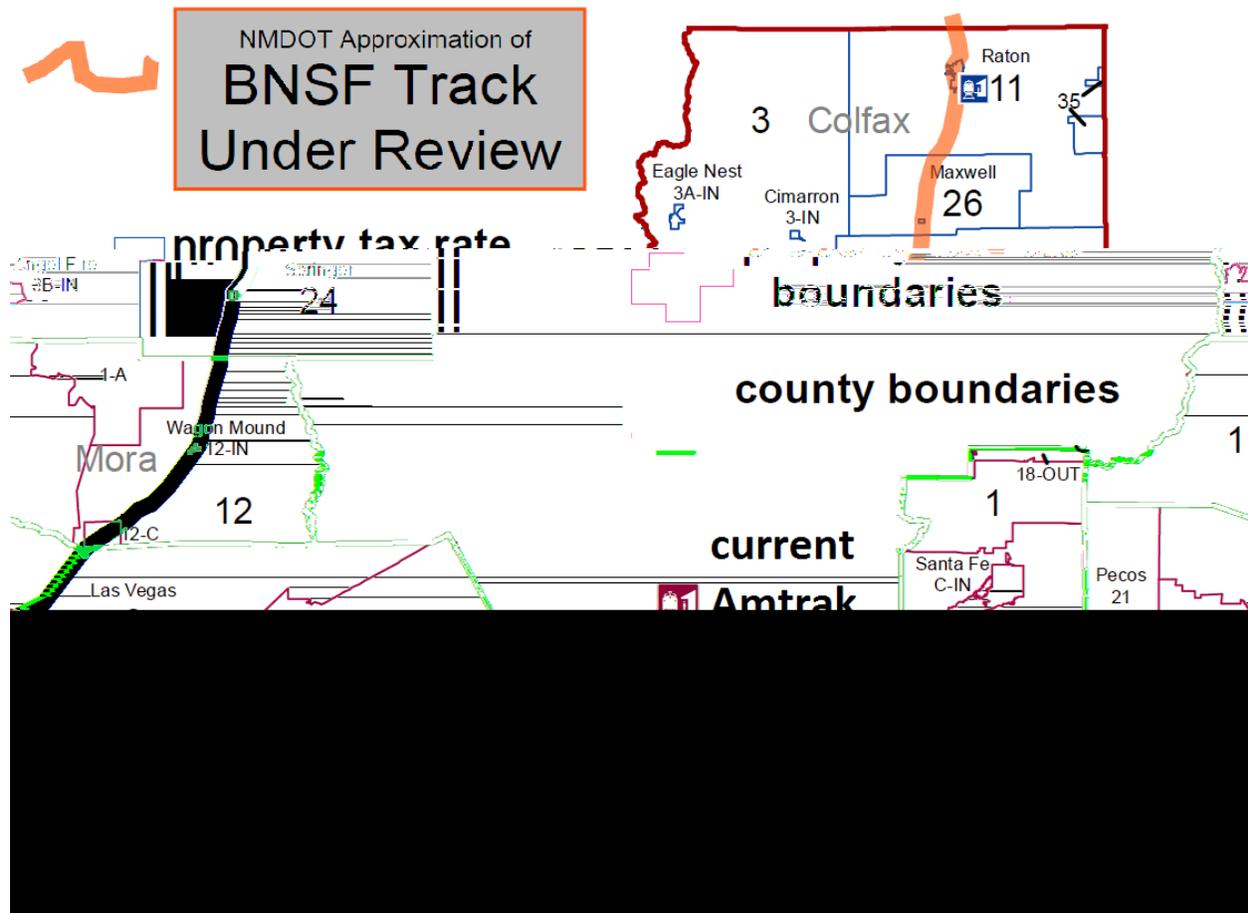


# NMDOT Analysis of Property Tax Impact of Potential Amtrak Southwest Chief Realignment

BNSF currently owns and maintains 183 miles of track in Santa Fe, San Miguel, Mora, and Colfax counties for the sole use of Amtrak's Southwest Chief line. In tax year 2013 BNSF's combined property tax liabilities in Santa Fe, San Miguel, Mora, and Colfax counties totaled \$1.1 million. This report details BNSF's property tax liabilities and the distribution of those revenues; it will also discuss the range of future tax implications if the Lamy-Raton Pass segment is discontinued and possibly sold, leased, or abandoned by BNSF.



