

Oregon Department of Transportation – Rail Division



Oregon Rail Study Appendix J

State Ownership of Rail Assets

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Introduction and Purpose

Since the early 1990s economic events and natural disasters have generated requests for the State of Oregon to participate in the purchase of and/or invest in several rail lines. When faced with these decisions as in the past, Oregon must be prepared to decide whether to pursue investment in rail infrastructure, which has traditionally been privately owned. This report provides an overview of different models of state ownership of rail assets in the U.S. by analyzing case studies from other states. It also provides questions for the Oregon Department of Transportation (ODOT) to consider when faced with railroad ownership decisions in the future.

Rail Ownership in the United States

Public ownership of railroad lines is standard in much of the world, but not in the U.S. While many states, including Oregon, have administered modest grant programs targeted at railroads for years, the notion of substantial state and federal funding for system improvements and ownership is very new and without much precedence.

In the U.S., railways developed as private ventures to move both freight and passenger traffic and were given broad powers including the right of eminent domain and, more recently, substantial partial relief from local and state regulatory oversight. Pursuant with federal railway deregulation in the 1970s and 1980s, the larger railroads ceased to operate marginally profitable branch lines and sometimes abandoned them all together. To save some lines from destruction, public agencies, particularly state departments of transportation, began to intervene and assume ownership of, or underwrite preservation of, rail service in some areas.

The push for abandonment of track by major railroads in some regions of the U.S. occurred on a large scale over a two or three year period. This was particularly true in instances when the railroad in question was itself in the throes of bankruptcy. The demise of the Penn Central Railroad in the Northeast and the Rock Island and Milwaukee railroad lines in the Midwest each generated a “near crisis” rail service environment in their respective regions. Many of the states in those regions, including Wisconsin, Kansas, Oklahoma, New Jersey and Pennsylvania, developed aggressive forward-looking programs to preserve rail service in areas threatened by abandonment.

The paring back of the rail network in Oregon over the past 40 years has, by comparison, been far more subtle. The merger of the Great Northern, Northern Pacific and Spokane, Portland & Seattle Railways into the Burlington Northern in 1970 created a measure of financial stability for those lines for the next 20 years. When the Class I operators discontinued service on rail segments, service was often preserved through partnerships with shortline operators with lower operating costs and more flexible work forces. Southern Pacific Railroad was under substantial financial duress during this same period and abandoned approximately 140 miles of rail lines, but these actions did not threaten large areas of Oregon with loss of rail service.

Over the past 10 years, a number of shortlines in Oregon have either ceased operating or have indicated they are considering ceasing operation. These circumstances have led Oregon to consider how and when to get involved in decisions to preserve rail service. A companion report to this study, called “Rail Industry Analysis,” indicates that there are a number of additional shortlines that are experiencing financial difficulties and may be faced with decisions to curtail or cease operations, leaving Oregon to decide if it should step in to preserve the service.

Public Ownership in Oregon

Public ownership of rail lines in Oregon began in 1918 with the 18-mile City of Prineville Railway, which is still owned by the City of Prineville. Two other cities own portions of rail lines: the City of Astoria (5 miles) and the City of Lebanon (1 mile). Although the state has not purchased any rail lines, it has assisted other public entities in purchasing lines including Lake County (55 miles), Port of Tillamook Bay (85 miles), Wallowa and Union Counties (63 miles), and Oregon International Port of Coos Bay (111 miles).

Oregon has the statutory authority to own and operate rail lines (ORS 824.040). Railroad assets owned by the State of Oregon include the Amtrak station in Salem and 155 miles of right of way located beneath portions of the Portland & Western Railroad (PNWR), both of which are administered by the ODOT Rail Division. This land was donated to the state in 1997-1998 by BNSF Railway Company (BNSF) but does not include any of the track infrastructure. The Salem Amtrak station was purchased in 1995 from Southern Pacific Railroad. Appendix E presents a summary of each publically owned rail facility in Oregon.

Review of Case Studies – State Ownership of Rail Assets

Most states approach public ownership of railroads as an option of last resort, recognizing that the economic benefits of a given property simply will not support costs associated with purchase and operation by a new entity. However, the threat of losing rail lines poses a cost to the transportation network that states are not willing to ignore.

The information gained through reviewing other state’s ownership experiences provide insight to the benefits and risks associated with rail ownership. The benefits of state rail ownership are significant, including:

- The state can manage rail assets for the public good in accordance with the state’s freight and passenger related transportation goals. This allows the preservation of rail corridors that otherwise could permanently be lost.
- State-owned rail may compete better with other modes for public funding.
- Liability and tax issues are simplified by state control, particularly in the event of initiating passenger operations.

Although state ownership provides substantial public benefit, it is not without risks, including:

- A substantial financial commitment is required to maintain a railroad, especially in the western portion of Oregon. Natural conditions may be prone to flooding and landslides and require many bridges and tunnels which are expensive to maintain.
- State ownership does not guarantee the rail line will remain in operation.
- State ownership would result in a reduction of local property tax revenues that would be collected from private owners.

This section describes the state rail ownership programs in Oklahoma, Wisconsin, Washington, and New Mexico. These states represent four different state ownership models and are in various stages of funding maturity. New Mexico is the only example in which the state owns the infrastructure solely for passenger operations. The other three states purchased rail lines primarily to perpetuate freight operations.

The states in the case studies have taken on the ownership of rail infrastructure with varying degrees of success:

- With the purchase of a key infrastructure asset – a mainline – Oklahoma has been able to use lease revenues to upgrade other lines around the state, providing private operators and shippers with sound rail infrastructure.
- In Wisconsin, it took several years for the state to address the need for sustained investment in the infrastructure it purchased. With increased funding over the years, Wisconsin has a well developed public rail network which is operated mostly by one railroad. Volumes have been growing and the southern region of the state has retained the option to ship by rail.
- Washington State is a relative newcomer to rail ownership and is facing many of the same problems that Wisconsin did initially. There is no program in place to fund the upgrades of the lines which are in very poor condition, and at least one operator has indicated that it is difficult to generate sufficient revenues to cover operating costs.

Each case study summarizes seven different aspects of ownership including: administration, program funding, benefit analysis, operations, maintenance, stakeholder impact, and statutory authority. More in-depth information on each case study is presented in Appendices A through D.

Oklahoma State Ownership of Freight Rail Assets

Beginning in 1982, Oklahoma began purchasing rail lines and now owns approximately 869 of the 3,250 miles of track in the state.

- **Administration:** Two full time staff people administer the program at the Oklahoma Department of Transportation (Oklahoma DOT).
- **Program Funding:** The Oklahoma Legislature with the support of the governor funded the \$22 million purchase of the Rock Island Railroad's north-south mainline. A lease-to-own agreement with Union Pacific for the 335-mile line is a major revenue source for additional railroad purchases and track rehabilitation.

Shortline operators pay ten percent of gross revenue generated by their service to the state. Additionally, there is a four percent freight car tax on cars owned by entities other than the railroads.

