

POTENTIAL RAIL LINE ACQUISITION REPORT

TO THE

**TRANSPORTATION LEGISLATIVE
REVIEW COMMITTEE**

**PREPARED BY THE COLORADO
DEPARTMENT OF TRANSPORTATION**

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Introduction

The purpose of this report is to provide the Transportation Legislative Review Committee (TLRC) with the Colorado Department of Transportation's report on rail abandonments and recommendations relative to possible rail line acquisitions. This is the twelfth report submitted by the Executive Director of the Department to the TLRC on rail abandonment pursuant to 43-1-1303 (3) C.R.S.

During the last year there have been no new abandonment actions, and one abandonment proceeding still in process. In addition, during the past year there have been some other activities and initiatives by the Department and others that could impact rail abandonments and rail acquisition in the future. **Part I** provides **Background Information** on past and ongoing activities. **Part II** describes **New Initiatives and Activities** which have been undertaken over the past year. Finally, **Part III** lists the **Recommendations** of the Department.

Part I Background Information

(A) Rail System in Colorado.

Colorado's rail system consists of almost 3,000 miles of track. A significant portion of this system, about 86%, is owned and operated by two Class I national railroad companies, the Union Pacific (UP) and BNSF railroad companies. The other 14%, about 424 miles, is owned and operated by eight regional railroad companies, private owners, the Federal Government. Population and employment growth in Colorado has led to an increase in travel demand that is straining the capacity of the highway system in some corridors. In high growth corridors, where traditional highway solutions require additional right of way or cannot fully meet commuter and freight needs, the rail right-of-way may need to be preserved, even if rail operations cease, to maintain the possibility of future transportation uses for the corridor.

(B) Past Legislative actions.

In 1997, the General Assembly enacted SB 37, concerning the disposition of abandoned railroad rights-of-way in Colorado. According to this legislation, an existing rail line, railroad right-of-way or an abandoned railroad right-of-way is eligible for acquisition by the Department, if the Executive Director determines it serves one or more of the following purposes:

- (1) Preservation of the rail line for freight or passenger service;
- (2) Maintenance of a rail corridor for future transportation purposes or interim recreational purposes;
- (3) Access to surrounding state manufacturing facilities and agricultural areas; and
- (4) Any public use of the rail line or railroad right-of-way that is compatible with future use as a railroad or other transportation system.

The legislation also requires the Colorado Transportation Commission to review any property determined to be eligible for acquisition and approve the acquisition before the Executive

Director submits the prioritized list of rail lines or rights-of-way to be acquired to the TLRC (43-1-1303)(2)).

43-1-1308 C.R.S., states that “the members of the Transportation Legislative Review Committee shall make a written report setting forth its recommendations, findings, and comments as to each recommendation for the acquisition of railroad rights-of-way and their uses and submit the report to the General Assembly.”

43-1-1301(2) C.R.S., stipulates that the “Executive Director shall submit a prioritized list with recommendations to the TLRC concerning the railroad rights-of-way or rail lines to be acquired by the state and their proposed use.”

During the 1998 Legislative Session, HB-98-1395 was passed by the Legislature and signed by the Governor. That bill allocated \$10.4 million to the State Rail Bank Fund to purchase the North Avondale (NA) to Towner rail line from the UP and to subsequently lease or sell the line to a short line operator. The line was purchased from the UP in July 1998 and subsequently advertised for sale. Since that time the State has leased the line to short line operators. (See item G. below.)

(C) **Past Transportation Commission actions.**

The Transportation Commission believes that certain significant rail corridors represent an irreplaceable state transportation resource and that it is critical to preserve them. That is because once they are lost, the cost of recreating equivalent corridors in the future will be prohibitive.

In June 2000 the Colorado Transportation Commission approved a **Rail Corridor Preservation Policy**, which states the following reasons why rail transportation is important to Colorado:

- Preserving rail corridors for future use may save money, since the cost to preserve a corridor for future transportation purposes is often far less than having to purchase an equivalent corridor in the future.
- Rail transportation may be needed in certain corridors to supplement the highway system and to provide adequate mobility and travel capacity.
- Rail transportation can be a cost-effective and environmentally preferable mode of transportation in certain situations.
- Preserving existing freight rail service by preventing a railroad from being abandoned can reduce the maintenance costs on state highways, since the transportation of displaced rail freight to trucks will increase deterioration of the state highway system.
- Freight rail service can serve as an economic lifeline to the economic health of a community when there are no other modes that adequately and economically serve the needs of the community.

