

**REPORT TO THE TRANSPORTATION LEGISLATION REVIEW
COMMITTEE ON RAIL ABANDONMENTS
AND THE POTENTIAL FOR RAIL LINE ACQUISITIONS**

**PREPARED BY
THE COLORADO DEPARTMENT OF TRANSPORTATION**



December 2019

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Introduction

The purpose of this report is to provide the Transportation Legislation Review Committee (TLRC) with the Colorado Department of Transportation's (CDOT) report on rail abandonments and recommendations relative to possible rail line acquisitions. This is the 22nd report submitted by the Executive Director of the Department to the TLRC on rail abandonment pursuant to 43-1-1303 (3) C.R.S.

Over the course of the past year, there have been a few notable new actions and/or developments pertaining to rail abandonments or potential rail line acquisitions within Colorado.

As reported in the 2017 and 2018 SB 37 Reports, Union Pacific (UP) Railroad's Burnham Yard in central Denver is considered a high risk for abandonment or sale. The potential opportunities for the yard, adjacent tracks, and surrounding right-of way and property have prompted CDOT to submit a bid to UP to purchase the property. The primary purpose of the acquisition is to enable Central I-25 expansion. This expansion necessitates relocation of the Central Main Line. Additional benefits of this relocation include increased capacity for RTD's light rail lines, future development opportunities for the City of Denver, and preserve right-of-way for future Front Range Passenger Rail.

The Tennessee Pass Line, also owned by UP, is included in this report. UP has not expressed any intentions of abandoning the line, despite the fact that it has not operated freight trains on the line in many years. However, several groups, both private and public, have inquired about utilizing the line for tourist train operations and bicycle trails. UP's Fort Collins Branch remains in this report as well, but no changes in its status have occurred from last year.

South Central Colorado's San Luis & Rio Grande Railroad, owned by Iowa Pacific Holdings, was placed in receivership in September 2019, and an anonymous buyer inquired about potentially purchasing the line. SLRG had struggled in recent years with maintenance and logistical challenges, but another operator could be successful with the proper support. In addition to the tourist train, the short line freight railroad plays a critical role in the region's economy with shipments of agricultural products.

Many of the general rail planning activities, which have appeared in prior reports, are no longer included in this report. Rail planning activities are documented in the 2018 State Freight and Passenger Rail Plan, which was approved by CDOT's Transportation Commission in August, and accepted by the FRA in December 2018.

Part I provides **Background Information** on Colorado's rail system and Legislative and Transportation Commission actions.

Part II describes **Abandonment Activities**, which have occurred over the past year.

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

Part I: Background

(A) Rail System in Colorado

The Colorado rail system currently includes both a freight rail network and a limited passenger rail network. The role of the railroads and rail transportation in the state is to provide efficient and safe transportation choices for the movement of goods and people while connecting effectively to the other transportation modes. The rail system in the state is an interconnected component of much larger regional, national and global multimodal transportation systems and economies.

Currently 14 privately owned freight railroads operate in Colorado. These railroads own more than 2,800 miles of track in the state and currently operate on 2,684 miles of those tracks. This represents about 1.9 percent of the nation's 140,000 miles of network track. The extent of this network is also reflected in the fact that 48 of Colorado's 64 counties are directly served by the freight rail network. There are two Class I railroads in Colorado, BNSF Railway and UP. Combined they operate over 80 percent of the freight track miles and carry the majority of rail freight in the state.

In addition, there are 12 short line railroads in Colorado comprising 20 percent of freight track miles in the state. They primarily provide localized service with connections to the Class I railroads. They principally serve the agricultural industry as well as the oil & gas industry and are very valuable assets to both local and statewide economies.

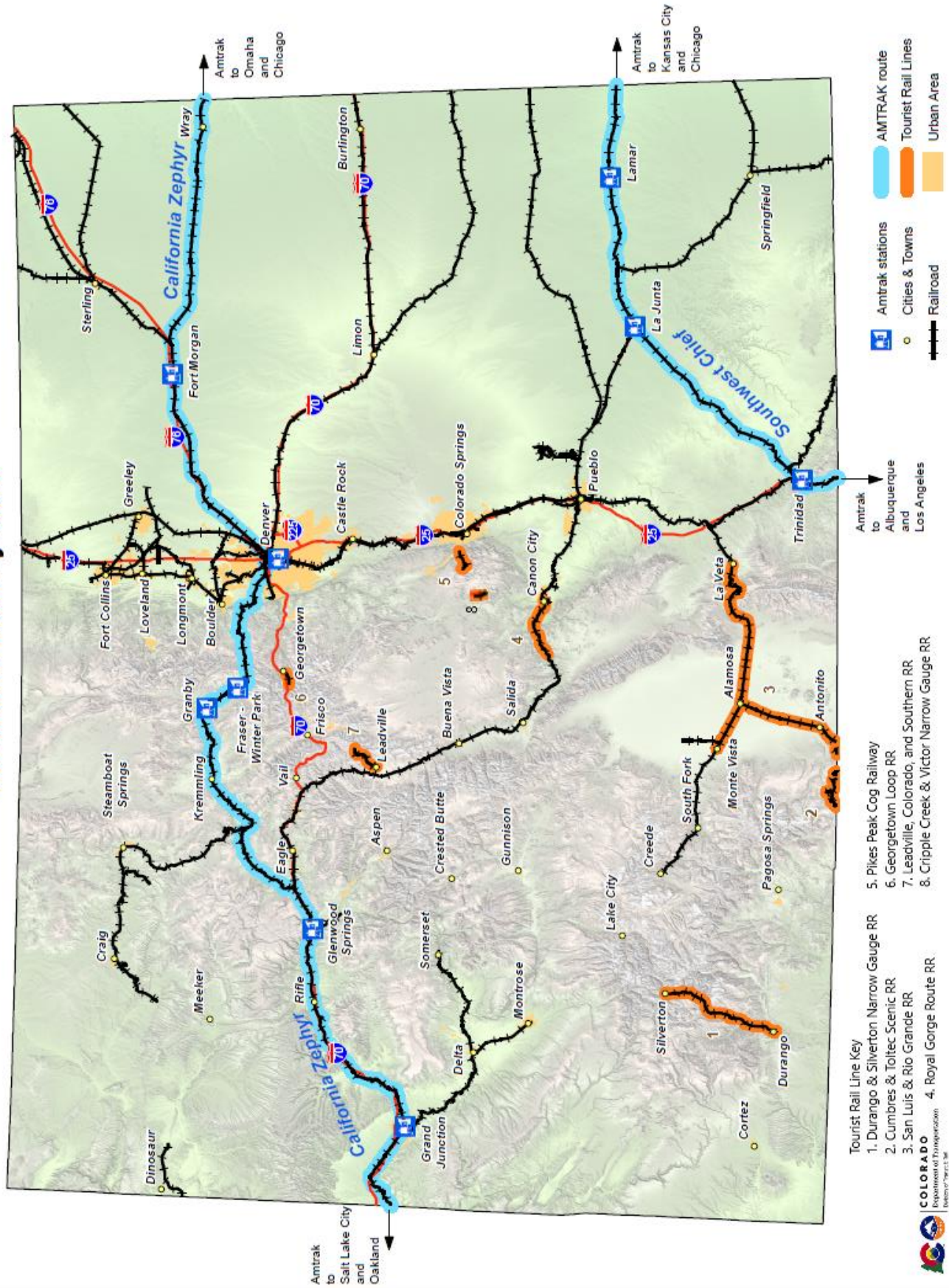
The passenger rail system in Colorado is presently very limited. Outside of the Regional Transportation District's (RTD) light rail and commuter rail lines in the Denver metro area, Amtrak provides passenger rail service with two routes that pass through the state. The Amtrak routes use existing freight tracks and rely on freight railroad infrastructure to be maintained and/or upgraded for efficient service. These two routes are:

- The California Zephyr, which runs daily between Chicago and San Francisco. Colorado stops include Fort Morgan, Denver, Fraser/Winter Park, Granby, Glenwood Springs and Grand Junction. Much of this service operates over Union Pacific track.
- The Southwest Chief runs daily between Chicago and Los Angeles. Colorado stops include Lamar, La Junta and Trinidad. Much of this service operates over BNSF Railway track.