- **Benefit Analysis:** The state performs cost/benefit analysis to determine if the purchase of rail lines warranted. Cost/benefit analysis is a basic valuation that compares the price to purchase the railroad with the value of the infrastructure and underlying property.
- **Operations:** The state is close to improving all publicly-owned trackage to meet FRA Class 2 (25 mile per hour (MPH)) standards. A request for proposal (RFP) process was used to select operators for the shortline network. Growth has been robust the past two to three years with freight volumes now at approximately 50,000 cars per year.
- **Maintenance:** The railroad companies are required to perform routine maintenance on the publicly owned track. The operators are required to maintain the track to FRA Class 2 (25 MPH) standards. The operator there is required to maintain the section of track used only for storage of cars to 10 MPH operations.
- **Stakeholder Impact:** Bankruptcy, which led to the abandonment of the Rock Island Railroad mainline that bisects Oklahoma, created an immediate crisis. Legislators recognized that abandonment of this north-south mainline, one of two in the state, would cause hardship for many shippers and potential capacity issues into the future. Political consensus between the legislature and the governor's office was quickly achieved for state acquisition of the railroad.
- **Statutory Authority:** In 1978 the legislature passed a railroad revitalization act that empowered the state to act as a railroad authority, providing the state with the ability to acquire, construct, operate, and maintain railroad rights of way.

Wisconsin State Ownership of Freight Rail Assets

Beginning in the 1970s the State of Wisconsin has owned approximately 700 of the 3,400 miles of railroad right of way over which three railroads operate.

- **Administration:** Rail Commissions, comprised of board members appointed from county commissions, administer the program in terms of granting operating rights and overseeing operations. The Wisconsin Department of Transportation (WisDOT) administers grant and loan programs.
- **Program Funding:** The state has two ongoing programs which railroad operators and local governments can apply for; one provides grants and the other provides loans.

Revenue-backed bonds fund the grant program. The bonds are repaid with general transportation fund revenues derived mainly from the gas tax as well as other taxes, such as an ad valorem tax on railroad property. Funding for the grant program has risen dramatically in the past 19 years:

- 1992-2005 \$4.5 million per biennium

- 2005-2007 \$12 million per biennium
- 2007-2009 \$22 million per biennium
- 2009-2011 \$60 million per biennium

The loan program was initially funded by a legislative appropriation, but the program is now funded by repayments of previous loans. From 1985 through 2007 this program provided \$88 million in loans. Loans are limited to \$3 million each. Rail operators also pay \$15,000 to \$25,000 per year to rail commissions for administrative costs. The payments can be derived from lease payments, and in some cases a portion of operating funds from member counties.

- **Benefit Analysis:** WisDOT has a comprehensive format to determine if purchasing a rail line is warranted. The format awards points for shipping costs of truck versus rail, system connectivity, environmental impacts, and economic development.
- **Operations:** RFPs were issued to select initial operators for state-owned lines. In the early years state-owned lines were not very successful as a result of poor track conditions. Currently, Wisconsin Southern operates most of the state-owned lines and asserts there is a continual need to upgrade lines, which vary in condition.
- **Maintenance:** The railroad operator is generally required to maintain lines to FRA Class 2 standards unless a different standard is specified. Lower standards have been allowed when the condition of the line was below Class 2 at the time that the operator began service. Once lines are rehabilitated, the contract requires the lines be maintained to the level to which they were rehabilitated.
- **Stakeholder Impact:** Abandonment of the Milwaukee Road left large sections of southern Wisconsin without rail service. Political consensus within the state government led to the purchase of the rail lines; the decision was based on the scale of the service cutbacks and the large number of communities slated to lose rail service over a short amount of time.
- **Statutory Authority:** The original 1977 state ownership program was limited to grants to local governments. In 1992 voters approved a constitutional amendment which allowed for state investments in privately-owned railroads.

Washington State Ownership of Freight Rail Assets

The State of Washington owns and oversees 370 miles of rail which it purchased between 2004 and 2007.

- **Administration:** One person at the Washington State Department of Transportation (WSDOT) administers the state rail ownership program; this individual has other responsibilities with the WSDOT Rail and Marine Program.
- **Program Funding:** A legislative transportation package funded \$14 million for the purchase of rail lines and \$12.2 million for track rehabilitation in the 2003 and 2005 legislative sessions. No additional funds have been identified to fund state rail line acquisitions.

- **Benefit Analysis:** WSDOT uses a community cost/benefit approach by calculating the value of taking trucks off county roads and the benefit to shippers of having modal competition.
- **Operations:** Infrastructure of state-owned lines remains in very poor condition, and existing programmed funding will fall far short of upgrading the network. RFPs were issued for operators, but one operator has struggled to meet operating agreement terms due to low volumes. There has been no traffic growth on lines since the state took over.
- **Maintenance:** The railroad companies are required to perform routine maintenance and keep track in the condition in which it was received. As a note, this is difficult to do given the advanced state of deterioration on many properties.
- **Stakeholder Impact:** Embargo of the lines by a previous operator and strong support by regional agricultural interests drove the decision making process for state acquisition of rail assets in Washington. An analysis of highway capital and maintenance impacts of increased grain trucking also created an economic foundation used to justify rail system investment by the state.
- **Statutory Authority:** The state has statutory authority to own rail lines and grant operating rights.

New Mexico State Ownership of Passenger Rail Assets

In 2005 The State of New Mexico purchased approximately 270 miles of railroad right of way between Belen and Raton and now provides passenger rail operations between the cities of Belen and Santa Fe with anticipated service along the entire corridor in the future.

- **Administration:** The New Mexico Department of Transportation has a designated passenger rail manager who handles day-to-day interface with the Mid-Region Council of Governments (MRCOG). MRCOG actively manages the passenger rail corridor and the associated Rail Runner commuter service. Train operations are performed by Herzog Transit under contract with MRCOG; Herzog also maintains the rolling stock for this service.
- **Program Funding:** The program is funded as part of the omnibus \$1.6 billion state transportation funding bonding regime established in 2003, Governor Richardson's Investment Program (GRIP) backed by state highway fund revenue. BNSF right of way between Belen and Raton (270 miles) was purchased in three phases totaling \$75 million.
- **Benefit Analysis:** The state compares and analyzes similar projects across the nation to determine if state ownership is necessary and beneficial. For instance, the Belen to Raton purchase was compared to other transit corridor acquisitions in Denver and Salt Lake City. To provide more insight into the impacts of the purchase, New Mexico examined the alternative cost of acquiring a "Greenfield" alignment, which would require construction of all new rail infrastructure and facilities.

- **Operations:** BNSF retains an exclusive freight easement over the entire alignment and, for at least eight to ten years, will be the only rail operator between Lamy and the Colorado state line. This rail line is part of the proposed Oklahoma to Colorado Front Range high speed rail corridor. The commuter rail agency operates Rail Runner trains on a shared use basis between Lamy and Belen. Amtrak also operates on the state-owned line between Raton and Belen.
- **Maintenance:** All maintenance of the rail assets is the responsibility of the state, shared with BNSF on a gross-ton-mile basis. Capital and maintenance work is undertaken by private firms selected on a competitive basis.
- **Stakeholder Impact:** The large and growing commuter population in the Belen, Albuquerque-Santa Fe corridor, and growing highway congestion, spurred interest in a commuter rail option. The state of New Mexico began supporting an intrastate bus service network several years prior to the rail corridor initiative; patronage was strong, providing increased public support for alternatives to driving.
- **Statutory Authority:** Ownership of rail property by the state is not restricted by statute in New Mexico.

Public Ownership Considerations for Oregon

The decision for the state to purchase rail lines is not a clear yes or no decision. If the state is considering purchasing a rail line or providing financial assistance to a local government for purchasing a rail line, the state must be able to justify why the rail line is needed and how it will benefit the state's economy and transportation system.

