Remarks of Art Bauer, Staff Consultant
Senate Transportation and Housing Committee

Presented to 2008 Haagen-Smit Symposium

April 2008

Aptos, California

I would like to thank the ARB for inviting me to this event. Today, I would like to review some of the major issues of the last several decades in California from the perspective of transportation finance and attempt to draw some lessons from that experience that might be useful to the ARB staff as it addresses AB 32 implementation.

Haggen-Smit

1. I'm probably one of the few people in the room who actually met Dr. Haagen-Smit, the first chair of the California Air Resources Board.

2. Dr. Haagen-Smit usually stopped by the Assembly Transportation Committee, with which I was an intern, to talk with the committee consultant, Bruce Samuel, who had managed the passage of the Mulford-Carroll Act creating the Board.

3. Haagen-Smit was always accompanied by the executive director of the Board, John Maga, who had been involved in public health policy for most of his career in state government.

4. I think an important lesson for the Board can be drawn from the Haggen-Smit/ Maga relationship—good science linked to public health.

5. I believe the creditability of the Board has been based on good science linked to public health. Whatever new responsibilities the Board assumes, including its AB 32 responsibilities, should not threaten or erode its core principle: good science and public health. If your credibility is eroded, your ability to regulate vehicle emissions ***may*** be eroded.

1970's set the funding context for today

1. Because of the court mandated reapportionment of 1966, there was a flurry of legislation because the Senate had been "urbanized"

2. CEQA in 1970 and the Transportation Development Act in 1971 committing a ¼ cent of the local sales tax to public transit.

3. Amending the constitution to allow gas tax revenue to be used for rail transit. (First leg of the San Diego light rail got $40 million from this source and was constructed without federal funds)

4. Of course, the big public policy issue of the decade was **Proposition 13,** which by rolling back property taxes created a complex fiscal relationship between local governments and the state. Moreover Prop 13 created the 2/3's vote rule for new taxes. It put the voters in the driver seat on taxation and created a political firewall when new taxes are discussed. The legislature and the governor simply misread public sentiment and could not find a way to address the public concerns re property taxes. Since Prop 13, the legislature has not been able to address taxes successfully. For example:

    a. Prop 98 re school financing which frames all debates on the state budget, especially in years when revenues don't meet needs or expectations.

    b. Requiring voters in 1990 to increase the gas tax rather than the legislature simply increasing tax, which had been the practice since 1922. A secondary consequence was the shift to GO bonds to finance transportation investments as a strategy to avoid gas tax increases.

    c. Abolishing the *in lieu* fee.

    d. Inability to manage a one-time surge in revenues in 2000.

    e. Prop 42 and the sales tax on gasoline, which is neither fish nor fowl, because it straddles the general fund and transportation funding. Try planning long-term capital investments with this kind of uncertainty!

5. Lesson learned: Don't count on the legislature to get funding right for state programs, transportation, or for GHG mitigation.

The adjustment of transportation funding to this environment.

1. Voter approved local transportation sales taxes

    a. Mainstay of transportation funding in urban counties. About 90% of state's population covered by this type of tax. (Usually the taxes are ½ percent, but Los Angeles County has 1 percent local tax dedicated to transportation)

    b. Require 2/3's vote

c. Require a program of projects—when imposing the tax voters also are adopting an expenditure plan of projects. Some taxes are as long as 30 years. Typically, programs commit a 1/3 of revenue to highways, 1/3 to local streets and roads programs, and 1/3 to public transit, both capital and operating purposes.

d. <u>Because of voter approval, the programs are view as inviolate. I don't advise trying to manipulate an approved expenditure program to implement a GHG reduction program.</u>

2. Devolution of transportation prioritization projects to regions: 75% of state and federal funds for capacity increasing projects prioritized by regional agencies; 25% percent by Caltrans. <u>Regions are critical, but have credibility problems: they're consortiums of local agencies, even when legislatively created. Not governments with independent boards.</u>

3. Other institutional reforms.

<u>Going Forward—Fees</u>

1. Fees: Fees can be tricky. The courts have ruled that there must be a nexus between the payee and the investment. That is there must be a reasonable relationship between the amount of the fee and the cost of the facility attributable to those paying the fee.

2. Because fees are not taxes, they only require a majority vote.

3. A fee is not a tax because of the nexus requirement and because a fee may be for a service. In the case of a service, the fee revenues cannot exceed the cost of the service, e.g., garbage collection service charge.

4. There are several motor vehicle fees, including those for running DMV and the CHP. Also, motor vehicle fees for air quality programs in non-attainment regions, fees for emergency phone along freeways and for emergency tolling services in some regions, and San Mateo County has a registration fee for the treatment of storm water run-off from the roadway network. As far as I know, none of these have been challenged.

5. There have been discussions of reinterpreting a new increment of the gas tax as fee and putting a program of expenditures before the voters for a majority vote to impose the fee. This would likely be at the regional level. How would a GHG program be structured to attract voters? Depends, of course, on the nature of the program. To date, voters have been looking for capital projects. Most everyone involved with local sales tax campaigns will tell you that cost of transit operations, which would be essential for a GHG expanded transit program, rides on the coattails of capital investments in transportation.

Next Steps

1. Don't damage the ARB's core program based on good science and public health.

2. Remember smog fighting through motor vehicle emissions regulations had four important attributes:

    a. Geographical defined problem—air basins.

    b. Limited number of auto manufacturers to regulate and technologically sophisticated firms. (This doesn't mean regulating is easy, but the regulated industry is readily definable and there's a knowledge base.)

    c. Cost of regulation to consumers negligible and built into the price of the auto. The cost is financible.

    d. The results are visible!

3. Regulating GHG is quite the opposite:

    a. The problem is global—why should I pay, if no one in China and India has to pay?

    b. Large numbers of activities must be regulated—land use, travel and VMT, etc.

    c. Cost is unknown, but not all strategies will enjoy the hidden cost of vehicle emissions control.

    d. The results won't be visible and may create hassles for the electorate.

Good Luck!