Colorado previously had two additional Amtrak routes that were discontinued in 1997 due to reductions in federal funds. These two trains were the Pioneer, operating between Denver and Seattle and the Desert Wind, operating between Denver and Los Angeles by way of Salt Lake City and Las Vegas.

Colorado has eight tourist railroads, which showcase Colorado's history and offer trips through Colorado's scenic outdoors. These scenic & tourist lines are located in Cripple Creek/Victor, Durango/Silverton, Georgetown, Leadville, Manitou Springs/Colorado Springs, Cañon City, and two near Alamosa. The Pikes Peak Cog Railway closed during the 2018 season due to infrastructure and

Colorado Rail System



equipment concerns. Since then, the Railway has made plans to reconstruct the tracks and station houses, and to replace the aged cars with new ones. The Railway placed their order for new cog cars to be delivered in January 2021, and as of November 2019, removal of the old tracks had been completed, and the date for service resumption was set at May 1, 2021.

(B) Colorado Legislative Actions

1997 SB 37 / CRS 43-1-13-3 CDOT Report to Legislature

In 1997, the General Assembly enacted Senate Bill (SB) 37, concerning the disposition of abandoned freight and passenger railroad rights-of-way in Colorado. According to this legislation and resulting state statute (CRS Title 43, Part 13 – Acquisition of Abandoned Railroad Rights-of-Way, 43-1-1303 rev. 2013), 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, agricultural areas or other locales that may be adversely affected by the loss of rail service or loss of railroad corridor; or
- (4) Any public use of the rail line or railroad right-of-way that is compatible with the 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 Transportation Legislation Review Committee (TLRC) (43-1-1303)(2)). Policy Directive 1607, and the State Freight & Passenger Rail Plan, both described further below, are CDOT Commission and staff-level implementation of the SB 37 legislation.

43-1-1308 C.R.S., states, “the members of the 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(3) 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.”

2017 SB 17-153 / CRS 43-4-1001 Southwest Chief and Front Range Passenger Rail Commission

On May 22, 2017, Governor Hickenlooper signed into law, this replacement and expansion of the former Southwest Chief Commission. In addition to CRS 43-4-1001, the bill amended sections of law pertaining to the relationship of this Commission with CDOT. See 24-1-128.7 8(a) and 8(b).

The original five voting members are appointed by the governor (see 1-5) and six additional voting members were added (see 6-11), appointed by their organizations. Three non-voting members are retained (see 12-14).

1. Public rail transportation advocate
2. Public rail transportation advocate [more general description replaced one previously targeting tourism representative]
3. Representative of Class I Freight Railroads (i.e. BNSF Railway)
4. Representative of Class I Freight Railroads (i.e. Union Pacific Railroad)
5. Resident of Huerfano, Las Animas, Otero, Prowers, or Pueblo County
6. Representative of North Front Range Metropolitan Planning Organization (NFRMPO)
7. Representative of Denver Regional Council of Governments (DRCOG)
8. Representative of Pikes Peak Area Council of Governments (PPACG)
9. Representative of Pueblo Area Council of Governments (PACOG)
10. Representative of South Central Council of Governments (SCCOG)
11. Representative of the Regional Transportation District (RTD)
12. Representative of Amtrak (non-voting)
13. Representative of Colorado Department of Transportation (CDOT) (non-voting)
14. Representative of the Greater Cheyenne Chamber of Commerce (non-voting)

The Commission created two new positions to represent their interests to be housed with the Division of Transit and Rail at CDOT Headquarters, a Project Director and a Commission Liaison.

This Commission has a two-part responsibility:

1. Assume and complete the mission of the Southwest Chief Rail Line Economic Development, Rural Tourism, and Infrastructure Repair & Maintenance Commission, as it existed prior to July 1, 2017, by continuing to coordinate and oversee efforts by the State and local governments and cooperate with the states of Kansas and New Mexico, Amtrak, and the BNSF Railway to ensure that the track repairs and upgrades required for the continuation of existing Southwest Chief Rail Service in Colorado are completed, that such service is extended to Pueblo, and that benefits of extending such service to Walsenburg are fully explored; AND
2. Facilitate the future of Front Range Passenger Rail and, in so doing, to specifically develop draft legislation to facilitate the development of a Front Range passenger rail system that provides passenger rail service in and along the Interstate 25 corridor and that is a well-integrated component of a modern, efficient, and cost-effective multimodal transportation system.

(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 first approved a **Rail Corridor Preservation Policy, also known as Policy Directive 1607**. The policy directive was updated, and approved by the CDOT Transportation Commission in August 2014. The updated policy directive states the reasons why rail transportation is important to Colorado. (See Attachment A.)

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.

In August 2018, the Transportation Commission approved the updated Colorado State Freight and Passenger Rail Plan. The Plan serves as a framework for future freight and passenger rail planning in Colorado. The plan was approved by FRA in December 2018. It contains the most recent information concerning the forecast growth of freight and passenger rail operations and includes an updated short-term (4-year) investment plan, and a long-term (20-year) investment vision. The Rail Plan identifies the State's priority strategies and actions to implement them.

Part II: Abandonment Activity “Watch List”

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 BNSF Railway (BNSF), 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 (i.e. pavement surface condition and/or traffic volumes) of the local roadways and/or state highways. In addition, some businesses cannot survive without access to a rail line, thereby causing these businesses either to relocate to another area in the state or to move out of state, resulting in negative economic impacts, locally or statewide. In addition, 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.

Burnham Yard (UP)

In November 2015, Union Pacific (UP) made the decision to close the Burnham Shop repair yard in central Denver due to a decline in coal shipments and a desire to consolidate maintenance activities. Union Pacific plans to prepare the 70-acre locomotive repair yard, located east of Interstate 25 between West Sixth and West Eighth Avenues, for sale. There are about two dozen buildings on the site, which is currently zoned for industrial use. The site is approximately 4,700 feet long on the longest side by 800 feet wide at the widest point.

Interstate 25 in the area between US-6 and Alameda Avenue has been identified by both the Valley Highway Environmental Impact Statement (Valley Highway EIS) and the I-25 Central Planning and Environmental Linkages (PEL) Study as having a need for both capacity addition and geometric changes to correct short weaves and merges. These improvements, however, are significantly constrained by the Consolidated Main Line (CML) which bounds the freeway on the east, and the South Platte River which bounds to the west.