This section reviews state ownership scenarios and considerations the state should review when investigating ownership of rail assets.

State Ownership Scenarios

Circumstances prompting state ownership of own rail assets vary. Oregon has and will continue to encounter any number of scenarios that will lead to consideration for state or other public ownership, including:

- **Abandonment of a rail line due to insufficient revenue generation for maintaining adequate track condition.** For example, a local carrier may plan to abandon a line because revenues do not justify the required capital expenditures needed for maintenance. Capital investment can no longer be deferred because the property can no longer be safely operated without significant rehabilitation.
- **Rail line abandonment due to rapid or unforeseen infrastructure failures.** For example, a marginally profitable local freight line may be threatened with abandonment due to rapid or unforeseen infrastructure failures caused by flooding, a trestle fire or tunnel cave in. An infusion of capital is necessary to restore service.
- **Preservation of a significant railroad corridor.** For example, a rail line may be threatened with abandonment due to operating costs exceeding revenue

and/or network rationalization decisions made by a major network carrier. The state may be asked to consider purchase as a means of preserving the corridor for future use even if short term restoration of rail freight service is judged to be unviable due to lack of business. Additionally, a local or regional entity, such as a county or a port, may request the state's financial assistance through loans, grants, or lines of credit to acquire assets as the entity does not have the financial capability of acquiring assets on their own.

- **New or increased passenger service on the rail line.** For example, a rail line could receive a major infusion of public capital to support commuter or intercity passenger rail operations. Freight service will also continue on the line, but infrastructure investment will largely be driven by passenger service requirements in the future.

State Ownership Considerations

When Oregon considers owning rail assets, a number of serious questions arise. Although these questions need to be revisited prior to the purchase of specific rail lines, addressing them beforehand will help to create a solid program foundation. Based on recent history, Oregon will not always have advanced notice before an opportunity arises and may need to act. Questions to consider may include but are not limited to:

Administration

- How will a state-owned program be administered? Can the state manage the program with existing resources or will more employees and/or funding be necessary for success?
- If the state assists a local or regional public agency in acquiring assets, how will the state financing (grants, loans) be administered and expenditures accounted for?
- Who will lead efforts to coordinate with and gain required approvals from the Surface Transportation Board? (For more information about the Surface Transportation Board, please review the *Oregon Freight Rail System* report.¹)

Program Funding and Financial Capacity

- What are the expected the operating, maintenance and capital costs for the rail line?
- What types of ongoing funding is available for future infrastructure investments?
- What are the capital investment needs and history of the line?
- Will local communities, counties and shippers participate financially in an effort to preserve the line? If so, at what level?
- What state funding and financing sources are available? Is the proposed purchase eligible for these sources?

¹ Oregon Department of Transportation. *Oregon Freight Rail System*. April 2010.

- If a local or regional public entity is to take ownership of the rail assets instead of the state, do they have the financial capacity to fund operations and maintenance without additional state assistance?
- Is the purchase eligible for assistance from the Strategic Reserve Fund or the Infrastructure Finance Authority²?
- Can other possible funding partners be identified, such as a neighboring state that would be affected by a loss of service?
- If the state is one of many public funders, at what point should the state “own” the asset?

Costs/Benefit Analysis

- Is the investment to make the line operational proportionate to the economic benefits that would be gained from restored rail service?
- Are there new markets in the corridor that could be served by rail? If so, what would it take to serve them?
- What are the potential long term uses of the rail corridor for through freight movement? Can it be used as a complement to other rail corridors for additional capacity, directional running, and specialized freight or passenger operations?
- What potential but undeveloped opportunities exist for short-haul local movements that could add volume to the line?
- What other options (besides state ownership) could be implemented to preserve the rail line? Is “rail banking” under the federal Rails to Trails to Rails legislation a possible alternative? Is a Discontinuance of Service under the Surface Transportation Board a viable option?

Operations

- What are the liability issues related to freight and/or passenger rail operations?
- What are anticipated challenges and risks of negotiating with the railroad(s)?
- Could public ownership change the competitive role of the line? Is there an opportunity or need to eliminate or mitigate restricted access?
- Does the line have competitive rail access or is it committed to one major railroad?
- What is the attitude of the current corridor owner(s) toward sale or long term lease of the line to the state?
- What recourse is available to the state if an operator defaults on his obligation?
- Will ownership of a line provide better guarantees for passenger rail service goals?

² The Strategic Reserve Fund is administered by the Oregon Business Development Department (ORS 285A.075). The Infrastructure Finance Authority (IFA) was created in the 2009 legislative session and administers a number of grant, loan, and innovative finance programs for infrastructure. Both the SRF and IFA have capabilities to respond to critical needs and emergencies within short timelines.

Maintenance

- What are the on-going maintenance and deferred maintenance costs?
- Do revenues from ongoing rail operations cover operating costs; in other words, would the operation be “profitable” on a short term basis if the deferred maintenance deficit was eliminated?
- If natural disaster played a part in creating the crisis leading to the sale of the line, how likely is it that the same circumstances could recur? Does the alignment traverse areas prone to flooding and/or landslides? What can be done to mitigate these risks?

Stakeholder Impacts

- What would be the impact of a service shutdown on employment and the viability of served customers?
- Should the line be saved to maximize development potential of adjacent industrial property? Is the site(s) compatible with local public planning goals?
- Do long term economic strategies for the service area envision continued rail service? Is there efficient and good connectivity to more than one mode of transportation (water, highway, or air) that can support and springboard rail investment?
- If service does not reopen, do viable transportation alternatives exist for transporting commodities and products produced and/or needed in the service area? What are the community impacts of shifting to those alternatives?

Statutory Authority

- Oregon has the statutory right to own and operate rail lines. In fact ORS 824.040 states that the State of Oregon, a city, county, county service district, mass transit district, transportation district or a port may acquire, own, reconstruct, rehabilitate, operate or maintain a railroad line for the benefit and use of its inhabitants and for profit. In most cases statutory authority will not be an issue for public ownership in Oregon.

Conclusions

As the rail industry continues to change in Oregon, the state can expect to be faced with more decisions about whether or not to purchase rail lines. To date, Oregon has carefully considered each opportunity as it has presented itself and in each case has decided to not directly own the rail line. However, in preparing for future opportunities that will arise, Oregon can look to other states that own and operate rail lines to inform its future decisions. States that have committed resources to support long term freight rail programs have been the most successful, seeing fruitful operations and growing volumes over time. Whereas, other states that own lines without a well supported

program continue to struggle. Purchasing a low-business freight line to convert to a passenger operation, like in New Mexico, requires a strong coalition of public partners from the beginning because the higher maintenance and operations costs and community impacts of increased trains. Lessons from these states can provide insight to Oregon as it crafts a long term strategy designed to address future ownership decisions.

Appendix A: Oklahoma Case Study on State Ownership of Freight Rail Assets³

Introduction

In 2007 railroads in Oklahoma hauled a total of 285,177,860 tons of freight.⁴ Most of the products carried, such as coal, wheat and sand are high volume, low value products which are uneconomical to transport by truck. Without viable freight rail service, Oklahoma would see significant impacts to the agricultural sector of the state economy as well as impacts to the rate structure of electric power generation.