## Tax Year 2013 BNSF Railway Property Tax Data

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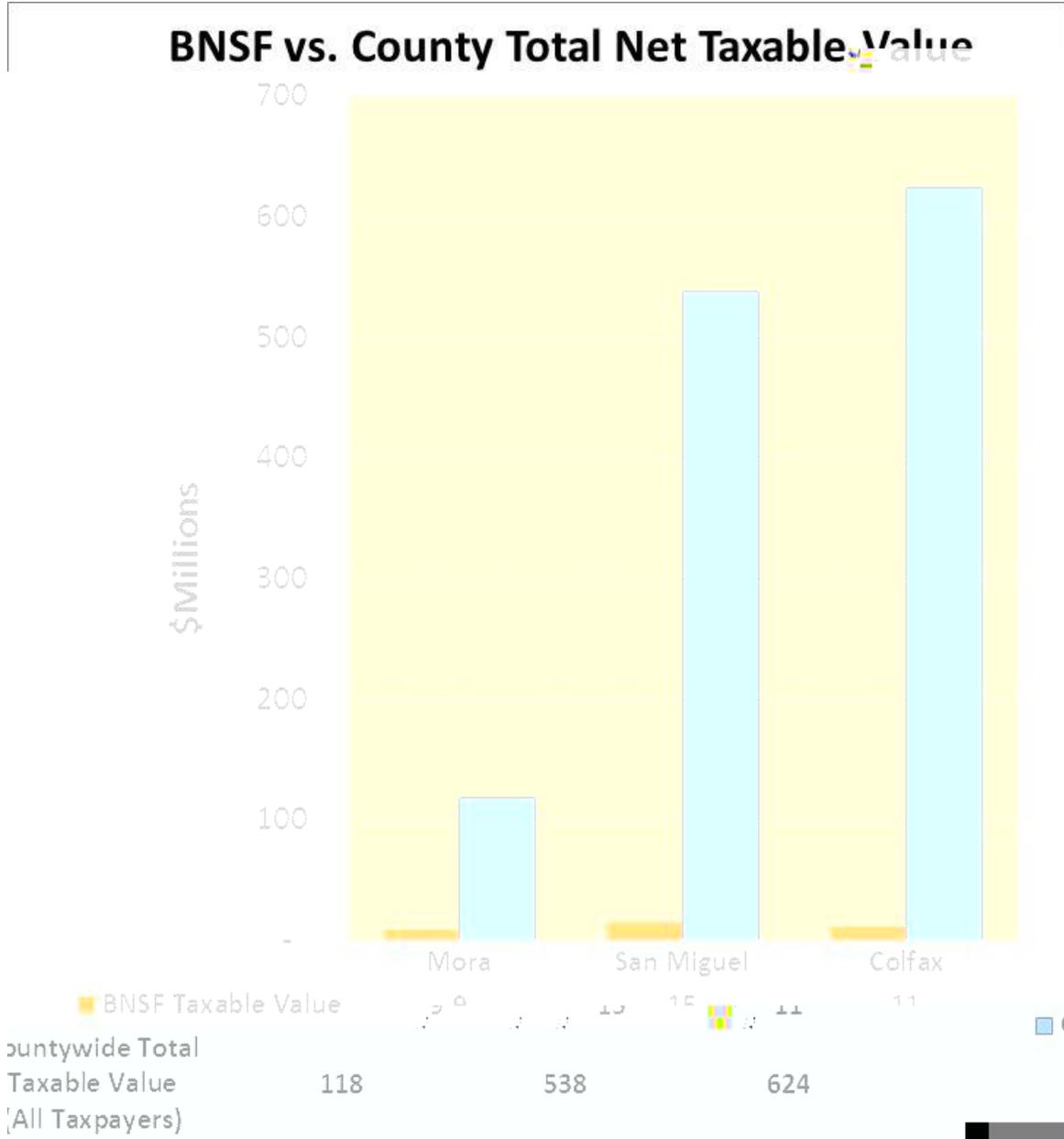
<b>BNSF Property Tax Summary: Totals for Counties Under Review</b>				
<b>County</b>	<b>Assessed Value (\$millions)</b>	<b>Net Taxable Value (\$millions)</b>	<b>Average Mill Rate</b>	<b>Tax (\$thousands)</b>
Colfax	33.7	11.2	23.18	260
Mora	26.1	8.7	24.72	215
San Miguel	43.9	14.6	26.74	391
Santa Fe	28.0	9.3	26.20	245
<b>Total</b>	<b>131.7</b>	<b>43.9</b>	<b>25.31</b>	<b>1,111</b>

<b>BNSF Property Tax: Distributions by Recipient Category (\$thousands)</b>						
<b>County</b>	<b>State</b>	<b>County</b>	<b>Municipal</b>	<b>School District</b>	<b>Other</b>	<b>Total</b>
Colfax	15	116	7	72	50	<b>260</b>
Mora	12	111	1	65	26	<b>215</b>
San Miguel	20	173	4	161	33	<b>391</b>
Santa Fe	13	126	0	69	37	<b>245</b>
<b>Total</b>	<b>60</b>	<b>527</b>	<b>12</b>	<b>367</b>	<b>145</b>	<b>1,111</b>

Note: "Other" includes community colleges, hospitals, and building levies.