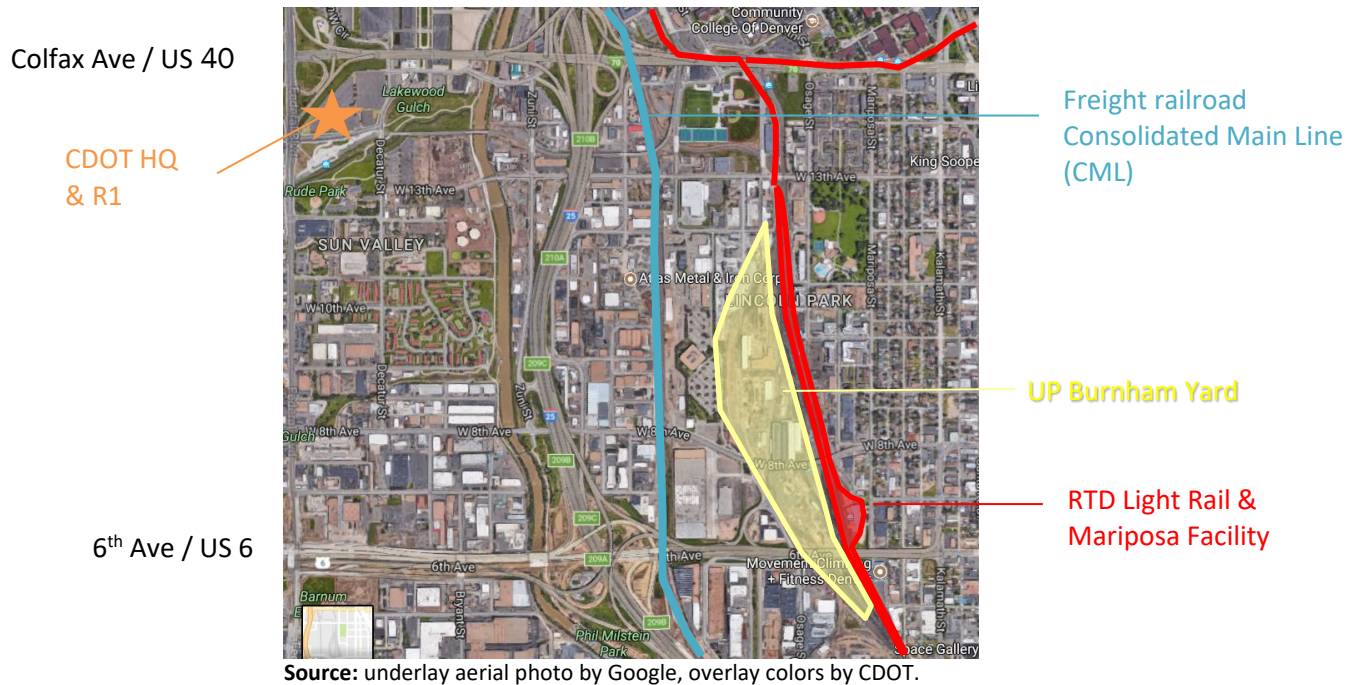
The Burnham Yard site provides an opportunity to realign the CML away from I-25 and into the former yard site, freeing up right-of-way and providing opportunity to secure additional right-of-way for future rail projects of both RTD and potential Front Range Passenger Rail. CDOT Region 1 and the High Performance Transportation Enterprise (HPTE) are currently in negotiations to purchase the property from the Union Pacific, and as of the writing of this report, the negotiations are ongoing.

The most important CDOT facilities in the vicinity are Colfax (US 40 Business) to the north, I-25 to the west, Santa Fe and Kalamath Streets to the southeast (south of I-25 it is US 85), and 6th Avenue to the southwest (US 6 begins at I-25 and continues west). CDOT's interest relates to I-25 between Alameda and 6th Avenue, which is constrained by the South Platte River on one side, and the Consolidated Main Line (CML) on the other. According to the Central I-25 Planning and Environmental Linkage (PEL) Study, CDOT plans to expand I-25 in this section. As a result, CDOT plans to purchase the Yard from UP in order to relocate the CML and industrial businesses nearby to accommodate the eastward expansion of I-25.

The relevance to CDOT's public sector partners of this site are as follows:

- For RTD, it is of importance to the ability of RTD to expand light rail operations. To expand service for both central downtown and Denver Union Station destinations, RTD needs quadruple tracks in this area. Although RTD does not need the entire Burnham Yard site, it would benefit from a right-of-way purchase west of, and along the existing light rail and Mariposa facility site. In its 2019 board-approved budget, RTD set aside \$6.87 million to purchase a 40-foot section of the Burnham Yard property adjacent to the RTD right-of-way between 4th Avenue and 13th Avenue, allowing for the addition of a third and fourth track in the Central Corridor.
- Private railways also stand to gain from a relocation of the CML, which would eliminate major at-grade crossings over Kalamath and Santa Fe Streets. The elimination of these crossing would also improve traffic flow and safety for drivers using those streets, which are major commuter routes into and out of Downtown Denver.
- For intercity / Front Range commuter rail purposes, a 40 to 60-foot right of way purchase west of, and along existing RTD light rail and Mariposa facilities would be required for safety separation from through-freight trains. This would be in addition to the RTD need. CDOT's Interregional Connectivity Study (ICS), the high-speed rail study, makes note of this.
- For intercity / Front Range commuter rail purposes, the whole site could potentially be acquired as the maintenance and storage facility for trains overnight.
- It is also of importance because it could potentially relieve freight train stoppages through the commercial & residential properties in Lower Downtown Denver. Freight rail shipments "stage" or hold trains in or near downtown to sequence the movements of trains south of Denver, over Monument Pass / Palmer Divide.

Burnham Yard and Surrounding Area



Next Steps

- CDOT Region 1 and HPTE are currently in negotiations with UP to purchase the Burnham Yard; therefore, CDOT will be closely monitoring the abandonment and potential purchase. The State Legislature will be notified if further action is needed before the next annual report on abandonments (before Fall 2020).
- CDOT Region 1 is in the process of concluding the I-25 Central Planning and Environmental Linkages (PEL) Study of I-25 between 20th Street and Santa Fe Drive. This six-mile segment is the busiest and most congested freeway in the State, and represents the primary north-south conduit for travel north and south through and around the downtown urban core. I-25 in this area provides access to major league sports stadiums, provides commuter connections between homes and places of employment, centers of commerce and transit of goods and services across the region.
 - The PEL has completed a detailed corridor assessment, including traffic modeling and analysis, evaluation of existing conditions, conceptual design, stakeholder engagement and involvement and has reached the following conclusions:
 - Managed lanes are recommended for further analysis for capacity addition due to congestion and travel time reliability benefits,
 - Collector/Distributor roads and braided ramp systems are recommended as operational improvements due to safety and turbulence reduction benefit
 - Smaller local or early-action projects may also be necessary to correct some issues at low cost, and can provide improvements to corridor permeability without precluding future projects.

Tennessee Pass Line (UP)

The Tennessee Pass line runs 178 miles from near Gypsum, through Eagle, Edwards, Avon, and Minturn, under Tennessee Pass (by tunnel) and along the Arkansas River via Leadville, Buena Vista, Salida, and Cañon City 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 existing trans-mountain alternative in Colorado to the Moffat Tunnel line, which often runs near capacity. The Tennessee Pass Line may serve 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.

The Royal Gorge Route Railroad currently offers scenic, tourist rail trips on 12 miles of the Tennessee Pass Line west of Cañon City. CDOT often receives inquiries from parties interested in operating commuter and/or tourist operations on the line. Additionally, the line is considered desirable by bicyclists as a rail-to-trail corridor and was identified as one of 16 priority trails by Governor Hickenlooper in 2016. The Department of Natural Resources has also been working to make use of the Line's right-of-way by "railbanking" which would allow interim use of the property for biking while preserving the right-of-way for future resumed rail use. Any arrangements by UP to resume freight service on the line would preclude other uses such as railbanking. Although no freight has been shipped across the full Tennessee Pass Line since 1996, recent conversations with the UP indicate that they do not intend to abandon this line in the near future. UP also indicated that they have received several purchase offers for the line, but that no decisions have been made at this time.