Origins of the State Ownership Program

Like the rest of the nation, Oklahoma faced the prospect of losing rail service to several regions of the state as a result of large railroads (Class I carriers) abandoning marginal rail lines in the 1970s. Faced with abandonment of the Rock Island Railroad mainline, an important north-south rail line, the State of Oklahoma took action by passing the Railroad Revitalization Act, giving the Oklahoma Department of Transportation (Oklahoma DOT) the right to act as a rail authority – meaning that the state could acquire, construct, operate, and maintain railroads.⁵ This legislation empowered the state to purchase abandoned rail lines and grant operating rights over them to other railway companies. The purchase of the Rock Island mainline, finalized in 1982, was the first transaction completed under Oklahoma's rail purchasing program.

State Ownership of Rail Lines

There are approximately 3,250 miles of track in Oklahoma, of which 869 are owned by the state. As shown on Figure 1, there are nine state-owned rail lines throughout Oklahoma, eight of which are leased and operated by railroad companies:

- Union Pacific Railroad (UPRR) operates over 921 miles of rail line, of which 335 miles are owned by Oklahoma.
- Stillwater Central Railroad (SLWC) operates over 240 miles, including 125 miles of state-owned rail.
- Farmrail Corporation (FMRC) operates over 179 miles of rail lines, all of which is owned by the state.
- Wichita Tillman and Jackson Railway (WT&J) operates over a total of 84 miles of track, of which 61 miles are state-owned.
- Arkansas-Oklahoma Railroad Company (AOK) operates over 70 miles of rail lines owned by the state.

³ Much of the information reported in this case study was provided through interviews and reviewing the state's website: Neal Hall, Manager of State Property, Oklahoma DOT. E-mail Exchange: August 11, 2009; August 31, 2009; September 29, 2009. Telephone Conversation: March 17, 2009 and August 2, 2009; and, Oklahoma Department of Transportation. 2009. www.okladot.state.ok.us. Accessed 8/11/09.

⁴ Association of American Railroads. 2009. www.aar.org. Accessed on August 11, 2009.

⁵ Oklahoma Statutes. 1971 as revised. Title 66. Railroads. <http://www.lsb.state.ok.us/osstatuestitle.html>. Accessed October 12, 2009.

- Austin Todd and Ladd Railroad (AT&L) operates more than 46 miles of rail lines, including 29 miles of state-owned track.
- Blackwell Northern Gateway Railroad Company (BNGR) operates over 17 miles of rail lines, all of which are owned by the state.
- South Kansas & Oklahoma Railroad (SK&O) operates 79 miles of rail lines, all of which are owned by the state.
- State – 53 miles of state-owned rail, not currently in operation.

Funding for State Ownership

State ownership of rail lines in Oklahoma was originally provided in the late 1970s by the Oklahoma State Legislature for the initial purchase of the Rock Island line (funding source unknown)⁶. UPRR leases 335 miles of the Rock Island mainline from the state under a lease-to-own arrangement, through which UPRR is scheduled to own the mainline outright as of November 2011. The lease revenues received from UPRR have funded state purchases of additional rail lines, most recently in 1999.

Only UPRR has a lease-to-own agreement with the state. The revenues from other operators consist of two primary components. First, the leases stipulate that the state receives 10 percent of the gross revenue of the operator. Secondly, a four percent “freight car tax” is collected from non-railroad owners or operators of freight cars on gross earnings derived from use or operation of freight cars within Oklahoma.⁷

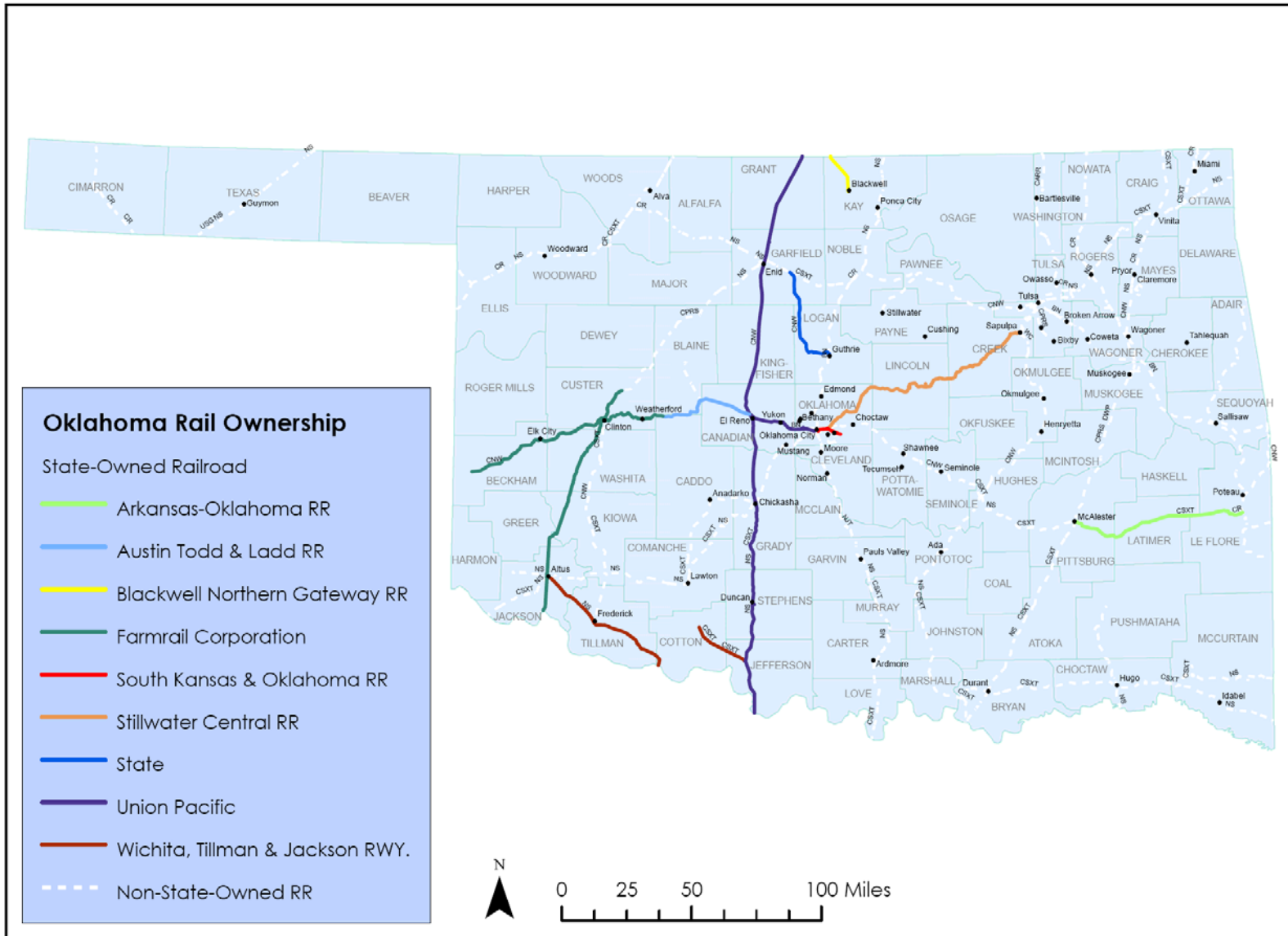
The revenues generated by state-owned rail lines are used to rehabilitate the publicly-owned lines, most of which were in poor condition when they were acquired by the state due to many years of deferred maintenance. These poor conditions caused some rail operators to struggle early on in their lease agreements with the state. The shortline railroads are the direct beneficiaries of public investment in rail rehabilitation as the Class I railroads are not eligible to receive reinvestment of revenue dollars.

