

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 fourteenth 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. However, during the past year there have been some other activities and initiatives by the Department and others that could potentially 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.

Part III lists the **Recommendations** of the Department.

Part I Background

(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, and the Federal Government.

(B) Past Legislative actions.

In 1997, the General Assembly enacted Senate Bill (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 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 (TLRC) 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 NA Towner rail line from Union Pacific Railroad (UP) 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. Victoria & Southern (V&S) currently lease the line with an option to purchase. V&S has indicated it wishes to exercise that right with a tentative date set for October 4, 2011, (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 transfer 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.

This original list is over 10 years old. The Division of Transit and Rail may explore rescinding the list and using its final State and Freight Passenger Rail Plan (see Part II A below) as a mechanism to identify rail corridors for preservation.

(D) Abandonment Activity

On May 6, 2008 Great Western Railway (GRW) filed to abandon the Welty Branch, a 6.2 mile line, in Weld County, Colorado, with the Surface Transportation Board. No significant action has occurred in this process since March of 2009. GRW has been granted the authority to consummate the abandonment but states it is continuing to explore alternatives to abandonment. Authority to consummate the abandonment will expire May 6, 2012. GRW may apply for an extension if no action is taken prior to this date.

(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 Burlington Northern (BN)), to small, regional railroad companies; or, (2) a formal request for abandonment to the federal 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 in as little as 90 days.

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 Right-of Way (ROW) is sold or reverts to adjoining property owners.

The Department will continue to monitor short line railroads in the State to ascertain their current financial status and to examine the prospects for their continued survival because they continue to be an important part of Colorado's future.

There are two lines that continue to be considered at risk of future abandonment. Both are identified as Rail Corridors of State Significance and are owned by Union Pacific and shown below:

❑ **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 identified as significant 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. The Tennessee Pass Line may be able to be used as an alternate route as trans-mountain rail demand grows 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 in recent (2011) conversations with the UP, there was no indication they 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. However, it should be noted this branch line is not included in the Preferred Alternative of the North I-25 Environmental Impact Statement. The North I-25 EIS does, though, recommend a new commuter rail line connecting the commuter rail line in Longmont and the north end of the RTD/FasTracks North Metro.

CDOT will continue to monitor the two remaining Rail Corridors of State Significance with regard to possible abandonment actions. These items will be added to the prioritization list for continued monitoring by the Department.

(F) State Rail Bank Fund Activities

There were no expenditures from the State Rail Bank Fund in FY 2011. If monies are not available from the Fund, CDOT has no resources readily available to preserve a Rail Corridor of State Significance if a rail company owning it chose to initiate abandonment of that line. Absent available cash in the Fund, the department would likely be unable to 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 Rail Corridor of State Significance 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 abandonment that may occur.

It should also be noted that while no expenditures are proposed from the State Rail Bank Fund, CDOT's State Freight and Passenger Rail Plan (see discussion below in **II (A)**) will aid the newly established Division of Transit and Rail (DTR) to prioritize and pursue funding in a rail projects in the future.

(G) Status of 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 Towner Rail Line, which runs from NA Junction to Towner, 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 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 from April 2000 until June 2004.

In 2005 CDOT signed a lease-purchase agreement with Victoria & Southern Railway (V&S) Details of the purchase agreement specify that V&S Railway would operate the line for six years in adherence with State and Federal regulations. The lease specifies that CDOT has the "first right to repurchase" should V&S Railway be unwilling or unable to continue to operate the line post-purchase agreement.

In January 2006, the V&S (operating as 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 train returning the Line to moving grain 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 repaired the Line, and was able to provide full service. The two locomotives used on the line were moved to Mississippi for other V&S operations. V&S has a standing agreement with WATCO, an independent rail operator, to transport freight along the line when required under the VST name.

V&S has indicated it wishes to exercise its right to purchase the line with a purchase date tentatively scheduled for October 4, 2011. At that time, V&S will present CDOT with certified funds of \$9,356,000. This money will be deposited into the State Rail Bank. CDOT is exploring various options on how best to use these if they remain in the Rail Bank. Given the current economic climate, legislation may be proposed to transfer the funds from the Rail Bank to the General Fund.

After the purchase of the Towner Line is complete, if and when V&S chooses to resell or abandon the line, pursuant to statute, V&S must provide written notice to CDOT which holds first right of refusal to repurchase the line, no less than thirty days prior to the commencement of the next following session of the General Assembly.

If V&S chooses not to exercise its right to purchase the line, CDOT will retain its ownership and work with affected stakeholders to determine the best course of action with the State Rail Bank funds.