## Tax Year 2013 BNSF Railway Property Tax Data Continued

BNSF Railway is one of the largest single property taxpayers in three of the counties where the Amtrak Southwest Chief route is under review: BNSF Railway alone makes up 7.4% of Mora County's total net taxable value, 2.7% of San Miguel County's total, 1.8% of Colfax County's total, but only around one-tenth of one percent of Santa Fe County's total net taxable value.



## Future BNSF Railway Property Tax Scenarios

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If Amtrak's Southwest Chief line is rerouted to the Transcon alignment there is significant uncertainty over what the ultimate positive or negative property tax impacts would be. In addition to the uncertainty of BNSF's future choices concerning their Raton Line, it is not clear if the ultimate net tax impact of any of their choices would be positive or negative.

BNSF has a wide variety of choices for the Raton Line between Lamy and the Colorado state line should the Southwest Chief be rerouted to the Transcon alignment, BNSF could choose to:

1. Operate the Raton Line as a freight only line.
2. Sell or lease trackage rights of the Raton Line to another railroad.
3. Abandon the Raton Line and salvage the railroad infrastructure.

Each of the above choices could create different property tax implications for the communities along the line. However, the net immediate and future property tax outcomes are not clear.

In the 1970's the federal Railroad Revitalization and Regulatory Reform Act (often called the "4R Act) provided special protections to railroads. The law precludes states from discriminatively taxing the captive railroad industry at a higher rate than other types of commercial property. Although it is not taxed discriminatively, the property tax valuation of railroad property in New Mexico is determined differently than regular commercial or residential property.

The majority of property value in New Mexico and in Colfax, Mora, San Miguel, and Santa Fe counties is residential property; it is typically assessed at market value using sales comparison or cost methods. Non-residential property is generally assessed by sales comparison, income, cost, or some combination of the three methods. Most property is appraised by county assessors in the county in which it is located; however, the state Taxation and Revenue Department assesses certain types of non-residential property. These state assessed properties typically include industrial property that extends across county boundaries, including property associated with railroads, pipelines, communication systems and mineral extractions. New Mexico has statutorily separate "special valuation methods" for various classes of these unique types of commercial property including railroad property.

The value of railroad property is determined according to the special method of valuation as described in Section 7-36-31 NMSA 1978. Operating rail property<sup>1</sup> is valued by the unit value

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<sup>1</sup> NMAC 3.6.5.38 D. (1): "Operating property" for the purposes of [the special method of operating railroad property valuation] Section 7-36-31 NMSA 1978 means all property, owned, leased, or used, which is reasonably necessary to the maintenance and operation of a railroad company's business

appraisal method which appraises an integrated property as a whole without reference to the value of its component parts. That means the total value of BNSF's operation in all states is valued and then apportioned to New Mexico. That statewide value is then allocated among each property tax district where the railroad operates.

A weighted combination of three separate methods is used to calculate the total value of each railway's operations in all states:

- 1) Income (capitalization of earnings);
- 2) Market value of stock and debt; and
- 3) Original cost less depreciation.

A portion of the total system value of all property used in the conduct of the railroad's business in all states is then apportioned to New Mexico. The apportionment is made comparing the New Mexico value to the total US value of the following:

- 1) Gross investment
- 2) Gross operating revenue
- 3) Gross operating expenses
- 4) Track miles
- 5) Tonnage originated or terminated
- 6) Ton miles
- 7) Other as determined by the Taxation and Revenue Department.

After a portion of the total US railway system value is apportioned to New Mexico that value is then allocated within New Mexico among property tax districts containing operating rail property. The allocation of total New Mexico railroad value is then made using primarily the number of main, branch, and spur track miles in each district. Consideration can also be given to locations where "sizeable terminal facilities"<sup>2</sup> such as yards, shops, and other special facilities not normally spread along the lines of the railroad. For example BNSF has about three-quarters as many track miles in Mora County as in Colfax County and correspondingly BNSF's assessed property taxes in Mora County are about three-quarters of the value in Colfax County.