Fort Collins Branch Line (UP)

The Fort Collins Branch line is a line that runs southeast from Fort Collins to Milliken and Dent, then east to La Salle. It is identified as a Rail Corridor of State Significance since it connects Greeley and Fort Collins to the North I-25 corridor, and was identified as part of the preferred alternative in the North Front Range Transportation Alternatives Feasibility Study (NFRТАFS, March 2000). This line does not appear to be at risk of abandonment at this time. However, it should be noted this branch line was not included in the Preferred Alternative of the North I-25 Environmental Impact Statement (December 2011). 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 Line. Recent conversations with the UP indicate that they do not intend to abandon this line in the near future. CDOT will continue to monitor activities on this rail line but it will not be considered a potential line for acquisition until such time as conditions may warrant.

San Luis & Rio Grande Railroad (Iowa Pacific)

The San Luis & Rio Grande Railroad (SLRG) runs west from a connection with the Union Pacific Railroad at Walsenburg, Colorado, over the Sangre de Cristo Mountains at La Veta Pass and into the San Luis Valley. At Alamosa, the railroad splits with a branch extending south to Antonito, Colorado just north of the New Mexico border, and northwest to South Fork. SLRG owns approximately 150 route miles of track, 126 miles of which are currently operated. The SLRG also operates passenger scenic service from

May through October over La Veta Pass, through the San Luis Valley. Scenic passenger service has been offered by the Rio Grande Scenic Railroad (RGSR) since 2006.

In September 2019, SLRG was placed in receivership, which is an alternative to bankruptcy during which SLRG will continue operating. Soon thereafter, an anonymous buyer proposed a purchase of the line, which SLRG believed meant that it would continue operation into the future. Leading up to receivership, SLRG had struggled with rising maintenance needs and logistics difficulties with access to the national rail network.

Southwest Chief

Amtrak's long distance route, the Southwest Chief, is included in this 2019 SB37 report because there are still 48 miles of track on the Raton Pass Line (which Amtrak uses for this route) in need of replacement in order to complete the project. In 2017, the Commission submitted an application for TIGER IX funding, with Colfax County, New Mexico as the lead. The TIGER IX award for the Amtrak Southwest Chief Stabilization Project will continue work along the route. Grant funds requested were \$17.5 million to be matched with \$9.2 million in funding from the state of New Mexico, Colorado and Kansas; local communities and organizations along the route; and financial support from BNSF and Amtrak. Federal grant funding awarded to this project under TIGER IX totaled \$16 million, with a total project cost estimated at \$26.7 million. To date, the TIGER IX Grant has not been obligated due to ongoing negotiations with Amtrak, but CDOT is hopeful that obligation could move forward in Spring 2020. In late 2018, additional funding was secured under FRA's CRISI grant program to install Positive Train Control (PTC) on tracks from Dodge City, Kansas, to Las Animas, Colorado. The Commission and CDOT have also applied for additional grant funding to continue necessary improvements to the Raton Pass Line that would support continued operations of Amtrak's Southwest Chief for years to come.

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.

The Department is recommending the following actions as noted below:

Abandonment/Acquisition Recommendations

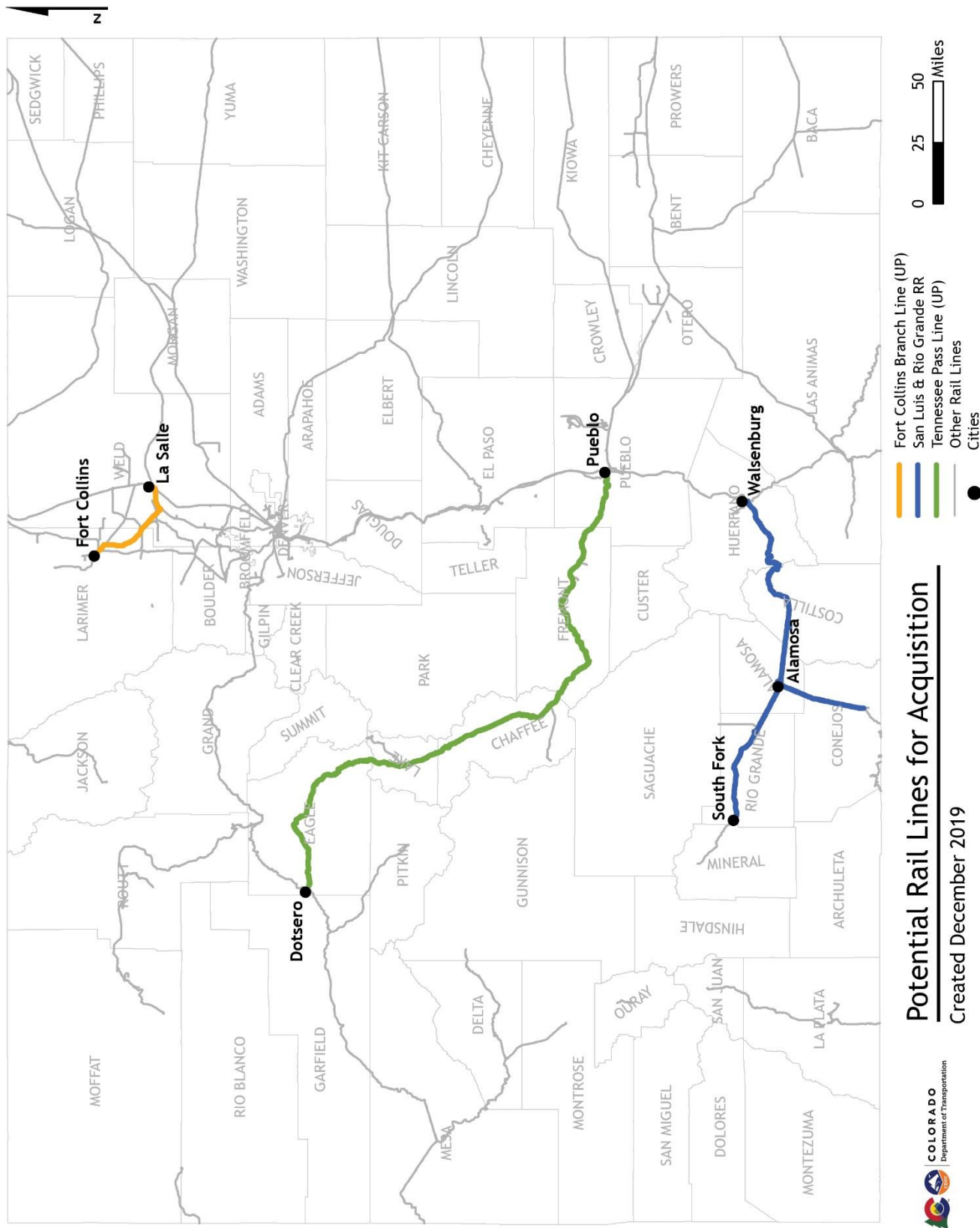
As CDOT works to procure the Burnham Yard in central Denver CDOT will continue to monitor its status and any projects CDOT begins in the property, including the potential shifting of freight railroad operations to the east, which would allow for eventual widening of Central I-25, as recommended by CDOT Region 1 analyses. Because the site may also provide an opportunity for future Front Range Passenger Rail operations, it will be considered in the Service Development Plan.

In addition, the Department of Transportation is recommending continued monitoring of activities on the Tennessee Pass and the Fort Collins Branch Lines. While there is no indication that the UP will abandon these lines in the near future, the Tennessee Pass Line has not been used for freight movements in over 15 years and interest has been expressed for other uses, such as passenger train service and a bicycle trail. *If either of these lines is abandoned the State should consider purchasing them to preserve them for freight and/or passenger service in the future.*

The San Luis & Rio Grande Railroad is considered to be at high risk of abandonment or sale at the current time. The Department of Transportation will continue to monitor this railroad as it continues to move through the process of receivership and potentially is bought by another operator. *Should a sale of the Railroad take place, the State should reach out to the new owner and explore ways to support them to improve the state of good repair and ensure future success on the line.*

Maintenance Recommendations

The Southwest Chief and Front Range Passenger Rail Commission should continue to pursue additional funding (e.g., TIGER/CRISI grants) to finance necessary repairs on the Raton Pass Line. It is estimated that the line will require further investment of \$41 million on 48 miles of track within the next 5 years in order to maintain adequate track quality, sufficient speeds, and continued operational reliability. The Commission has made great strides in pursuing and securing funding toward this project, but full funding for the project is far from complete. It is critical that the Commission continue negotiations with Amtrak as it evaluates its long-distance routes.



