

Orange County's 91 Express Lanes: A Transportation and Financial Success, Despite Political Problems

By Robert W. Poole, Jr.



California's first experiment with long-term public-private partnerships for toll roads was the 91 Express Lanes project in Orange County. It consists of four new toll lanes added to the median of SR 91 by a private consortium, operating under a 35-year franchise, awarded competitively by Caltrans. Some claim this project was a success; others that it failed. The truth is a bit more complicated.

As an improvement to the greater L.A. freeway system, the Express Lanes were a huge success. At the time they were authorized, there was a dire need for more capacity in the SR 91 corridor, but neither Caltrans nor Orange County had the funds to build the four new lanes that had been on the books for many years. When the legislature approved AB 680 in 1989, permitting

several privately financed toll road pilot projects, the proposal to pay for these new lanes with tolls scored highest of all the projects proposed to Caltrans.

From a transportation standpoint, the Express Lanes project made history:

- It provided 40 lane-miles of much-needed new highway at no cost to taxpayers.
- It was the first toll road in the world with no tollbooths, making full use of then-new electronic toll collection.
- It was the first toll road in the world to use "value pricing" to manage traffic flow, guaranteeing uncongested travel at rush hour.
- And it was the first privately financed toll road in America in the 20th century.

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Moreover, the Express Lanes filled a real need. They offered meaningful time savings to tens of thousands of daily commuters who willingly paid for a faster trip, while relieving congestion in the regular lanes on SR 91. Since day one, the Express Lanes have always received high customer satisfaction ratings.

From a financial standpoint, the project was also a success. By its third year of operation, it was generating enough revenue not only to pay the debt service on its bonds but also to pay for operations and maintenance, highway patrol services (contracted from the CHP), and even property taxes! True, it had one very tight year when traffic dropped 20 percent when the SR 241 toll road first opened and diverted some trips heading to south Orange County. But even then the bondholders got paid.

Further proof is that when political difficulties led to legislation authorizing the Orange County Transportation Authority to buy the Express Lanes, the project was not sold

at a “fire sale” price. On the contrary, a third-party valuation firm did a rigorous assessment of how much revenue the Express Lanes would generate over the remaining 28 years of the franchise, and developed a price of \$207.5 million, based on the net present value of that robust revenue stream. Today, under OCTA ownership, the Express Lanes continue to generate net revenues, which are being used to improve the transportation system.

But if the Express Lanes were a financial success, why did the company sell? The reason is that the principal owner, Kiewit, had given up previous plans to develop a long-term toll roads business, and spun off the company to a sister firm called Level 3 Communications. The Express Lanes ended up as an orphan project for this company, albeit a profitable business. As long as they could get fair market value for it, they were happy to sell and use the cash for what they thought were better opportunities in telecommunications.



So the Express Lanes project was a transportation success and a financial success. Why have some judged it a political failure? The main reason was a huge political controversy over the “non-compete” provision in the franchise agreement with Caltrans. Toward the end of the 1990s, continued growth in Riverside County led to such strong traffic demand on SR 91 that the regular lanes became seriously congested again, as they had been prior to construction of the Express Lanes. Caltrans wanted to add more regular lanes to SR 91, but the non-compete provision prevented them from doing so. Thus, the politics quickly became that of “profits vs. the public interest” in expanded capacity to relieve congestion. The Express Lanes company won a legal battle with Caltrans, but lost in the court of public opinion. And that led to the legislation authorizing OCTA to buy out the franchise.

Why did Caltrans agree to the non-compete provision to begin with? Remember that back in 1990 when the franchise agreement was negotiated, nobody had ever financed toll lanes with large-scale free competition right beside them. Even conventional toll roads often worked out non-compete agreements with highway agencies, since unlimited amounts of competition from free roads could siphon off so much traffic that bond-buyers would never be repaid and the bonds would default. So the financiers advised Caltrans that strong protections would be needed in order to obtain financing for this revolutionary type of project.

Today, 15 years later, the financial markets have some experience with what we now call “HOT lanes” (premium-toll lanes built alongside regular lanes on a freeway). They know that a fraction of commuters are willing to pay much higher tolls than anyone had deemed possible back in 1990 to bypass rush-hour congestion. So these days, rigid non-compete clauses are no longer demanded. Most toll road and toll lanes projects being financed these days build in the

assumption that every project in a region’s 25-year long-range transportation plan will eventually get built, and may divert some traffic from the toll lanes. That risk must be borne by the toll lanes’ developer-operator. Second-generation competition provisions (such as those in the franchise agreement for the SR-125 toll road in San Diego) permit some degree of compensation only for loss of traffic from further additions of capacity, beyond what is in the approved long-range transportation plan. Thus, these kinds of provisions balance investor protection and the public interest. A modern toll-roads/public-private partnerships enabling statute should address the competition issue in this manner.

We should remember that the Express Lanes project was part of a small pilot program. Pilot programs are intended to test out new ideas, to see what works and what doesn’t work. From the experience with this project, California policymakers can learn several lessons:

- Private capital is available to build innovative new toll projects.
- Commuters welcome the option of a faster and more reliable trip, for a price.
- Variable pricing works well to manage traffic flow and prevent rush-hour congestion.
- Fully electronic toll collection (no tollbooths) is reliable, low-cost, and customer-friendly.
- Rigid non-compete provisions are not necessary for new toll projects in built-up, congested urban areas.

Drawing on these lessons, California policymakers can craft a successor to the AB 680 pilot program, so that Californians can benefit from innovative toll projects serving both commuters and goods-movement. ■



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