The Department has made it a priority to administer the purchase of the Towner line or offer the line for lease/purchase if current rights are not exercised. If V&S notifies CDOT of its intent to sell or abandon the line the appropriate steps will be taken in accordance with the legislative intent of 43-1-1307 C.R.S.

Part II New Initiatives and Activities

With the passage of Senate Bill 09-094, a new Division of Transit and Rail 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 established a 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 Division's purpose and role, in support of the transit and rail-related functions of the department.

This section below 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) The State Freight and Passenger Rail Plan

The Federal Railroad Administration awarded a \$400,000 PRIIA grant to CDOT to develop a state rail plan. The grant required a \$400,000 match from CDOT. CDOT has begun work on the State Freight and Passenger Rail Plan and anticipates completion in early 2012. The SFPRP will provide direction on how to integrate passenger and freight rail elements into the larger statewide

multi-modal transportation framework. It will provide important guidance to the new Division of Transit and Rail. The Plan also enables Colorado to be eligible for future high speed rail funds, as states must have a state rail plan in order to qualify for such funds.

(B) 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, the EIS was completed and a Record of Decision was signed by the Federal Transit Administration on October 17, 2008.

The Denver Union Station Project Authority (DUSPA) is the non-profit, public benefit entity formed by the city in July 2008 along with its public partners. DUSPA is responsible for the financing, acquiring, owning, equipping, designing, constructing, renovating, operating and maintaining the Denver Union Station redevelopment project.

Federal loans will constitute approximately 58 percent of all funding sources for the project; under the financing plan, an RTD bond as well as tax increment revenues pledged to DUSPA will be used to repay the debt. The remainder of the project funding comes from the RTD FasTracks tax initiative, SAFETEA-LU, the Senate Bill 1 Strategic Transit Program, and the master developer. RTD will assist with the construction management of the transportation improvements and will own and operate the facilities after the construction period.

The total cost of the project is \$489M. The project now is approximately 46% complete as of July 2011, with an expected completion date of Spring 2014.

(C) Rail Relocation Discussions

CDOT, UP, BNSF and RTD have been discussing possible rail infrastructure relocation and freight line consolidation for a number of 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 the 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 any proposed improvements which would constitute a desirable relocation and consolidation project. 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.

The Public Benefits and Benefits study was concluded in 2005 with findings that demonstrated both the public and private benefits associated with moving through freight service from the Front Range to a new line on the Eastern Plains. Both railroads indicated that they were interested in continuing to work with CDOT and others to implement this project.

In 2007 CDOT began the Rail Relocation Implementation Study (also referred to as the Railroad Relocation for Colorado Communities project—R2C2) using Federal funds.

As part of this process, CDOT began a process of establishing a Citizens Advisory Committee to work with CDOT as further review continued. The public outreach of R2C2 revealed the need for a more detailed evaluation of the benefits and impacts of a new rail line

In May, 2010 CDOT made the decision to suspend the on-going analysis as the Department was establishing the new Division of Transit and Rail and had received a grant from the FRA to conduct a State Freight and Passenger Rail Plan (SFPRP). Pending recommendations of the SFPRP CDOT will be using this plan and prioritize rail projects, including relocations. The intent of the plan will be to prioritize projects by similar objectives as those outlined in SB 37 (see Section A above.)

(D) Colorado Interregional Connectivity Study

CDOT was also awarded FRA funds for conducting an Interregional Connectivity Study. The FRA awarded \$1 million for this study, with a required \$1 million match from CDOT. An additional match of \$500,000 was transferred to the study from the Advanced Guideway System budget (see Section E below) to produce ridership estimates for both studies.

This study is the result of findings from the Rocky Mountain Rail Authority (RMRA) High Speed Rail Feasibility Study, which indicated that good connections in Denver, particularly with RTD's FasTracks rail lines, are crucial to the success of any potential future high speed rail line. The RMRA study indicated that a very limited number of stations should be located in the Denver metropolitan region and that those stations would ideally also serve Regional Transit District (RTD) FasTracks stations. The study also pointed out that alignment choices were limited in the Denver area due to existing rail traffic and an already heavily built environment. The RTD is currently engaged in various stages of planning for the locations of stations and alignments for its FasTracks rail system expansion. This study, the Colorado Interregional Connectivity Study, will examine the feasibility of also using those stations and alignments for HSR, based on available and potential HSR alignments and ridership.

CDOT will partner closely with the RTD in conducting the study and to review preliminary recommendations for High Speed Intercity Passenger Rail (HSIPR) alignments, technologies and station locations in the Denver Metropolitan Region that will maximize ridership for the proposed RTD FasTracks system and future High Speed Rail service. The study should commence in fall of 2011.