Part IV: Attachments

Policy Directive 1607 on Rail Corridor Preservation Policy

US District Court for the Northern District of Illinois, Case No.: 19-cv-06029, “Order Appointing Receiver”
on San Luis & Rio Grande Railroad and Iowa Pacific, LLC



COLORADO

Department of Transportation

Office of Policy and Government Relations

4201 E. Arkansas, Room 275
Denver, CO 80222

RELEASE MEMO

To: All CDOT Employees

From: Herman Stockinger / Mark Imhoff / Debra Perkins-Smith *AS*

Re: Updated Policy Directive 1607.0 "Rail Corridor Preservation Policy"

Date: August 22, 2014

-
1. Name of Policy Directive: 1607.0 "Rail Corridor Preservation Policy"
 2. Date of PD this Directive Supersedes: June 30, 2000
 3. Executive Summary: This updated Policy Directive provides identifying criteria to be used in identifying passenger and/or freight rail corridors of State interest and describes the respective activities in which CDOT may engage regarding the preservation or abandonment of rail corridors. It provides transparency to external public and private partners and guidance to internal staff implementing its terms.
 4. Office to Contact with Questions: Division of Transit and Rail
 5. Procedural Directive will be Implemented by: Division of Transit and Rail and Division of Transportation Development
 6. Effective Date: August 22, 2014



COLORADO DEPARTMENT OF TRANSPORTATION		<input checked="checked" type="checkbox"/> POLICY DIRECTIVE <input type="checkbox"/> PROCEDURAL DIRECTIVE
Subject Rail Corridor Preservation Policy		Number 1607.0
Effective 8.22.14	Supersedes 6.30.2000	Originating Offices Division of Transportation Development and Division of Transit & Rail

I. PURPOSE

The purpose of this Policy Directive is to provide a framework for determining under what conditions CDOT will participate in passenger and/or freight rail transportation by identifying criteria to be used in defining passenger and/or freight rail corridors of State interest and describing passenger and/or freight rail activities in which CDOT may engage.

II. AUTHORITY

Transportation Commission pursuant to § 43-1-106(8)(a), C.R.S.

§ 43-1-104, C.R.S., (authority and responsibilities of Division of Transit & Rail)

§ 43-1-1301, *et seq.* C.R.S., (providing authority to CDOT to acquire abandoned rail rights-of-way)

III. APPLICABILITY

This Policy Directive applies to all Divisions and Regions of the Colorado Department of Transportation.

IV. POLICY

A. The Colorado Department of Transportation shall participate in passenger and/or freight rail transportation in a manner consistent with its legal authority, when such participation serves to advance statewide transportation or economic interests, which include but are not limited to:

1. Preserving rail corridors for future passenger and/or freight rail use where the state can avoid the purchase of an equivalent corridor in the future.
2. Passenger and/or freight rail transportation may be needed in certain corridors to supplement the highway system and to provide adequate mobility, market access and travel capacity.
3. Passenger and/or freight rail transportation can be demonstrated to be a cost-effective and/or environmentally preferable mode of transportation of significance to communities.

Subject	Number
Rail Corridor Preservation Policy	1607.0

4. Preserving and/or enhancing existing freight rail service to reduce the state highway maintenance costs, and to avoid the transportation of displaced rail freight which may increase deterioration of the state highway system.

B. CDOT identifies state significant rail corridors in the State Freight & Passenger Rail Plan and the Statewide Long Range Transportation Plan. The following criteria shall be used to identify those corridors:

1. Existing or potential future demand for passenger/freight rail services.

a) Corridor significance can be presumed in the corridor if it is recommended in an adopted alternative analysis/feasibility study, planning & environmental linkage (PEL) study or similar study.

b) Corridor significance can be presumed if the rail corridor is within, adjacent or parallel to a transportation corridor identified in the Statewide Long Range Transportation Plan as needing significant capacity improvements.

c) Designation of a corridor for freight rail purposes should only be considered when freight rail is necessary for the economic health of a community, area or region. This is determined based on the following factors:

(1) When there are no other reasonable modes of transport that can economically serve the needs of the community; or

(2) When abandonment of freight service in a corridor significantly impacts a parallel state facility.

d) If the rail corridor has present/future use as a significant statewide or national freight corridor.

2. Local and regional support for corridor preservation.

a) Public support may be measured in terms of adopted land use plans supportive of rail transit or freight rail, local transportation and financial commitments.

b) Private support may be measured in terms of committed resources, personnel or other economic development strategies.

C. If a corridor is identified as a state significant rail corridor, CDOT shall, where feasible and prudent, design and construct roads and related structures to preserve right-of-way sufficient to accommodate future passenger / freight rail service.

1. In addition, if a corridor is identified as a state significant rail corridor, CDOT may engage in, but is not restricted to, preserving rail right-of-way through:

a) Purchase: CDOT may allocate funds to purchase currently operating, embargoed railroad rights-of-way, rail lines identified/proposed for abandonment, or newly designated rail corridors for rail.

b) Purchase/Lease Back: CDOT may purchase right-of-way/track and sell or lease back to another entity to operate in the corridor.

c) Coordination with Railroad Companies: Engage private railroad companies in partnership to ensure that private railroad improvements in state significant rail corridors accommodate reasonably anticipated future transportation activities that serve the state transportation interests.

d) Cost Sharing: CDOT may share the cost of reserving railroad right-of-way for future transportation improvements with other private or public entities.

D. If a corridor is not identified as a rail corridor of state significance, but is identified in an adopted regional plan, the state may:

1. Cost Share: Share the cost of reserving right-of-way for future transportation improvements with other private or public entities.

2. Incorporate future rail into highway design and construction: Where feasible and prudent, design and construct roads and related structures to preserve right-of-way sufficient to accommodate future passenger / freight rail service.

E. The following criteria should be considered when prioritizing the above activities for funding:

1. Magnitude of impacts upon adjacent highways. An estimate of the increased or decreased maintenance and reconstruction cost implications of diverting rail freight to truck transport on parallel state highway corridors should be evaluated considering present and future needs.

2. Immediacy of the possible abandonment of an existing rail line that may result in subsequent private/public activity encroaching on the existing or future rail right-of-way. An estimate should be made to determine how soon actions may occur by public or private developers or railroads that are likely to jeopardize an existing or future rail corridor.
 3. The estimated price and cost-effectiveness of acquiring an existing or future corridor or preserving the option to implement rail service in an existing corridor.
 4. Public-Private Partnership (PPP or P3). The opportunity for participation in a public-private partnership that is beneficial to the traveling or freight-shipping public.
- F. Any financial commitment to purchase rail corridors shall be subject to such rail corridors being identified, justified and included in the State Freight and Passenger Rail Plan and the Statewide Long Range Transportation Plan. Such rail corridors shall be considered for acquisition consistent with § 43-1-1301 *et seq.*, C.R.S. Rail corridors shall be acquired only after specific budgetary action has been approved pursuant to Policy Directive 703.0.

V. IMPLEMENTATION PLAN

1. This policy shall be implemented jointly by the Division of Transit and Rail and the Division of Transportation Development.
2. DTD and DTR shall ensure that all employees who will be referencing this Directive shall be made aware of its revisions, including but not limited to all DTR staff, DTD Multimodal Planning Branch Mobility Unit staff, Region Planners, Safety & Traffic Engineering (Section 130 Program), Regional Transportation Directors, and the Senior Management Team.

