. 5, 84th Leg., R.S., 2015 Tex. Gen. Laws 5414, 5416 (emphasis added).

Throughout Texas, many roads are tolled for portions of their route but not their entirety. In addition, some lanes of a road may be tolled while others are not. The constitutional provisions restricting the use of funds do not directly address whether the Commission may use the funds on roads that have both tolled and non-tolled components. Further, we find no caselaw interpreting the term “toll road,” nor do Texas statutes define the term. The common definition of “toll road” fails to clarify whether a toll road includes a non-tolled portion or lane of a road that also contains tolls. Accordingly, we cannot determine whether a court would construe Propositions 1 and 7 to allow those monies to be used for “toll projects” when those provisions refer to “toll roads.”

Unquestionably, the Commission may not withdraw Proposition 1 and Proposition 7 funds from the state highway fund and place them into a general fund for a partially tolled project with no mechanism for ensuring that it spends the funds as constitutionally required, that is, only on non-tolled roads.⁵ In your request, you explain that the Commission has “projects that have both tolled and non-tolled components,” and you indicate it is “using Prop 1 and Prop 7 monies along with other funding” to fund these projects. Request Letter at 1. After you submitted your request, however, the Commission reversed course and voted to remove the tolled components from several of its long-term construction projects.⁶ Until the Legislature and the voters have an opportunity to clarify their intent regarding the appropriate use of Proposition 1 and Proposition 7 funds, the Commission has chosen to delay using the funds on projects with tolled components.

⁵There is an indication that the Commission, at least with regard to one project, can provide “separate tracking for all the non-tolled elements,” and that it is “able to account for that separately and demonstrate to the public that [it is] not using any of the Prop 1 or 7 . . . money for a toll project.” See Brief from C. Brian Cassidy, Locke Lord, LLP, Counsel to Cent. Tex. Reg’l Mobility Auth. at 5 (Dec. 12, 2017) (on file with the Op. Comm.) (quoting Tex. Transp. Comm’n Meeting (Oct. 26, 2017) (statement of J. Bruce Bugg, Jr., Chairman, Tex. Transp. Comm’n)). Whether the Commission possesses the ability to track funds accordingly, and whether the Commission does so, are fact questions beyond the purview of an attorney general opinion. See Tex. Att’y Gen. Op. No. KP-0046 (2015) at 4 (noting that whether funds are spent in accordance with what the voters approved involves questions of fact that cannot be answered in the opinion process).

⁶See Tex. Transp. Comm’n Meeting (Nov. 16, 2017) (statement of J. Bruce Bugg, Jr., Chairman, Tex. Transp. Comm’n).

S U M M A R Y

The Texas Transportation Commission may not spend state highway funds received pursuant to Propositions 1 and 7 to fund any toll road. Furthermore, the Commission may not withdraw Proposition 1 and Proposition 7 funds from the state highway fund and place them into a general fund for a partially tolled project with no mechanism for ensuring that it spends the funds as constitutionally required. The absence of a definition of “toll road” in the constitutional provisions, statutes, or caselaw leaves us unable to determine whether the Commission may use Proposition 1 and Proposition 7 monies on non-tolled portions of toll projects.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

DALLAS DISTRICT

PROGRESS

Monthly Report on Dallas District Projects and Topics

COLLIN CO. | DALLAS CO. | DENTON CO. | ELLIS CO. | KAUFMAN CO. | NAVARRO CO. | ROCKWALL CO.

A BRIDGE THROUGH HISTORY GETS A NEW CHANCE AT LIFE

Historic Warren Through Truss Bridge In Lancaster Gets A Facelift



Lancaster, Texas — Built almost 100 years ago to span Ten Mile Creek, this historic Warren Through Truss Bridge was quickly reaching the end of its structural integrity and it needed to be replaced.

It consists of three spans including the 80-foot Warren Through Truss main span. It was designed from the 1920 Texas Highway Department specifications book.