In both 2007 and 2008, the state spent \$24 million on rehabilitation and maintenance, representing approximately 50 percent of the annual budget for Oklahoma DOT’s rail division programs. Oklahoma DOT staff report that these expenditures are representative of the state’s average annual investment in publicly-owned rail lines. However, when the UPRR lease expires in 2011 and UPRR takes full ownership of its leased line, the state will lose its largest source of funds for rail maintenance and rehabilitation projects. At that time almost all of the public assets will meet FRA Class 2 standards, and it will be up to the operators to maintain the tracks to that standard. It is uncertain at this time whether or not the state will provide funding for projects from other revenue sources.

⁶ <http://www.okladot.state.ok.us/hqdiv/p-r-div/maps/railroad/2009/pdfs/rail-cover.pdf>.

⁷ Oklahoma Tax Commission. 2003. Freight Car Tax. <http://www.oktax.state.ok.us/oktax/taxes1.html#freight>. Accessed August 11, 2009.

Figure 1: Oklahoma Rail Ownership



Prepared by Parson Brinckerhoff

Project Selection Methodology

When the State of Oklahoma investigates possible rail lines to purchase, a cost/benefit analysis is performed in which the asking price of the railroad is compared with the value of the property – including the underlying land and rail, ties, ballast, bridges, tunnels and other improvements – and the revenue generated by the property.

Strong consideration is also given to the economic development potential for each line. For example, in the northern part of Oklahoma, BNGR serves virtually no shippers and is used primarily for storage of empty rail cars. However, the state decided to purchase this line because of the important connection it provides to lines in Kansas. Another example of a strategic purchase by the state occurred in 1999 when the low-volume SLWC line was purchased because it had received recent investments by municipalities and private interests that were generating increases in volumes and economic activity.

The analysis process for selecting rail lines to purchase varies and is unique for each candidate line. Purchasing decisions are made at the discretion of Oklahoma DOT, which does not have any publicly available documents that outline the selection process.

Freight Operations and Volumes

Oklahoma DOT staff estimate that approximately 50,000 origin/destination railcars per year are shipped on public lines, exclusive of UPRR traffic and through traffic, although they do not have reports for this data. The state also estimates that carload volumes have grown at least 25 to 30 percent during the past 10 years, with FMRC and SLWC seeing significant recent growth.

To maximize operations on state-owned rail lines, the state's goal is to improve all of the publicly-owned railroad lines to Class 2 track speeds of 25 miles per hour; with a few exceptions, all state-owned infrastructure now meets this standard. Oklahoma DOT continues to invest in upgrades to the state-owned lines, although it can only invest in infrastructure physically located on state-owned property; the state cannot invest in facilities on private property served by the railroads.

There is no formal application process for lessees of state-owned lines to request funds for infrastructure upgrades. The typical process begins when the railroad sends a letter to the state identifying the proposed project and requesting funds for tracks, ties, ballast, bridge repairs or other public infrastructure improvements. In response, Oklahoma DOT staff conducts a site visit, and if they agree that the project is warranted, staff proceed through project scope and budget negotiations and an agreement is developed for the project. Funds are then provided to the railroad, which contracts the improvement work and manages the project. Any budget overruns are the responsibility of the railroad. On rare occasions, the state acts as the contractor and oversees the improvement project directly.

In order for the state to protect itself in the event of a major incident on a state-owned line, the shortline operators must have insurance and indemnification clauses in their operating agreements. The state is named as an additional insured under all policies. The rail operators also indemnify the state for any railroad related actions or operations

on the property. If there is a hazardous materials spill, the railroad is responsible for clean up since there are no provisions addressing preexisting environmental issues.

Oklahoma DOT has made significant investments in railroad infrastructure throughout the state; its infrastructure is now in good repair, which should minimize future operation and maintenance costs for operators. However, should any of the railroads fail to cover the cost of operations, maintenance, and infrastructure, the state will again face a decision point as to whether or not to provide additional state funding for infrastructure investment or to subsidize ongoing operations.

Appendix B: Wisconsin Case Study on Ownership of Freight Rail Assets⁸

Introduction

Rail has been and will continue to be an important mode of transportation in Wisconsin's economy. Rail service provides a low cost transportation alternative for commodities that are essential to many of Wisconsin's traditional manufacturing industries. It is also the main transportation mode for coal, the state's primary energy source. Wisconsin also expects to experience projected growth in international containerized shipments as well as in carload freight movement to and from Canada and Mexico. Intercity passenger rail is viewed as a transportation option that can help individuals and business travelers avoid congestion on highways and uncertainty in the air travel industry.⁹

Origins of the State Ownership Programs

In the late 1970s railroads across the country suffered the effects of antiquated federal regulations, compromising their ability to compete with other transportation modes. This led to a steady decline in freight volumes and the ability of the railroads to maintain their infrastructure. As a result, many rail lines were no longer economically feasible for operation, leading to applications for abandonment with the federal government. The State of Wisconsin's state-ownership program has been in place since 1977 when the specter of abandonment became broad enough that consensus quickly grew for preserving the availability of rail service in regions of the state.

Freight Railroad Preservation Program

Wisconsin's initial program, the Freight Railroad Preservation Program (FRPP), provides grants, funded by bonds backed by general transportation funds, to local governments for the purchase of rail lines either for operation or land banking, as well as for rehabilitation of lines. Under original FRPP grants, the state provided 80 percent of required funds for purchase and rehabilitation of track, and the remaining 20 percent was provided by the local communities, the railroad operator, and/or local shippers.

Statutory restrictions prevented the state from direct involvement in rail operations and contracts for railroad operations, so rail transit commissions were formed by counties to receive the funds, purchase assets, and govern the assets. Under FRPP, the state retained ownership of the land underlying rail lines, but the commissions assumed ownership of the improvements and granted the operating rights to railroad operators. These commissions still exist and consist of members appointed by county boards, typically the county board of supervisors, often with multiple counties represented on each commission.

⁸ Much of the information reported in this case study was provided through interviews: Frank Huntington, Chief of Rail Project and Property, Wisconsin Department of Transportation. Email Exchange: 3/17/09; 7/31/09; 8/4/09; 8/12/09; 8/28/09; 9/1/09; and, 10/8/09. Telephone Conversations: 3/17/09 and 7/1/09; and, Ken Lucht, Director, Governmental Relations, Wisconsin & Southern Railway. Telephone Conversation; August 5, 2009.

⁹ WisDOT Division of Investment Management Bureau of Planning. 2004. *Wisconsin Rail Issues and Opportunities Report*.

In 1992 a constitutional amendment was approved which gave the state greater authority to own infrastructure and grant operating rights.¹⁰ Even though the state now has broader administrative powers, the general consensus among WisDOT staff is that the rail commissions function well, so the state has chosen not to change the governance structure. The state does own some of the track purchased since 1992, but it has chosen to continue delegating its authority to grant operating rights to the commissions.