VI. REVIEW DATE

This Policy Directive shall be reviewed on or before June 2019.

Norman J. Stocking III
Secretary, Transportation Commission

8-22-14
Date

Resolution # TC-3182

Adoption of Policy Directive 1607.0 "Rail Corridor Preservation Policy"

WHEREAS, pursuant to § 43-1-106(8)(a), C.R.S., the Colorado Transportation Commission is charged with formulating general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the state; and

WHEREAS, the Transportation Commission approved Policy Directive 1607.0 on June 30, 2000; and

WHEREAS, the Rail Corridor Preservation Policy Directive provides identifying criteria to be used in defining passenger and/or freight rail corridors of State interest and describes passenger and/or freight rail activities in which CDOT may engage; and

WHEREAS, as part of the Department's initiative to update older Policies and Procedural Directives, the Division of Transit and Rail ("DTR") and the Division of Transportation Development ("DTD") have collaborated to update Policy Directive 1607.0; and

WHEREAS, the revisions to the Policy Directive, while minor, reflect the ongoing commitment of the Department to work with external public and private stakeholders and execute a transparent process based on defined criteria for abandonment or preservation; and

WHEREAS, Policy Directive 1607.0 provides value to both Department staff and external partners regarding rail preservation for the implementation of the State Freight and Passenger Rail Plan and guidance for the Statewide Long Range Transportation Plan.

NOW THEREFORE BE IT RESOLVED, the Commission herein approves updated Policy Directive 1607.0 "Rail Corridor Preservation Policy"

Norman J. Stockinger III
Transportation Secretary

8-22-14
Date

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

Big Shoulders Capital LLC
an Illinois limited liability company

Plaintiff,

v.

Case No.: 19-cv-06029

San Luis & Rio Grande Railroad, Inc.,
a Delaware corporation, and

Mt. Hood Railroad Company,
an Oregon corporation,

Defendants.

ORDER APPOINTING RECEIVER

This matter, coming before the Court on the *Motion to Appoint Receiver* filed by Big Shoulders Capital LLC (“Plaintiff”) on September 9, 2019 (the “Motion”):

THE COURT HEREBY FINDS AS FOLLOWS:

(A) Plaintiff filed its Complaint, asserting claims against San Luis & Rio Grande Railroad, Inc. (“San Luis”) and Mt. Hood Railroad Company (“Mt. Hood” and collectively with San Luis, the “Defendants”) for breach of Defendants’ obligations under the Loan Documents.¹ In particular, Plaintiff alleges that Defendants have defaulted on various repayment and other obligations related to loans and other financial accommodations provided by Plaintiff to Defendants pursuant to the Loan Documents.

(B) Plaintiff requests appointment of a receiver in the above-captioned action.

(C) Good cause has been shown for the appointment of a receiver. Among other things, (i) Defendants currently consent to the appointment of a receiver pursuant to the terms

¹ Each capitalized term used herein shall have the meaning ascribed to such term in the Motion, unless otherwise so stated.

and conditions contained in this Order and previously agreed to the appointment of a receiver in any action initiated by Plaintiff pursuant to the Loan Documents; (ii) Plaintiff lacks other good and sufficient security from Defendants to further secure the Indebtedness owing under the Loan Documents; (iii) Defendants are in default under the Loan Documents, and there is no cure of said default in prospect; (iv) Plaintiff has a vested interest in the efficient operation of the businesses of Defendants, so as to manage, protect and preserve the Collateral; (v) Defendants lack sufficient funding to maintain the Collateral, and Plaintiff is legitimately concerned that the Collateral has been, is, and will continue to be consumed, used, and/or dissipated absent the appointment of a receiver; and (vi) Plaintiff has no adequate remedy at law and requires equitable relief to ensure that its interest in the Collateral is preserved and protected.

(D) Plaintiff has requested that Novo Advisors (“Novo”) be appointed as receiver in the above-captioned action.

(E) Pursuant to Rule 66 of the Federal Rules of Civil Procedure (the “Federal Rules”) and Rule 66.1 of the Local Rules for the United States District Court, Northern District of Illinois (the “Local Rules”), this Court is empowered to appoint a receiver under the circumstances existing in this case.

(F) The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332 because the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and the parties hereto are of diverse citizenship.

(G) Proper and adequate notice of the hearing on the Motion was given to Defendants.

(H) The appointment of a receiver is not intended to be, nor shall it be, an election of remedies by Plaintiff, and Plaintiff expressly reserves all of its rights and remedies against

Defendants and the Collateral under the Loan Documents and applicable law with respect to the indebtedness and obligations owed by Defendants to Plaintiff.

THE COURT HEREBY ORDERS AS FOLLOWS:

1. The Motion is GRANTED, as provided in this Order.
2. Effective as of the date of entry of this Order (the “Effective Date”), Novo is hereby appointed as the receiver over Defendants. In its capacity as receiver, Novo is hereinafter referred to as the “Receiver”; this receivership proceeding is hereinafter referred to as the “Receivership”; and the estate created in the Receivership is hereinafter referred to as the “Receivership Estate.”
3. On the Effective Date, Receiver is authorized to: (i) take possession, custody and control of the Receivership Assets, subject to all existing liens, claims, and encumbrances; and (ii) perform all acts reasonable and necessary to manage, protect, and preserve the Receivership Assets, without further order of the Court. As used in this Order, (a) “Assets” means any legal, equitable or beneficial interest in, right to, or claim to any real and personal property, including, without limitation, funds, vehicles, boats, certificates of title, accounts with any Financial Institution (defined below), chattels, choses in action, chattel paper, claims, causes of action against other persons or entities, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, membership interests in any limited liability company, partnership interests, inheritances, options, contractual rights, interests in any trust, art, collectibles, furnishings, jewelry, personal effects and all cash or money, wherever located, and (b) “Receivership Assets” means Assets of any and every kind whatsoever that are (i) owned, controlled or held by or for the benefit of any Defendant, in whole or in part; (ii) in the actual or constructive possession of any Defendant, or other individual or entity acting in concert with any

Defendant; (iii) held by an agent of any Defendant, including as a retainer for the agent's provision of services; or (iv) owned, controlled or held by, or in the actual or constructive possession of, or otherwise held for the benefit of, any entity directly or indirectly owned or controlled in whole or in part by any Defendant, including Assets that have been transferred to another person or entity but as to which Assets such person or entity does not have a legitimate claim.

4. Without limiting the foregoing, on the Effective Date, Receiver is authorized (but not obligated) to do any of the following acts:

- (i) take immediate possession, custody, and control of the Receivership Assets and all books and records relating to the Receivership Assets, wherever located;
- (ii) take all steps necessary or reasonable to secure all premises owned, rented, leased, or otherwise controlled by Defendants, which steps may include but are not limited to any of the following as Receiver deems necessary or advisable: (a) photographing and videotaping any or all portions of the premises; (b) securing the premises by changing the locks and disconnecting any computer modems or other means of access to the computer or other records maintained at the premises; (c) requiring any persons present on the premises at the time this Order is entered to leave the premises, to provide Receiver with proof of identification, or to demonstrate to the satisfaction of Receiver that such persons are not removing from the premises any Receivership Assets; and (d) employing the assistance of law enforcement officers as Receiver deems necessary to implement the provisions of this Order;
- (iii) supplant any rights or powers of Defendants to hold and manage the Receivership Assets;
- (iv) retain and pay professionals (e.g. counsel, investment bankers, accountants, appraisers, financial advisors, property managers, real estate brokers, auctioneers, etc.) ("Professionals") to advise and assist Receiver with management, operation, or disposition of the Receivership Assets and to protect and preserve the interest and rights of Receiver in fulfilling its duties hereunder, including, without limitation, Professionals that are currently or have previously been engaged by Defendants;
- (v) collect, receive, sue for, and compromise all accounts receivable, earnings, rents, issues, income, profits, and other revenues and contractual claims that constitute or relate to the Receivership Assets (the "Revenues") now due and unpaid and that become due during the Receivership;