The Rail Corridor Preservation Policy identified the following criteria to be used to prioritize corridors for funding:

- Magnitude of negative impacts upon adjacent highways.

- Immediacy of the possible abandonment of the rail line.
- Immediacy of possible encroachment on an existing rail corridor that may jeopardize the implementation of passenger rail service in the corridor.
- Estimated cost to acquire the rail corridor.
- Opportunity for public-private partnerships.

In order to facilitate a more comprehensive examination of which rail corridors are of interest to the State, the Transportation Commission directed CDOT staff to identify State Significant Rail Corridors. In November 2000, CDOT prepared a list of **State Significant Rail Corridors**, which were adopted by the Transportation Commission as part of the Statewide Transportation Plan. The criteria used to identify these state significant rail corridors included existing and potential future demand for passenger and freight services and local/regional support for the preservation of the corridor.

(D) Abandonment Activity

During the last year there were no new abandonment activities and one abandonment proceeding still in process, as described below

- Great Western Railway of Colorado filed a Notice of Exemption to abandon the Welty branch between Johnstown and Welty CO, totaling 6.2 miles. This abandonment is in conjunction with the Eaton Abandonment which began on or around August 8, 2003. (STB Docket No. AB-857X (Sub-No. 1X))

This abandonment action does not significantly impact the state transportation system adversely, so it does not call for any intervening action by the State.

(E) Potential Rail Lines for Acquisition

When a rail line is not economically viable to operate, the result is often either (1) the sale of the line, usually from the two Class I national railroads (UP and/or BN), to small, regional railroad companies; or, (2) a formal request for abandonment to the Surface Transportation Board (STB) by the owner of the rail line. Rather than abandon a line, a larger railroad company will usually solicit bidders for the purchase of the line by a short line operator or regional railroad in an effort to maintain rail service along the line. These smaller railroad companies usually have lower operating costs and do not need the same volume of business on the line as the larger railroads to be profitable.

The ability to respond quickly to a potential abandonment can be an important factor in ensuring corridor preservation: once a Request to Abandon has been formally filed with the STB, abandonment can take place as little as 90 days later.

The issue of rail lines being abandoned is of statewide importance due to the impact these abandonments may have on the remainder of the transportation system. As lines are lost, the freight that was being moved by rail must then be moved by truck, causing additional deterioration of the local roadways and/or state highways. In addition, some businesses cannot survive without access to a rail line, thereby causing these businesses to either relocate to another

area in the state or to move out of state. Also, once a railroad corridor is abandoned, it is unlikely it will be returned to rail service or be available for any transportation purpose, especially if the rail tracks are salvaged and the ROW is sold or reverts to adjoining property owners.

There are three lines that continue to be considered at risk of future abandonment and are considered railroad lines of state significance. They are as follows:

❑ **Valmont/Boulder Branch Line (UP)**

This line, commonly referred to as either the Valmont or the Boulder Branch, extends north from Commerce City along the east side of I-25. The line then crosses over I-25 and runs west from Erie to the Valmont Power Plant, east of Boulder. Only the portion of the line east of I-25 is identified as a corridor of state significance. The UP is proposing to discontinue (but not abandon) service on the portion of this line to the west of I-25. This action has resulted in CDOT avoiding reconstruction of a railroad bridge across I-25 during the widening of I-25. The section of the Boulder Branch line east of I-25 will stay in service. This eastern portion of the Boulder Branch line is identified as a significant rail corridor because it is the preferred rail alignment identified in both the North Front Range and North Metro Major Investment Studies. Should this corridor be lost at some point in the future, the creation of a new, equivalent corridor would be much more expensive than preserving the current corridor.