Freight Railroad Infrastructure Improvement Program

Subsequent to the statutory change in 1992, the state created the Freight Railroad Infrastructure Improvement Program (FRIIP) to complement and update FRPP. FRIIP is a loan program that provides financing for a broader array of projects, including those on privately-owned rail lines. The funding for this program was initially came from a legislative appropriation; it is now derived from the repayment of past FRIIP loans. The program provides up to 100 percent financing for projects which accomplish one or more of the following:

- Connect an industry to the national rail system;
- Make improvements to enhance transportation efficiency, safety, and intermodal freight movement;
- Accomplish line rehabilitation; and/or
- Develop the economy.

State Ownership of Rail Lines

Of 3,400 miles of track in Wisconsin, the state currently owns approximately 700 miles (approximately 20 percent) of railroad right of way as a result of the FRPP program, over which three railroads operate. Wisconsin & Southern Railroad Company (WSOR) operates over approximately 600 miles of track in southern Wisconsin; the Escanaba & Lake Superior Railroad (E&LS) operates over approximately 80 miles of track in northeastern Wisconsin; and Tomahawk Railway (TR) operates over approximately 20 miles of track in northern Wisconsin as shown in Figure 2.

As is the case nationwide, the first lines to be abandoned in Wisconsin are those in the poorest condition and require the most extensive rehabilitation. Typically a railroad operator can cover operating costs of its rail lines, but volumes are inadequate to generate enough revenue to rehabilitate the lines. Most shortline properties have aging tracks, ties, and ballast that can only handle heavy railcars traveling at very low operating speeds.

When rail lines in southern Wisconsin were first acquired by the state, rail transit commissions solicited operators for them. The initial operator that was selected lacked railroad experience and was unable to successfully operate and rehabilitate the lines due to a lack of capital available for rehabilitation.

¹⁰ Wisconsin Legislature. 2008, 2007-08 Wisconsin Statutes & Annotations. <http://nxt.legis.state.wi.us/nxt/gateway.dll?f=templates&fn=default.htm&d=stats&jd=85.08>. Accessed on July 30, 2009.

Despite these early setbacks, the state's current ownership situation is very stable, and the state believes that success is a result of a sustained effort to purchase and rehabilitate the rail lines. Over time the operations on the lines have consolidated, and the system has increased in size, providing the three current operators with more connections to other railroads and a more diverse traffic base.

In recent years the state has also become more aggressive in providing rehabilitation funding, as evidenced by the increasing budget for grants. The state has gradually increased its standards for rehabilitation, so lines are no longer being improved just enough to function, but rather so that they can actually operate efficiently.

Project Selection Methodology

The State of Wisconsin has developed specific project selection criteria for receipt of FRPP grants, which is outlined in the application instructions.¹¹ Projects are scored on the following criteria with varying weight expressed in points:

- **Transportation Efficiency Benefit/Cost Ratio (used to evaluate railroads that the state intends to operate immediately)** (50 points) – The ratio is determined by WisDOT’s Rail and Harbors Section based on data provided by the applicant. Applicants may make a case for purchase of a rail line by comparing shipping costs by truck versus rail. Rehabilitation funds can be requested based on demonstration of an improvement in operating efficiencies, an increase in operating speeds resulting in cost savings for operation, and other financial benefits.
- **Criterion for Rail Banking Projects (used to evaluate railroads that will not be immediately operated, but may want to be preserved for future use)**(30 points) - For abandoned rail lines without rail service the following criterion are considered in lieu of the benefit/cost ratio above,:
 - Abandonment status;
 - Performance characteristics: whether the rail line has handled freight in the past, if any known environmental remediation is needed, whether it connects to other line segments, if the line exhibits potential for future rail service, or could be a candidate for conversion to a pedestrian trail through Rails to Trails;
 - As a minimum, is constructed of 85-pound rail with maximum headwear of ¼ inch; and
 - Ninety percent of the line’s bridges and trestles are rated to carry not less than 263,000 pounds gross weight cars.
- **Wisconsin Carloads per Mile** (15 points) – This criterion measures the use of the rail line by industries located in Wisconsin exclusive of through traffic. This criterion excludes consideration for lines serving coal fired power plants because it is assumed that utilities can support operations and capital investment without public assistance.
- **Category of Line** (5 points) – This criterion is meant to demonstrate physical connectivity of a line to facilities that do or could generate freight traffic volumes. This criterion provides no points for intermodal facilities because it is assumed that these private businesses can support operations and capital investment without public help.
- **System Connectivity** (5 points) – This criterion allows weight to be given to lines that may not directly serve Wisconsin-based industries but are important in terms of overall network efficiency and connectivity.

¹¹ WisDOT. 2009b. *Freight Railroad Preservation Program: SFY 2010: Part I – Application Instructions*. <http://www.dot.wisconsin.gov/localgov/docs/frpp.pdf>. Accessed on August 1, 2009.

- **Geographical Distribution and Rural Population Density** (5 points) – This criterion awards points for rural regions of Wisconsin that have not previously benefited from the program.
- **Prior Beneficiary of Assistance** (5 points) – This criterion provides points for railroad operators who have not benefited previously from the program
- **Environmental Benefits** (5 points) – Points are awarded for the potential environmental benefits that operation of rail lines can provide based on:
 - Reducing highway congestion;
 - Reducing petroleum fuel consumption;
 - Reducing emission of air and/or water pollutants;
 - Improving safety of hazmat transport;
 - Improving road or pedestrian safety; and
 - Serving near term needs of passenger rail service.
- **Enhancing Wisconsin's Economy** (5 points) – Points are awarded for a line's potential to contribute to the state's overall economy based on:
 - Creating and/or retaining jobs;
 - Timeline demanding action for long term benefit;
 - Improving competitiveness of businesses; and
 - Serving a developed industrial park.

Freight Operations and Volumes

The state initially solicited operators for all the newly acquired lines, but as operation of the state-owned lines matured, it became logical to consolidate lines regionally under a single successful operator (WSOR), so that as the state acquires new lines in the southern region of the state, WSOR incorporates them into its portfolio. There are two other operators in different regions of the state with no connectivity to the WSOR operation.

The state has “hold harmless” language in all agreements with the rail commissions, and the rail commissions have essentially the same language in their agreements with the railroad operators. The language holds the state and the rail commissions harmless from any claims related to all railroad activities. The operators are also obliged to investigate any incidences or claims at their expense. The state indicated that there is rarely any deviation from this language (please see attachment for the “Hold Harmless” language).

WSOR operates approximately 600 miles of publicly-owned railroad. In 1988 these lines handled 7,500 carloads of origin/destination products, which had increased to 55,000 carloads by 2008 plus through traffic. The goal of WSOR is to upgrade all branch lines to Class 2 standards with operating speeds of 25 miles per hour. On mainlines, such as the line between Madison and Chicago, the goal is to upgrade to Class 3 standards permitting operating speeds of 40 miles per hour. WisDOT estimates that 50 to 75 percent of the branch lines currently meet Class 2 specifications. Volumes are not available for the other two operations which are much smaller.

Attachment to Wisconsin Case Study: Hold Harmless Agreement
Provided via 10/8/09 email exchange with Frank Huntington.

Agreement between WisDOT and Rail Transit Commission

Section 6.1 - Hold Harmless.