The Taxation and Revenue Department (TRD) is granted significant discretionary powers in the application and administration of the special railroad property tax valuation method by statute and regulation.

- The weightings of methods (earnings, stock value, or cost) used to determine overall US value of a railway must add to 100% but their relative importance is

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<sup>2</sup> Section 3.6.5.38 NMAC

not codified in statute or regulation. It is chosen by TRD for each valuation to be the method they believe appears to “be most indicative of market value.”<sup>3</sup>

- TRD can choose not to consider one or more of the six US to New Mexico apportionment factors outlined in regulation and they can also choose to add one or more additional New Mexico apportionment factors.<sup>4</sup>
- When allocating value within New Mexico, TRD primarily considers track miles and then facilities but also has the power to make additional judgments if they see fit on the basis of “physical characteristics and traffic density” of the track miles and they can also use an altogether new method not described in regulation if they see fit to “account for unusual or substantial changes in the operation or gross investment of the railroad company within the governmental units.”<sup>5</sup>

The significant discretion granted to TRD in calculating and distributing current and future railroad property tax liabilities adds further uncertainty to the net property tax impact of any future choices by BNSF concerning the Raton line.

If Amtrak’s Southwest Chief line is rerouted but BNSF continues to own or lease trackage rights on the Raton line the property tax impacts may or may not be smaller than historic year-to-year fluctuations. The overall US market value of BNSF will not be significantly impacted. BNSF’s 2013 operating income was about \$6.6 billion in 2013<sup>6</sup>. The amount that BNSF receives from Amtrak for twice daily use of the 183 miles of track in question is not a significant portion of their overall US income. The payments from Amtrak for the Raton line may be partially replaced or exceed by new payments from Amtrak for the use of BNSF’s Transcon line. The relocation of the Southwest Chief from this line would not significantly impact three of the six New Mexico apportionment factors (track miles, tonnage originated or terminated, and ton miles) compared to retaining Amtrak’s usage of the line. It is not clear if the three remaining New Mexico apportionment factors would be significantly impacted (investment, revenue, or expenses). The relative allocation of BNSF’s total property tax within New Mexico (among each property tax district) would not be expected to change significantly.

If BNSF sells or leases the Raton line to another railway, the property tax liability would shift to the new railroad when the 183 miles shifted from being included in BNSF’s “operating property” to the new railroad’s “operating property.” Because railroad property is valued with a special “unit value appraisal method, it could depend more on which company took control of

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<sup>3</sup> Section 3.6.5.38.B (7) (a) NMAC

<sup>4</sup> Section 3.6.5.38.B (8) NMAC

<sup>5</sup> Section 3.6.5.38.C (1)(b) NMAC

<sup>6</sup> BNSF Railway Company, Class I Railroad Annual Report to the Surface Transportation Board, for the Year Ending December 31, 2013.

the track than what they did with the track. It is difficult to speculate on which company or companies may compete to take ownership of the track in question. The new rail company's valuation for the Raton line could be lower, higher, or about the same as under BNSF operation but the method of valuation would be the same.

If BNSF sells or abandons the Raton line the allocation of their property tax liabilities within New Mexico will shift among counties and among property tax districts, but BNSF's total property tax liabilities in New Mexico may not change significantly. BNSF's property tax valuation is based on their total US value allocated to New Mexico by six apportionment factors. Some of the six New Mexico allocation factors may not change at all: since the Raton line does not currently carry any freight, BNSF's tonnage originated, tonnage terminated, and ton miles would not immediately shift. It is not clear if some of the New Mexico factors would increase or decrease significantly such as gross investment, expenses, or revenue. For example revenue generated for BNSF by fees from Amtrak's current use of the Raton line may just shift to Amtrak's payment for use of BNSF's Transcon line or even increase.

If BNSF abandons the Raton line and it ultimately reverts to another commercial use and ownership the new owner of the property would pay property tax based on a new type of valuation. If the land was put to use under one of the special types of commercial property such as pipeline, telecommunications, or mineral extraction the state property tax division would value the property, if not each county assessor would value the property under its new use. As mentioned earlier, federal law prohibits New Mexico or any state from taxing railroads at a discriminatively higher rate than other commercial property, if the track was put to another commercial use it would still be subject to property tax. It is possible that other commercial uses of the track and associated land and right-of-way could be put to commercial uses with higher or lower value than BNSF's current use.