❑ **Tennessee Pass Line (UP)**

The Tennessee Pass line runs from near Gypsum, over Tennessee Pass and along the Arkansas River to Pueblo. The Tennessee Pass line has been of high concern to CDOT because of its potential to carry both passengers and freight, and because it is the only trans-mountain alternative in Colorado to the Moffat Tunnel line, which often runs near capacity. This rail line may be key in the event there would be a significant increase in trans-mountain rail demand due to increased development on the Western Slope or if the Moffat Tunnel were damaged or closed for any reason. Such an event would have a significant impact on Colorado, particularly on the Western Slope, since the railroads would be forced to move freight through Wyoming. No freight has been shipped on the Tennessee Pass Line since 1996, but it does not appear that the UP will abandon this line in the near future.

❑ **Fort Collins Branch Line (UP)**

The Fort Collins Branch line is identified as a rail corridor of state significance since it connects Greeley and Ft. Collins to the North I-25 corridor, and is identified as part of the preferred alternative in the North Front Range Transportation Alternatives Feasibility Study. This line does not appear to be at risk of abandonment at this time.

CDOT will continue to monitor these rail corridors of state significance with regard to possible abandonment actions.

(F) State Rail Bank Fund Activities

There were no expenditures from the State Rail Bank Fund in FY 2009. In fact, through Senate Bill 09-208 the General Assembly transferred all available funding for the acquisition of rail lines out of the Fund and into the General Fund in response to the State's fiscal problems. CDOT believes it is important to note that without the Fund it now has no resources readily available to preserve a state significant rail line if a rail company owning it chose to initiate abandonment of that line. Absent available cash in the Fund, the department may well prove unable to preserve request and obtain funding from the state legislature to preserve such a corridor in a timely fashion, should abandonment occur when the Legislature is out of session. As noted earlier, abandonment can occur with as little as 90 days notice.

One concept that deserves consideration is placement by the Legislature of significant funds in the Rail Account of the State Infrastructure Bank, which the Transportation Commission could draw upon should a state significant rail line need to be acquired. CDOT would then pursue repayment to the Rail Account of the State Infrastructure Bank for any acquisition expense from the Legislature during the following Legislative session. This would enable the Transportation Commission to be more responsive to any abandonments that may occur.

It should also be noted that while no expenditures are proposed from the State Rail Bank Fund, CDOT's Rail Relocation Implementation Study (see discussion below in II (B)) may generate interest in state participation in a rail relocation project and may lead to new interest in the rail bank and a request for funding in the future.

(G) Status of NA Towner Line

During the 1998 Legislative Session, HB-98-1395 was passed by the Legislature and signed by the Governor, allocating \$10.4 million to the State Rail Bank to purchase the North Avondale (NA) Towner Rail Line from the UP and to subsequently lease or sell the line to a short line operator. The line was purchased from the UP in July 1998 and subsequently advertised for sale. In March 2000, CDOT leased the NA Towner Line to the Colorado Kansas and Pacific Railway Company (CKP) for five years with an option to buy. CKP operated rail service on the line beginning April 2000.

During the 2002 Legislative session, HB 1350 was signed into law. That bill amended HB-98-1395, (1) directing CDOT to renew the current NA Towner lease, provided the lessee is financially solvent and responsible; (2) extending the length of the lease from 5 to 10 years; (3) instructing CDOT to lease the line for as long as is reasonably possible and to offer the lessee an option to buy; (4) requiring CDOT to waive any bonding requirements if the lessee has demonstrated financial solvency and responsibility after one year of such lease; and, (5) authorizing CDOT to suspend any volume-based rent in the lease so long as such rent is placed into an escrow account used for infrastructure improvements approved by CDOT. That legislation was developed in response to the difficulties experienced by the CKP as a result of drought and low crop yields.

In 2003, the CKP experienced two derailments and did not realize significant freight traffic from the local community. The CKP struggled to maintain service, and in February 2004 was unable to secure insurance for operating the line. CDOT requested that CKP stop operation until that

situation was rectified. While a number of options were explored, the CKP was unable to overcome its operational and insurance problems. CDOT staff received approval from the Transportation Commission in June 2004 to begin lease termination proceedings.