Coordination can certainly be considered one of the key components in the reconstruction of this bridge over Ten Mile Creek in Lancaster in the Dallas District. Ten Mile Creek is located in a FEMA flood plain. But that's not where this project gets complicated. So many details had to be considered for the safe and accurate removal of antique parts of the bridge, and replacement of those special

elements with parts that were up to standard for the volume and weight using the bridge.

At one point, TxDOT tried to give the truss span to one interested group so that it could be preserved as is. No groups stepped forward to adopt such a unique structure. So plans moved forward to delicately replace it.

Lancaster, originally a frontier post, was one of Dallas County's earliest settlements. In the 1920s, about 1,190 residents lived in the town, compared to today's modern suburb with more than 36,000 residents.

In the years since it was built in 1923, the bridge has taken a beating. It was built to sustain a 15-ton truck, and when the study was done to replace it, it was load zoned



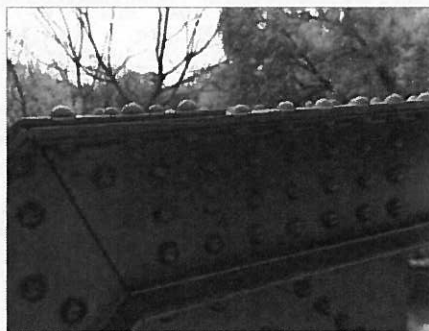
TxDOT image

The original bridge after years of overlay and retrofitting to serve the specifications of the time.

at 14,000 lbs. gross and 5,000 pounds axle. No one questioned the need to replace the bridge, but it was a delicate dance from the beginning.

Challenges and Coordination

Because of the unique structure of the bridge, parts of it had to be either preserved or duplicated. It was hoped that under the paint, the truss would be mostly intact. There were parts that couldn't be seen under the deck until the deck could be removed. The abutment wall was pushing the bridge forward and made the rocker slant. And when workers removed the deck, they were worried that the bridge would collapse. During construction, the deck had to be removed in 50 pieces -- all in a critical sequence -- to keep this from happening.



TxDOT image

Newly-repainted truss beams with clean steel.

As work began, more challenges emerged. The paint on the truss contained lead. The paint had to be confined and removed before anything else could be done. The channel below couldn't be contaminated. They couldn't assess the truss until it was uncovered. TxDOT project manager Kevin Mathis worked closely with the contractor's project manager, Jose Gonzalez to see over the crews and the operation. A remediation expert was subcontracted and the site was properly tarped and new paint applied without contaminating the channel.

See **LANCASTER** on Back Page

APRIL 2018 LET PROJECTS (SUBJECT TO CHANGE)

CSJ NUMBER	HWY	LIMITS	TYPE OF WORK	EST. (M)	BID (M)	(%)	EST. TOTAL COSTS (M) ^o	CONTRACTOR
1	0009-11-244	I-30	W of Gus Thomasson Rd. to east of N Galloway Ave.	\$2.61	\$2.07	-20.63	\$2.37	Ed Bell Construction Company
2	0009-12-211	I-30	0.1 mile west end of Ray Hubbard Br. to Hunt County Line	\$3.56	\$3.41	-4.28	\$3.87	Oldcastle Materials Texas, Inc.
3	1290-01-012	FM 1141	SH 66 to FM 552	\$2.68	\$2.75	2.48	\$3.12	D. L. Lennon Inc. - Contractor
4	1290-02-017*	SH 276	SH 205 to FM 549	\$15.94	\$17.68	10.93	\$25.15	Ed Bell Construction Company
	1950-01-039*	VA	Various locations in Denton County	\$0.81	\$0.85	5.11	\$1.02	Central North Construction, LLC
	2980-01-013*	VA	Various locations in Denton County	\$2.52	\$2.20	-12.50	\$2.52	O. Trevino Construction, LLC
	0196-07-033*	VA	Various locations in Dallas, Collin, Kaufman and Rockwall Counties	\$0.88	\$0.87	-1.66	\$1.00	Mica Corporation
	0918-47-128*	VA	Various intersections in Dallas	\$1.28	\$1.34	4.95	\$1.68	Durable Specialties, Inc.
ESTIMATED APRIL 2018 TOTALS				\$30.28	\$31.17	2.95	\$40.73	
DISTRICT FY ACCUMULATIVE LETTINGS				\$176.17	\$171.61	-2.59		
DALLAS DISTRICT FY LETTING VOLUME CAP				\$287.84**				

*Not mapped.