(E) Advanced Guideway System Feasibility Study

The I-70 AGS Feasibility Study is a 2011 Statewide FASTER Transit Grant to Region 1 that will be managed by DTR. This study is a result of CDOT's and FHWA's selection of the I-70 Mountain Corridor Preferred Alternative, which specifies that in order to best meet the purpose and need of a transportation improvement program for the Mountain Corridor, a multi-modal solution is needed, including implementation of an Advanced Guideway System (AGS).

The I-70 Mountain Corridor Record of Decision commits CDOT to determine the feasibility of such a system for the Corridor prior to implementation. The detailed alignment, station locations, and technology of the AGS have not been selected, but the technology must meet certain operating characteristics as outlined in the FPEIS. The proposed system will begin at C-470 in Jefferson County and continue west to the vicinity of the Eagle County Regional Airport in Colorado, a distance of approximately 120 miles.

There are currently few, if any, transit systems in the world that meet the operating characteristics defined in the PEIS with the grade, curvature and climate constraints that exist in the I-70 Mountain Corridor. Therefore, a traditional analysis of existing systems and technologies would not answer the critical feasibility questions for the corridor. In addition, the Rocky Mountain Rail Authority Study (RMRA, March 2010) included a technology review and will be used as input for our study effort.

This study will further advancing the development of the project definition and in assessing the feasibility of proposed alignments and technologies along the Corridor. These locations will be recommended based on their ability to provide a cost-effective, safe high-speed transit system that meets the criteria outlined in the FPEIS and to be subsequently defined in collaboration with the manufacturing industry and with stakeholders. The primary consideration of the study will be technology and alignments to determine feasibility of an AGS system for along the I-70 Mountain Corridor. DTR will engage the AGS manufacturing and delivery industry to develop technologies and alignments that can meet the performance characteristics to operate along the Corridor.

The study will review the unique corridor conditions, develop suitable technologies and associated alignments, review and evaluate capital and operating costs, and recommend a project implementation approach, including a business plan approach and operational structures and project financing strategies. This analysis will be coordinated with the Interregional Connectivity Study that will run concurrently and interface directly with this study.

(F) Amtrak Examination of Service through Colorado

Amtrak is engaged in a number of activities in Colorado. Following is a summary:

1. Congress required Amtrak to perform a feasibility study to explore restoration of the Pioneer Line from Denver to Seattle, a service that was abandoned in 1997. Amtrak submitted its study to Congress in October 2009, outlining the feasibility of restoring the Pioneer, or portions of it. The study assessed the ridership, revenue, and mobility

implications resulting from various scheduling options and the associated capital and operating requirements. The study included a projected timeline and estimated costs associated with restoring the service. Amtrak provided opportunities to the state DOTs along the route to submit comments.

The study reached no conclusions about whether the Pioneer Line should be restored. Rather, Amtrak indicated it cannot restore the Line within its current budget, leaving it to Congress to decide whether to provide funding for the Line. It is possible that states along the line would be asked to contribute to the cost of operating the service.

2. The Amtrak station in Trinidad was demolished as part of the rebuilding of the I-25 viaduct through the city. CDOT, Amtrak, South Central Council of Governments, Greyhound and the BNSF Railroad have been working together to replace the station with a multimodal station that will serve both Amtrak and Greyhound riders, as well as local transit riders.

3. Amtrak and the BNSF have expressed concern to the states of Kansas, New Mexico and Colorado about the future of the Amtrak Southwest Chief line, which traverses southern Colorado, including stops in Lamar, La Junta and Trinidad. BNSF traffic has decreased significantly on portions of the line through the three states. If BNSF fails to keep the line up to certain maintenance standards, Amtrak will be unable to maintain its current speeds and keep existing schedules. Amtrak has already had to reduce speeds on portions of the route due to a BNSF directive— adding roughly 30 minutes to Amtrak’s schedule in each direction. Future discussions will be held with the states as to whether any financial assistance can be provided. Thus far the three states have indicated they cannot use existing transportation revenues for rail improvements. Amtrak is also exploring ways that it could make a direct request for federal transportation funds that could be used to improve the track. Amtrak estimates the cost of doing initial construction and maintenance over a 10-year period is \$210 million across the three states.

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 administer the purchase of the Towner line or offer the line for lease/purchase if current rights are not exercised. If V&S notifies CDOT of its intent to sell or abandon the line the appropriate steps will be taken the legislative intent of 43-1-1307.

The **second 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 fourteen years. If this line is abandoned, the State should purchase it to preserve it for freight service in the future.

The **third 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.