In February 2005, CDOT released a Request for Proposal for a purchase of the NA Towner Line. CDOT received five proposals from two firms and after completing the Request for Proposal Process, CDOT selected the V&S Railway Inc. to purchase the line for \$10.3 million in January, 2006. The purchase agreement stipulated a down payment of 1 million dollars that was collected at the contract initiation with a balance of \$9.3 million due in six years. Significant details of the purchase agreement include that V&S Railway will operate the line for six years, agreement to a “first right to repurchase” should V&S Railway be unwilling or unable to continue to operate the line post-purchase agreement and an agreement to operate the line with adherence to State and Federal regulations.

In January 2006, the V&S (aka VST) began rehabilitation and improvements of the Line which included: track repair, track replacement, repair of active crossing equipment, and returning the track to Class II operating standards. The first grain train returning the Line to service was conducted in September 2006. In April 2008, the Line experienced the loss of two bridges and roadbed damage due to fires in the Ordway area. The VST has repaired the Line, and is able to provide full service. VST is storing cars on the west portion of the line for UP. The two locomotives generally used on the line have been sent to Mississippi for V&S operations. Grain movement on the Towner Line will be provided by WATCO under the V&S name.

Part II New Initiatives and Activities

This section describes new initiatives or major activities in the rail field, some of which have included CDOT as an active participant. Listed are initiatives or activities that could have a future impact on rail service, abandonments and/or acquisitions.

(A) Denver Union Station

CDOT continues to participate as a partner in the development of Denver Union Station (DUS). The City and County of Denver, RTD, DRCOG and CDOT jointly purchased the 19.5-acre Denver Union Station (DUS) site and agreed to fund the development of a master plan, a rezoning of the property, and an Environmental Impact Statement. The master plan and zoning application were completed and the EIS has been completed and is anticipating a Record of Decision in October 2008.

A master developer has been selected for the project. Passage of the FasTracks tax initiative has provided approximately \$200 million for the DUS project. In addition, \$50 million has been authorized for the project in the SAFETEA-LU transportation bill, and as mentioned below, nearly \$17 million has been made available for the DUS project from the Senate Bill 1 Strategic Transit Program. Still, there is a significant funding shortfall for the transportation improvements at DUS. The master developer is charged with identifying public funding as well as private development income, with which to pay for these improvements.

DUS is expected to become an important transportation hub for the Denver metro area, Front Range and state. It is expected to bring together many passenger modes into this 19-acre site, including commuter rail, light rail, regional buses, Amtrak, regional trains, taxis, and cars. The site will also include transit oriented private development.

CDOT will continue to play a major role in this process to ensure that DUS maintains its role as a significant local, regional and statewide transportation facility.

(B) Discussions regarding Rail Relocation

CDOT, UP, BNSF and RTD have been discussing possible rail infrastructure relocation and freight line consolidation for several years. These exchanges have focused on the development of a long-term plan to ease traffic congestion and improve freight and passenger mobility along the Front Range without impacting the competitive balance between railroads or economic health of businesses within the state.

In 2003 the two railroads came to an agreement on the types and locations of improvements that would constitute a desirable relocation and consolidation project. CDOT then agreed to conduct a public benefits and costs study of those proposed improvements in order to identify and quantify public benefits, drawbacks and costs associated with a possible transportation partnership with the railroads. A major purpose of the study was to assess whether or not the benefits of this partnership are such that it would be worthwhile to the public to continue to consider participating in and supporting a relocation and consolidation project. This study was an initial phase of a larger effort that will require a more detailed and comprehensive analysis.

A final Public Benefits and Costs Study was released in May 2005. The study indicated that there are significant public (and private) benefits associated with this project. Both railroads indicated that they were interested in continuing to work with CDOT and others to implement this project.

In 2005 Congress awarded Colorado \$2 million in transportation funding with which to conduct its next phase of work for the relocation project. In May of 2007 CDOT selected a consulting firm to conduct the Colorado Rail Relocation Implementation Study (also referred to as the Railroad Relocation for Colorado Communities project—R2C2) using the Federal funds. In order to analyze the possible rail bypass project costs and also to determine the railroad operations savings and costs associated with such potential bypass routes, two “Study Alignments” were identified for analysis in R2C2. These two hypothetical alignments were identified for three purposes: 1) to determine order of magnitude construction costs of a potential “bypass route”, 2) compare order of magnitude railroad operational savings operating on a new bypass route as opposed to operating on the existing Joint Line, and 3) identify environmental resources that may be encountered in eastern Colorado if a rail bypass project were to be constructed.