**District FY 2018 Letting Volume Cap does not include the following: 1) Southern Gateway (\$565 million); 2) Previous Prop 1 commitments that have been funded through NCTCOG 10 year plan swap (\$103.2 million).

*Project is an A+B bidding project.

^oEstimated Total Project Costs includes est. PE, ROW, E&C, Indirect Costs and Potential Change Order Costs at the time of bid.

MAY 2018 PROJECTED LETTING PROJECTS (SUBJECT TO CHANGE)

CSJ NUMBER	HWY	LIMITS	TYPE OF WORK	EST. (M)
1	0918-47-176	CS	On Beltline Rd., from Dry Branch to Bear Creek	\$3.52
2	0997-03-007	FM 667	Ellis County Line to SH 31	\$24.33
3	1015-01-023	FM 3549	I-30 to north of SH 66	\$9.39
4	1051-01-037	FM 664	Westmoreland Rd. to I-35E in city of Red Oak	\$31.77
5	1394-02-026	FM 1387	1.542 mi NE Bus 287 to 2.51 mi NE of Bus 287	\$1.10
6	2374-02-143	I-635	At Quail Drive	\$0.35
	0091-03-027*	VA	Various intersections in Celina, Prosper, and Rockwall	\$1.37
	0095-13-040*	VA	Various locations in Dallas/Kaufman/Rockwall Counties	\$3.41
ESTIMATED TOTAL				\$75.24

*Not mapped.

COMPLETED CONSTRUCTION PROJECTS (FROM APRIL 1 - 30, 2018)