- (vi) take and have complete and exclusive control over Defendants' bank accounts (and all balances and funds therein), and, at the election of Receiver, maintain and utilize Defendants' deposit accounts (which shall be used exclusively for deposits and disbursements of the Revenues and funds of the Receivership Estate) or to open one or more new deposit accounts and direct payors to deposit funds due and owing to Defendants in such deposit accounts;
- (vii) obtain any and all financial records, statements, and other documents pertaining to Defendants from any bank, credit union, savings and loan association, insurance company, or other financial institution (collectively, the "Financial Institutions") (and all Financial Institutions are hereby directed to deliver to Receiver all such financial records, statements, and other documents pertaining to Defendant as requested by Receiver);
- (viii) market, sell or otherwise dispose of the Receivership Assets, in its entirety or in one or more parcels (each, a "Disposition"), in each case free and clear of all mortgages, security interests, conditional sale or other title-retention agreements, pledges, liens, claims, judgments, demands, unrecorded easements, charges, encumbrances, defects, options, rights of first refusal, rights of reclamation, and restrictions of any kind (collectively, "Interests"). All such Interests shall attach to the proceeds of a Disposition in the same priority, extent and amount as such Interests attached to the Receivership Assets. The proceeds of any Disposition shall be disbursed by Receiver in accordance with this Order and further orders of the Court;
- (ix) file voluntary bankruptcy petitions on behalf of any of the Defendants;
- (x) initiate any litigation and/or defend, manage, dispose of, or compromise any legal action, claim, lawsuit, or other proceeding to which Defendants are currently, or may become in the future, a party, whether as plaintiff, defendant, cross-plaintiff or cross-defendant, counterclaimant, third-party plaintiff, third-party defendant, claimant, intervenor, or other capacity;
- (xi) continue utilizing the services of any or all of Defendants' personnel (who shall be subject to Receiver's oversight and authority and shall be answerable solely to Receiver in order to conduct the day-to-day operations of Defendants);
- (xii) assume control over, operate, and/or wind down the business of Defendants in such manner, to such extent, and for such duration as Receiver may deem necessary or appropriate, if at all, and pursue and preserve all of Defendants' claims or interests as Receiver deems to be in the best interest of the Receivership Estate in Receiver's business judgment;
- (xiii) enter into and reject contracts and leases;
- (xiv) hire and terminate any director, officer, employee, independent contractor, or agent of Defendants, and to adjust the salaries or compensation of any such persons, all in Receiver's discretion;

- (xv) take possession of (and the U.S. Postal Service and all courier or delivery services are hereby directed to release to Receiver or its designees) all mail or packages addressed to Defendants at any of Defendants' locations or post office boxes and to open and inspect all such mail and packages to determine whether any items or information contained therein fall within the mandates of this Order;
- (xvi) borrow funds on behalf of Defendants as described in this Order;
- (xvii) take any action necessary to ensure that all licenses and permits required under federal, state, or local law to operate Defendants' businesses are maintained;
- (xviii) pursuant to 28 U.S.C. §754, within ten (10) days after the Effective Date, file a copy of the Complaint and this Order in each district where any of the Receivership Assets is located;
- (xix) request any supplement or amendment of this Order as may be advisable or appropriate to further the purposes of the Receivership; and
- (xx) take all other actions as may be deemed advisable or appropriate to carry out the duties, powers, and authorizations granted to Receiver or to maximize the value of the Receivership Assets.

5. On the Effective Date, Defendants (and, where applicable, Defendants' officers, shareholders, directors, partners, assigns, agents, servants, employees, accountants, and attorneys), all persons and entities claiming by or through Defendants, and all other persons and entities:

- (i) shall surrender possession of all of the Receivership Assets to Receiver, of whatever nature and wherever located, whether such Receivership Assets are in the possession of Defendants or any affiliate of Defendants, or any of their officers, directors, partners, shareholders, representatives, professionals, employees, or agents, or any other person or entity, and all of such Receivership Assets shall be, on the Effective Date, placed in custodia legis of the Court;
- (ii) except by leave of the Court, shall be enjoined, restrained, stayed, and prohibited from (a) commencing, prosecuting, continuing or enforcing any suit or proceeding against or affecting Defendants or any part of the Receivership Assets, except that such actions may be filed to toll any statutes of limitations, (b) using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any portion of the Receivership Assets, including, without limitation, any property owned by or in the possession of Defendants or Receiver, wherever situated, (c) attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate the

obligations of any lease, loan, mortgage, indebtedness, security agreement or other agreement with Defendants, or any entity controlled by Defendants, or otherwise affecting the Receivership Assets, (d) attempting to (i) obtain or control any shares of stock in the Defendants or (ii) exercise any power derived from any shares of stock in the Defendants, or (e) doing any act to interfere with the taking of control, possession, management, or sale by Receiver of any portion of the Receivership Assets, or to in any way interfere with Defendants or Receiver (including any act that interferes with the corporate governance rights of Defendants or their shareholders), or to interfere in any manner with the exclusive jurisdiction of the Court over the Receivership Assets; provided, however, that the foregoing shall not restrict (x) the commencement or continuation of a criminal action or proceeding, or (y) the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

- (iii) shall be required to immediately provide access, means of access, and make available to Receiver all keys, codes, passwords, books, records, computer hardware and software (including all computer programs, data bases, disks, and other media owned or licensed by Defendants or upon which information regarding the property, assets, accounts, and businesses of Defendants are stored, recorded, or located), mail, email, and other correspondence addressed to or which may contain information regarding the Receivership Assets and affairs of Defendants; provided, however, that to the extent Receiver seeks access to such mail, email and other correspondence by parties other than Defendants, the obligation of such parties to produce shall be subject to any and all applicable privileges;
- (iv) shall immediately disclose to Receiver the nature, amount, and location of any and all Receivership Assets, including, books, records, computer programs, and media owned by Defendants or connected with businesses of Defendants, and shall immediately turnover to Receiver all Receivership Assets forthwith; and
- (v) shall cooperate with Receiver and abide by Receiver's requests for information and documentation so that Receiver may perform Receiver's function with full information and knowledge.

6. Receiver is authorized (but not required) to perform all obligations of Defendants under the Loan Documents in accordance with, and subject to, the terms of this Order (and any further orders of the Court) and the budget submitted to Plaintiff by Receiver (together with all updates, amendments, and supplements thereto, the "Budget"), which Budget shall be subject to approval (in form and substance) by Plaintiff in its sole and absolute discretion. Receiver shall provide to Plaintiff all documents, records and information reasonably requested by Plaintiff (or

otherwise required in the Loan Documents) in connection with Plaintiff's review and approval of the Budget. Receiver shall not destroy any documents or records of Defendants without further order of the Court.