Based on feedback from Colorado Citizens, CDOT is in the process of establishing a Citizens Advisory Committee to work with CDOT as the process continues. The public outreach of

R2C2 also revealed the need for a more detailed evaluation of the benefits and impacts of a new rail line to the agriculture and ranching industries and communities of eastern Colorado. These benefits and impacts were not addressed in the Public Benefits and Costs Study or the R2C2 Study and CDOT made a commitment to perform such a detailed analysis.

(C) **Senate Bill 1 Strategic Transit Program Funding**

Senate Bill 1 (1997) provides General Fund dollars, amounts above certain thresholds, for “strategic transportation projects.” A 2002 revision to the bill requires that at least 10% of such revenues be used for strategic transit projects. With the passage of Referendum C in 2005, SB 1 dollars once again became available, so the Transportation Commission appointed a Task Force that was charged with defining project goals, establishing a project selection and prioritization process, and recommending a project list to the Commission.

The Task Force issued a Call for Projects, with an established goal of “increasing transit ridership through improved transit connections between communities...” The Task Force evaluated all applications and recommended funding for 18 projects, and the Commission adopted that project list. The project list covered a five year time period, from 2006 through 2010. All 2006-2008 projects have been awarded funding. Late in 2008 CDOT conducted an application process for projects for 2009-2012. However, declining State revenues resulted in CDOT not being able to fund any projects starting in FY 2009 and for at least three years. Subsequently, legislation eliminated the SB 1 program.

Among the projects funded in the first phase were four that were passenger rail related, as follows:

- The Rocky Mountain Rail Authority, a public entity formed by intergovernmental agreement by over 40 public agencies, was awarded \$1.2 million to conduct a High Speed Rail Feasibility Study in the I-25 and I-70 West corridors. The application built upon the fact that in 2002 CDOT submitted a letter to the U.S. Department of Transportation expressing an interest in having these two corridors designated as the eleventh High Speed Rail Corridor under a High Speed Rail program established by Congress. RMRA is studying the feasibility of instituting high speed rail on the I-25 corridor from the Wyoming state line to the New Mexico state line, and on the I-70 West corridor from DIA to Grand Junction, as well as along some spur routes. The study is expected to be completed before the end of 2009.
- The Northwest Colorado Council of Governments was awarded \$500,000 with which to identify land use planning and zoning issues that are essential for incorporating a potential future mass transit system along the I 70 West corridor. This planning, which included exploration of transit access points (stations, park-n-rides, intermodal facilities) and transit-oriented development alternatives where possible, was completed in 2009.
- RTD was awarded \$16,880,000 for phased improvements at Denver Union Station.
- The City of Longmont was scheduled to receive \$4,000,000 in 2010 for an extension of FasTracks commuter rail from the planned end-of-line station at Twin Peaks Mall to a central location in Longmont’s historic downtown. However, with the elimination of the SB1 program there is no longer any SB 1 funding available for that project.

(D) Funding for High Speed Intercity Passenger Rail

The Obama Administration, through the American Recovery and Reinvestment Act (ARRA) as well as proposed annual appropriations, is making significant Federal funding available for the study, design, construction and implementation of high speed intercity passenger rail. CDOT is awaiting the results of the RMRA High Speed Rail Feasibility Study, and will need further detailed studies of high speed rail, before seeking such federal funds for such a system. Rather, CDOT is seeking designation of the final remaining federally-designated High Speed Rail Corridor, and CDOT is seeking to develop a state rail plan, which is a prerequisite to applying for high speed rail funds. The State is also partnering with the states of New Mexico and Texas in seeking federal funds to study the feasibility of high speed intercity passenger rail from El Paso to Denver.

(E) Creation of a Division of Transit and Rail

With the passage of Senate Bill 09-094, a new Transit and Rail Division was created within CDOT. The statute calls for the new Division to be “responsible for the planning, development, operation, and integration of transit and rail, including, where appropriate, advanced guideway systems, into the statewide transportation system; shall, in coordination with other transit and rail providers, plan, promote, and implement investments in transit and rail services statewide.”