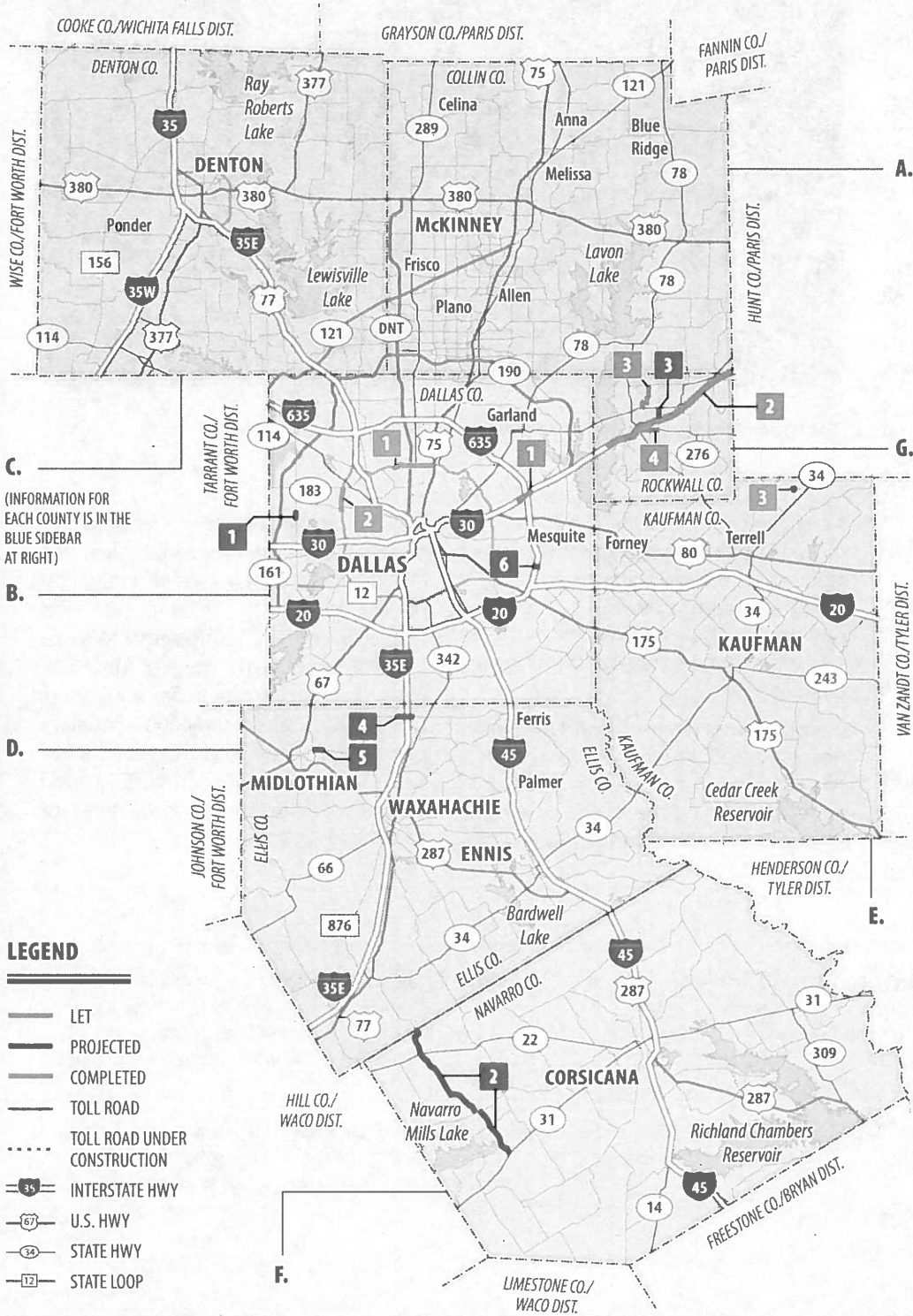
CSJ NUMBER	HWY	LIMITS	TYPE OF WORK	COST (M)	COMPLETION DATE
1	0353-05-088	SL 12	West of Midway to US 75	\$7.65	04/10/18
2	0581-02-145	SL 12	Shady Grove Rd to SH 183	\$1.46	04/09/18
3	0918-11-091	CR	CR 324 @ Greasy Creek Tributary	\$0.70	04/02/18
ESTIMATED TOTAL				\$9.81	

SOURCE: Texas Department of Transportation.

TxDOT graphics

DALLAS DISTRICT PROJECTS MAP

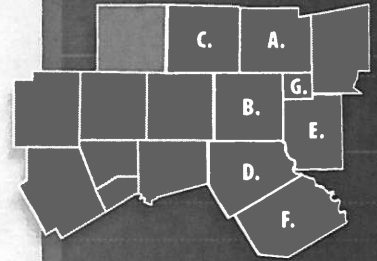
Colored and numbered boxes correspond with the charts on page 2 and show projects that have let in April, are projected to let in May, or have recently been completed.



LEGEND

- LET
- PROJECTED
- COMPLETED
- TOLL ROAD
- TOLL ROAD UNDER CONSTRUCTION
- INTERSTATE HWY
- U.S. HWY
- STATE HWY
- STATE LOOP

SOURCE: TxDOT research.
*POPULATION ESTIMATE: NCTCOG.



2017 DALLAS DISTRICT ESTIMATE TOTALS

VEHICLE REGISTRATION | 3,806,303
*POPULATION ESTIMATE | 4,681,210
LANE MILES | 10,493,628

A. | COLLIN COUNTY

VEHICLE REGISTRATION: 729,624
*POPULATION ESTIMATE: 932,530
LANE MILES: 1,373,829

B. | DALLAS COUNTY

VEHICLE REGISTRATION: 2,064,783
*POPULATION ESTIMATE: 2,502,270
LANE MILES: 3,366,158

C. | DENTON COUNTY

VEHICLE REGISTRATION: 603,332
*POPULATION ESTIMATE: 814,560
LANE MILES: 1,488,733

D. | ELLIS COUNTY

VEHICLE REGISTRATION: 165,813
*POPULATION ESTIMATE: 173,410
LANE MILES: 1,523,910

E. | KAUFMAN COUNTY

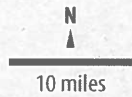
VEHICLE REGISTRATION: 109,180
*POPULATION ESTIMATE: 116,140
LANE MILES: 1,201,810