7. Defendants and Plaintiff have executed an Eighth Forbearance Agreement and Amendment to Loan Agreement (the "Receivership Amendment") that contemplates, among other things, that Plaintiff will provide additional advances to Receiver (on behalf of Defendants) (the "Receivership Advances"), subject to the satisfaction of certain conditions precedent and on the terms and conditions contained in the Receivership Amendment and the other Loan Documents. A true and correct copy of the Receivership Amendment is attached hereto as **Exhibit A**. Subject to the terms and conditions of the Receivership Amendment and the other Loan Documents and such other instruments, documents, and agreements as Plaintiff may require Receiver to execute (all of which Receiver is hereby authorized to execute), Receiver (on behalf of Defendants) is hereby immediately and expressly authorized (but not required) to borrow the Receivership Advances from Plaintiff solely for payment of expenditures set forth in the Budget contemplated to be made during the first fourteen (14) days of the Receivership (the "Initial Receivership Advances") in accordance with the Receivership Amendment and the other Loan Documents. Nothing contained in this Order or otherwise shall obligate Plaintiff to provide the Initial Receivership Advances or provide any other financial accommodations to Receiver or Defendants except upon strict compliance with the terms and conditions contained in the Receivership Amendment and the other Loan Documents. Notwithstanding any provision in the Loan Documents to the contrary, the Initial Receivership Advances shall constitute part of the Obligations (as defined in the Loan Agreement) and shall be secured by all of the Collateral (including, without limitation, any assets constituting Collateral acquired after the appointment

of the Receiver) with the same validity, extent, priority, and effect that the Collateral currently secures the Obligations. For the avoidance of doubt, the Initial Receivership Advances shall not be subordinated to (nor shall the validity, extent, priority, and effect of Plaintiff's liens and security interests that secure the Initial Receivership Advances be limited by) any lien or security interest (including any federal tax lien) that now or hereafter covers any of the Collateral (including any subordination or limitation that would be imposed under the Federal Tax Lien Act of 1966), and any such subordination or limitation (whether under the Federal Tax Lien Act of 1966 or otherwise) is hereby eliminated with respect to the Initial Receivership Advances. Receiver shall not borrow funds from any other third party during the Receivership unless and until: (i) such other potential third party executes and delivers to Plaintiff (or its designee, successors, or assignees) a subordination agreement (acceptable in substance and form to Plaintiff, which acceptance shall not be unreasonably withheld), subordinating its liens and claims to those of Plaintiff and subordinating repayment of the indebtedness due to it to the repayment in full of the Obligations; and (ii) the entry of an order of the Court authorizing (but not directing) Receiver to enter into any such subordinate financing. Receiver shall not be obligated to advance any of its own funds to pay an expense or Obligations or other liability of Defendants.

8. A hearing to consider approval of the Receivership Advances contemplated to be made during the Receivership other than the Initial Receivership Advances (the "Remaining Receivership Advances") is scheduled for September 25, 2019, at 9:00 a.m. (prevailing Central Time) before the Honorable Judge Thomas M. Durkin, United States District Judge, at the United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois 60604 in courtroom 1441. Objections to approval of the Remaining

Receivership Advances shall be in writing and filed with the Clerk of the Court no later than 4:00 p.m. (prevailing Central Time) on September 23, 2019, with copies served upon: (i) Eric S. Prezant, Bryan Cave Leighton Paisner, LLP, 161 N. Clark Street, Suite 4300 Chicago, Illinois 60601, and (ii) Steven B. Towbin, Fox Rothschild LLP, 321 N. Clark Street, Suite 1600 Chicago, Illinois 60654. If no objections to approval of the Remaining Receivership Advances are timely received, this Court may enter an order approving the Remaining Receivership Advances without further notice or hearing.

9. All persons and entities now or hereafter in possession of or using any Receivership Assets (whether pursuant to any contract, lease or other occupancy, operating, use or service arrangement or otherwise) or now or hereafter indebted to or obligated to make payments to Defendants are hereby ordered to continue paying all Revenues now due and owing, or hereafter becoming due, in the ordinary course, with such payment being made to Receiver.

10. Receiver shall faithfully discharge its duties under this Order and obey all further orders of the Court. Expenses of the Receivership Estate that are payable pursuant to the Budget (or otherwise approved for payment by Plaintiff in writing) shall be paid: (a) first, from any Revenues or other income generated by the Receivership Assets; (b) second, from the proceeds of a Disposition of the Receivership Assets; and (c) third, to the extent that each of the foregoing is insufficient, from amounts borrowed by Receiver from Plaintiff or other third parties in accordance with this Order.

11. In accordance with Local Rule 66.1, within twenty-one (21) days after the Effective Date, Receiver shall file with the Court an inventory of all property of which Receiver has taken possession or control, together with a list of the then-known liabilities of the Defendants and a report explaining such inventory. Thereafter and until discharged, Receiver

shall file a report every four months (unless the Court orders otherwise), which report shall list the receipts and disbursements made by Receiver and summarize the activities of Receiver during such period.

12. Receiver may apply to this Court by motion and upon notice to all parties in interest for further or other authority as may be necessary in the performance of its duties hereunder.

13. Receiver shall be named as a primary insured party on existing insurance coverage for the Receivership Assets, and Receiver is authorized to obtain and pay (in accordance with the Budget) the premiums for additional insurance for Defendants or for Receiver (including, without limitation, an error and omissions policy and an umbrella policy) for the Receivership Assets and to maintain the policies otherwise in accordance with the Loan Documents.

14. Receiver shall have and enjoy all of the powers, immunities, privileges, and prerogatives ordinarily provided to receivers under applicable law unless otherwise prohibited by this Order. Without limiting any other rights or immunities Receiver may have at law or in equity, except for an act of willful malfeasance or gross negligence, Receiver shall not be liable for any loss or damage incurred by the Receivership Estate, Plaintiff, Defendants or their clients, associates, subsidiaries, affiliates, officers, directors, agents or employees, or by any of its creditors or equity holders because of an act performed or not performed by Receiver or its agents or assigns in connection with the discharge of the duties and responsibilities hereunder.

15. Receiver is entitled to compensation on an hourly basis not to exceed \$600 per hour, plus reimbursement of actual out-of-pocket expenses, for Receiver's services in performing the rights and duties described in this Order; provided, however, that any fees and expenses

incurred by Receiver and any Professionals during the Receivership in excess of the aggregate amounts set forth in the Budget shall be subject to approval by Plaintiff in writing. Receiver is authorized to pay itself such compensation monthly, without further order of the Court. Receiver shall provide an itemized fee statement on a monthly basis to Plaintiff and Defendants.

16. Receiver shall not be required to post a bond with the Court, and any requirement to do so is hereby waived.

17. In connection with the discharge of their duties and obligations in this matter, Receiver and its Professionals shall not be liable for any loss or damage incurred by Defendants or any other person by reason of any act performed or omitted to be performance by them in good faith and in the exercise of ordinary care. In the performance of its duties, Receiver shall be entitled to consult with its Professionals, and Receiver's reliance in good faith on the advice or opinion of such Professionals shall be considered in connection with any dispute concerning whether Receiver has exercise ordinary care. Any such dispute shall be resolved by this Court.

18. Without breaching the peace and, if necessary, with the assistance of local peace officers or United States marshals, Receiver may enter and secure any premises, wherever located or situated, in order to take possession, custody or control of, or to identify the location or existence of, assets or records of the Receivership Estate. Receiver may seek to compel the attendance of a person or entity for examination and/or production of documents in a manner permissible under Federal Rule 45.

19. Within three (3) business days after entry of this Order, Receiver shall serve a copy of this Order on Defendants and any person of whom Receiver is aware that has or may claim to have a lien on or security interest in any of the Receivership Assets. To the extent that

the Receiver discovers the identity of additional such parties subsequently, Receiver shall serve a copy of this Order on such persons promptly.

20. Nothing in this Order shall be construed to impair or otherwise affect Plaintiff's rights or remedies under the Loan Documents or applicable law.

21. This Order shall be in full force and effect as of the Effective Date and there is no just cause for delay.

ENTERED:

A handwritten signature in black ink, appearing to read 'TMD', is written over the printed name of the judge.

Honorable Thomas M. Durkin
United States District Judge

Dated:

9/12/2019