In accordance with the statute, CDOT has established a special interim transit and rail advisory committee to specifically advise the Transportation Commission and the Executive Director regarding the initial focus of the division and to recommend a long-term advisory structure, including the advisory structure's purpose and role, in support of the transit and rail-related functions of the department. The committee’s deliberations began in September.

(F) Amtrak Examination of Restoring Abandoned Service through Colorado

Congress is requiring Amtrak to perform a feasibility study to explore restoration of the *Pioneer* Line from Denver to Seattle. This service was abandoned in 1997. Amtrak must submit a report by October 16, 2009, outlining the feasibility of restoring the *Pioneer*, or portions of it.

The study will aid Amtrak in assessing the ridership, revenue, and mobility implications resulting from various scheduling options and the associated capital and operating requirements. The study will also include a projected timeline and estimated costs associated with restoring the service.

Amtrak is providing draft results of the study to state DOTs along the route and has asked each state to provide comments. A central area of focus for states to comment on will be each state’s preferred routing option. The study examines two routes previously used for the Pioneer: One route connects train cars on to the existing *California Zephyr* train through Glenwood Springs and Grand Junction and on to Salt Lake City, where the Pioneer cars would then split off and

travel on to Seattle. The other route being studied would travel from Denver through Greeley, Cheyenne, Laramie and on to Seattle.

(G) Ski Train Discontinues Service; Replacement Proposed

In April, the operator of the Ski Train service between Denver and Winter Park announced that it was selling its rail cars and ceasing operations. Citing issues related to sharing tracks with freight trains and overall cost increases, particularly for liability insurance coverage, the announcement signaled the end of a 69-year run for the excursion train.

Recently, Iowa Pacific Holdings LLC, which operates a number of short line railroads throughout the country, announced it was interested in providing a service to replace the Ski Train. Iowa Pacific, which operates the Alamosa-based San Luis & Rio Grande Railroad and Rio Grande Scenic Railroad, has made some initial inquiries with the Union Pacific Railroad, which owns the track and operates freight trains in the corridor. Replacing the Ski Train service would require obtaining permission of the Union Pacific to operate on its tracks. A replacement service would also need to work out a plan for a temporary loading platform at Denver Union Station during redevelopment of the Station.

Part III Recommendations

There are no major rail lines in Colorado which have been abandoned in the past year that impact the state's transportation system, nor are there any which are considered to be at high risk of abandonment at the current time. Consequently, at this time the Department is not recommending to the TLRC that any railroad rights-of-way or rail lines be acquired by the State. However, the Department is recommending the following actions:

- The first priority is to continue to monitor the NA Towner line. CDOT has taken steps to maintain an operator for the line, with an emphasis on trying to keep the line open for freight service rather than salvaged. However, it has been difficult to maintain freight service on the line given the low levels of revenue.
- The second priority is to continue CDOT's cooperative project to examine opportunities for the relocation and improvement of freight service along the Front Range. The goal of these efforts would be to improve freight movement, create new economic opportunities, improve safety and air quality, and reduce congestion. Such improvements could also present opportunities for rail passenger placement in or along railroad rights-of-way. CDOT is conducting the next phase of work, examining what it would take to implement the project. There are still major engineering, funding and financing steps that must be undertaken before a project can proceed.
- The third priority is to monitor the status of the Valmont/Boulder Branch line. It does not appear the UP will abandon the portion of this line east of I 25. This line is critical to

preserving options to relieve congestion on I 25, US 36, and US 85 and therefore should be preserved for future passenger rail service.

- The fourth priority is to monitor the status of the Tennessee Pass line. While there is no indication that the UP will abandon this line in the near future, the line has not been used for over eight years. If this line is abandoned, the State should purchase it to preserve it for freight service in the future.
- The fifth priority is to monitor the status of the Fort Collins Branch line. While this line does not appear to be at risk of abandonment at this time, it is identified as a rail corridor of state significance since it connects Greeley and Ft. Collins to the North I 25 corridor, and is identified as part of the preferred alternative in the North Front Range Transportation Alternatives Feasibility Study.