F. | NAVARRO COUNTY

VEHICLE REGISTRATION: 51,056
*POPULATION ESTIMATE: 49,170
LANE MILES: 1,192,820

G. | ROCKWALL COUNTY

VEHICLE REGISTRATION: 82,515
*POPULATION ESTIMATE: 93,130
LANE MILES: 346,368



LANCASTER BRIDGE CONNECTS RICH HISTORY TO FUTURE OPPORTUNITY

Continued from **COVER STORY**

Other restrictions and complications included "Buy America" legislation restricting steel vendors. Project managers also had frequent discussions and negotiations with the Texas Historical Commission. Mathis fielded the inspectors while Gonzalez managed the crews. Construction equipment was strictly monitored so that the weight limits were not exceeded.

Other Issues

Because of the unique nature of the project, TxDOT developed three separate plans for construction contingencies. All contingencies were developed because the conditions of some of the substructure elements simply couldn't be seen until the deck came off. Contractors had no way of knowing what exactly they would build when the project started construction. The design consultant had to reprofile the bridge after deck removal to see if they were going to choose plan set number one, number two or number three.

Another historical detail was the bridge rail. The rail was unique and it touched the truss. It was replaced with a specially made, crash-worthy rail. Mathis and Gonzalez had to carefully compare the rail to the old one and inspect the installation vigorously.

Luckily, 90% of the truss was able to be salvaged.

It seems impossible that with challenges



TxDOT image

The finished Warren Through Truss Bridge, restored and repainted with new rail.

facing the project that it could come in on time and under budget, but it did. The project reached substantial completion status a month early and the total cost of the bridge came in \$100,000 less than budgeted. There was one change order, and it was for the amount of \$0.00.

Great pains were taken to see that this project not only got off the ground, but to preserve this piece of history for future generations while maintaining the bridge as a viable part of the transportation network for this

area. This project stands as a testament to TxDOT's designers, who developed three sets of contingency plans to ensure a thorough project, and also to the contractor, who teamed with TxDOT consistently to make the project a success. None of this could have happened without communication, perseverance and coordination between project managers. And the residents of Lancaster now have an historic Warren Through Truss Bridge that should last for generations to come. ■



JANICE F. OF DENTON, TX: "Now that I-35E is about finished, please start on I-35W between Denton and Fort Worth. We need the express and at least three lanes each way. Thank you, y'all are doing a good job trying to keep up with all the growth in North Texas."

KRISTE H. OF DENTON, TX: "I love the new I-35 expansion from I-635 to US 380! What a welcome change."

TAMMYE C. OF DALLAS, TX: "As a person who can't afford to miss any work I wanted to take time to let you know that I appreciate all of the pretreatment of the roads. Keep up the good work. I appreciate all that you do."

MS. CAROL P. OF DENTON, TX: "Thanks for such a great job cleaning up FM 2164. Makes for a much nicer drive to and from work. Looks so nice."

SOURCE: Texas Department of Transportation.

TxDOT graphic

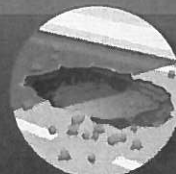
DALLAS DISTRICT | PROGRESS



TEXAS DEPARTMENT OF
TRANSPORTATION
4777 E. Highway 80
Mesquite, TX
75150-6643

FOR MORE INFORMATION:

214-320-4480
dalinfo@txdot.gov
www.txdot.gov



REPORT A POTHOLE:

Visit www.txdot.gov/contact-us/foia/html/foia-report-a-pothole or call 800.452.9292. Progress report can be downloaded at <http://www.txdot.gov/inside-txdot/district/dallas/progress.html>