Except to the extent that the same arises from or is related to co-uses permitted by WisDOT pursuant to Section 2.2(g) above, Commission shall save and hold WisDOT harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or railroad operation of Operator, or its agents, servants, subcontractors, officers or employees, or which arise out of or are connected with, or are claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened, in or about the place where such operation, act or omission is being performed or in the vicinity thereof (1) while Operator is performing its work, or (2) during the period this Agreement between WisDOT and Commission is in effect, or (3) while any of the Operator's property, equipment, or personnel, are in or about such place or the vicinity thereof by reason of or as a result of the performance of Operator's operations: including, without limiting the generality of the foregoing, all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to WisDOT, its officers, employees, agents, subcontractors or frequenters, or to any other persons, whether based upon, or claimed to be based upon, contract, tort, or having its basis in worker's compensation (except worker's compensation claims by employees or agents of WisDOT) under Federal or State statutes or having any other code or statutory basis, or based upon administrative laws or other provisions. Without limiting the generality of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever. Commission shall cause Operator, at Operator's own expense to investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claim, demand or action.

Agreement between Rail Transit Commission and Railroad

Section 6.1 - Hold Harmless.

Except to the extent that the same arises from or is related to co-uses permitted by Commission or WisDOT pursuant to Section 2.2(g) above, Operator shall save and hold Commission, Commission's member counties and WisDOT harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of Operator, or its agents, servants, subcontractors, officers or employees, or which arise out of or are connected with, or are claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened, in or about the place where such operation, act or omission

is being performed or in the vicinity thereof (1) while Operator is performing its work, or (2) during the period this Agreement between Commission and Operator is in effect, or (3) while any of the Operator's property, equipment, or personnel, are in or about such place or the vicinity thereof by reason of or as a result of the performance of Operator's operations: including, without limiting the applicability of the foregoing: all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to WisDOT, its officers, employees, agents, subcontractors or frequenters, or to Commission, its officers, employees, agents, subcontractors or frequenters, or to any other person whether based upon, or claimed to be based upon, contract, tort, or having its basis in worker's compensation (except worker's compensation claims by employees or agents of Commission or WisDOT) under Federal or state statutes or having any other code or statutory basis, or based upon administrative laws or other provisions. Without limiting the applicability of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever. Operator shall at its own expense investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claim, demand or action.

Appendix C: Washington Case Study on Ownership of Freight Rail Assets¹²

Introduction

The State of Washington is one of the top 10 origin and destination states for rail traffic in the U.S. This is the result of the rail connectivity to the state's robust port system that handles containers in Seattle and Tacoma, automobiles at the Tacoma and Vancouver ports, and grains at multiple ports in the Puget Sound and along the Columbia River. In addition, the state's forestry industry and agricultural regions are highly dependent on rail for transportation.

Origins of the State Ownership Program

The State of Washington is relatively new to public rail ownership. It was not until WATCO Companies, Inc., a shortline operator, made plans to abandon segments of the Palouse River and Coulee City Railroad (PCC) in 2004 that the state began to consider purchasing rail lines. The PCC lines were in poor condition when WATCO began operation in 1996. WATCO was unable to make needed investments in ongoing line maintenance, which led to further deterioration and reduced operating speeds, resulting in higher operating costs.

In 2004, WATCO submitted a letter to the governor stating its intention to begin operational embargoes and file for abandonment unless the state agreed to purchase and rehabilitate the lines. As a result, Washington State Department of Transportation (WSDOT) purchased the lines, comprising 370 miles of track, between 2004 and 2007.

Public Ownership of Rail Lines

Purchase of the 370-mile PCC line is the only acquisition of an operating rail line by the state to date; however, there are municipal entities in Washington that own portions of Washington's 3,200 miles of track:

- City of Richland owns the Horn Rapids Spur.
- City of Tacoma owns the Tacoma Rail Mountain Division line and the Tacoma Municipal Belt Line.
- Clark County owns the Portland-Vancouver Junction Railroad line.
- Port of Benton owns the Tri-City and Olympia Railroad line.
- Port of Chehalis owns the trackage used by a Centralia-Chehalis Railroad excursion train.
- Port of Columbia owns the portion of the PCC southern branch line from Walla Walla to Dayton.
- Spokane County owns the Geiger Spur.

¹² Much of the information reported in this case study was provided through interviews and reviewing the state's website: Mike Rowswell, Project Manager, Washington State Department of Transportation, Rail and Marine Office. Email Exchange: August 4, 2009; August 7, 2009; August 10, 2009; and, September 29, 2009. Telephone Conversation: June 29, 2009 and August 5, 2009; Washington State Department of Transportation. 2009. www.wsdot.wa.gov. Accessed August 8, 2009; and, Casavant and Jessup. 2006. Palouse River and Coulee City Railroad Market Assessment – Report to Washington State Department of Transportation, Office of Freight Strategy.

- Yakima County owns the Toppenish Simcoe and Western Railroad line.

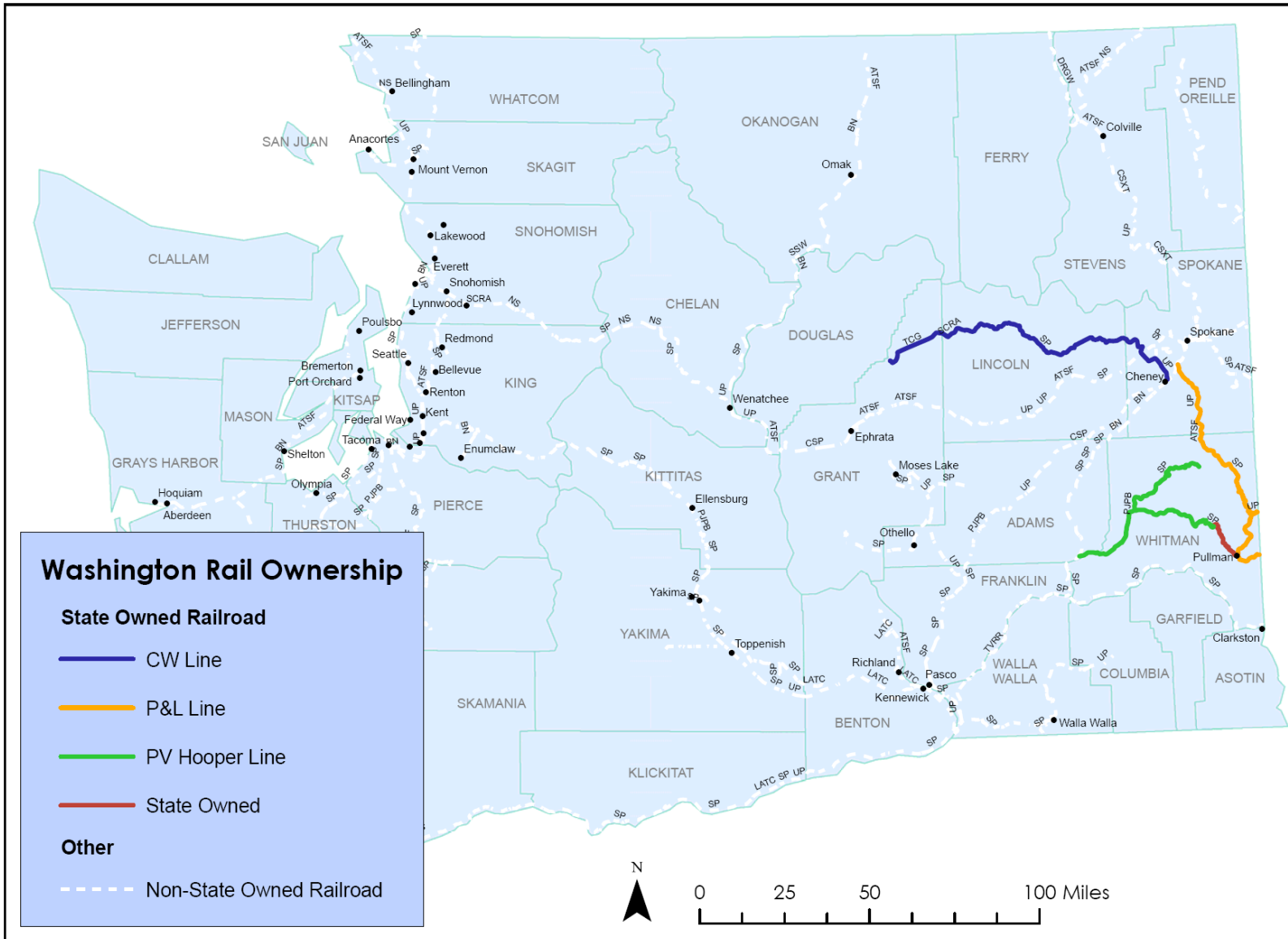
After the PCC line was purchased, WATCO Companies continued to operate the three segments which collectively comprise the line. When WATCO decided to stop operations on two of the branch lines in 2007, WSDOT solicited other operators, so three different railroads now operate the state-owned PCC rail lines. These are shown on Figure 3:

- WATCO Companies operates the PV Hooper branch line that runs from Thornton to Winona, and from Hooper through Winona to Colfax;
- Eastern Washington and Gateway Railroad (EWGR) operates the CW branch line that runs from Coulee City to Cheney; and
- Washington and Idaho Railway (WIR) operates the P&L branch line that runs from Marshall through Pullman to the Idaho border near Moscow, and from Palouse directly east to the Idaho border where it meets a WATCO line.

Early on, EWGR experienced difficulties meeting lease terms due to financial problems; however the railroad changed its business model and is now exceeding the required benchmarks for continuing operations under its lease.

Although WSDOT is the owner and regulator of the PCC lines and has final administrative authority, the state also has an intergovernmental agreement with the PCC Rail Authority, which is comprised of representatives from the four counties served by the lines. The Authority provides guidance and oversight on economic development aspects of the business and also reviews the business plans with the operators.

Figure 3: Washington Rail Ownership



Prepared by Parsons Brinckerhoff

Funding for State Ownership

Funding for the state's purchase of the PCC lines was originally included in Washington's 2003 legislative transportation package, which allocated \$20.7 million from the state's new and used vehicle sales tax; in 2005 an additional \$7 million was appropriated. Since that time, the state has spent approximately \$14 million for purchase of the lines and has spent or is in the process of spending \$12.2 million on rehabilitation projects, reallocating the remaining \$1.5 million to other projects.¹³ The railroad operators are not required to pay fees to the state for use of the publicly-owned lines, so leases under the rail ownership program do not provide direct revenue for the state.

The state is currently in the process of spending \$8.6 million of the above mentioned funds on rehabilitation projects on all three lines. There are no plans at this time for additional rehabilitation projects.

Project Selection Methodology

In making the decision to purchase the PCC lines, WSDOT conducted an analysis of the risks to the state and returns to the community.¹⁴ The primary benefits of public ownership of the PCC line were identified as:

- Savings on shipping costs for wheat growers and other agricultural industries;
- Continuation of competition among transportation modes;
- Protection against future fuel cost increases; and
- Avoidance of highway wear and tear.

These community benefits plus the strong support of regional shippers were deemed sufficient to make the public investment in purchasing the PCC lines.

The state also commissioned a market assessment of the PCC lines in 2006. This study concluded that market growth on the lines was uncertain at best and that sustained investment levels were needed to upgrade the tracks to faster operating speeds. This study was not a feasibility study for purchase of the lines, but rather to assess the outlook for the market served by the lines as well as the ongoing investment needed for infrastructure.

Freight Operations and Volumes

When the state purchased the PCC lines they were all classified as FRA "Excepted" track with 10 MPH maximum speed. Further, track, ballast, and sub-grade were in need of upgrades on almost all segments of the lines. In addition, the lines included many trestles and culverts requiring upgrades or replacement, as well as public crossings. Even with the state's \$12.2 million rehabilitation projects, it is unlikely that the lines will attain Class 2 condition permitting 25 miles per hour operation, perpetuating slower speeds and higher operating costs.

¹³ Mike Rowswell. Project Manager, Washington State Department of Transportation, Rail and Marine Office. Email Exchange: August 4, 2009; August 7, 2009; August 10, 2009; and, September 29, 2009. Telephone Conversation: June 29, 2009 and August 5, 2009

¹⁴ Washington State Department of Transportation. 2004. Purchase and Rehabilitation of the Palouse River and Coulee City Railroad Track – Assessment of Economic and Community Benefits.

In general terms, the railroad indemnifies the state for anything caused by its operations, whether or not it is the state's fault. However, it does not indemnify the state for needed rehab caused by deferred maintenance (as opposed to ongoing maintenance) or "acts of God" (e.g. fires caused by lightning strikes, floods, and so forth).

In addition to the cost of upgrading the infrastructure, the state also bears the administrative costs of overseeing the lines and addressing issues unforeseen at purchase. These include private and public crossings, fencing requirements, bridge replacement, stop and yield signs, and inspections.

Traffic volumes on the PCC lines have remained relatively static in recent years. In 2005, the P&L line had a volume of 1,280 cars; by 2008 this had dropped slightly to 1,130 cars. The CW line had 2,140 cars and 2,102 cars in the same years, respectively. Volumes for the PV Hooper line were not reported.

Appendix D: New Mexico Case Study on Ownership of Rail Lines for Passenger Operations¹⁵

Introduction

Most of the U.S. railway network is privately owned; as such, it is primarily used to generate profits for its equity stakeholders without regard for public interest considerations such as passenger rail. Intercity passenger rail operations provide service between major population centers throughout the day while commuter rail operations provide service between employment and residential nodes during morning and evening commute hours. Growing interest in the use of the railway network for both of these passenger operations has elevated challenges associated with sharing rail assets for freight and passengers. Where passenger operations are or are likely to become significant, public and private entities are compelled to address the appropriate ownership structure to accommodate the changing environment.

Intercity Passenger Rail

In 1970, the National Rail Passenger Service Act created Amtrak as a public entity to operate intercity passenger service, which began operations in 1971. In return for relief from the burden of providing passenger service, participating railroads were obliged to give Amtrak access to their privately-owned rail networks and agree to a low, “available cost” basis of assessing needed compensation for the host carrier.

The modest level of payments to freight carriers for use of their track provides no incentive for host freight railroads to undertake track and service improvements. Where investment in new capacity and other infrastructure and service improvement features has occurred, it resulted from specific, complex negotiations involving Amtrak, the host freight railroad and the state or public agency sponsoring proposed intercity service. While this approach has been successful in certain instances, surging interest in public rail investment and passenger operations raises the issue as to whether outright public ownership of certain corridors might prove more manageable over the long term, particularly for alignments where passenger operations are slated to become the dominant use in the long term.

Commuter Rail

In contrast to intercity passenger rail services, agreements between private railroads and commuter rail operators are local in nature, and commuter rail operators are not entitled to any general right of access to tracks owned by freight railroads. Thus, proponents of new commuter rail operations have very little leverage to gain access to freight rail tracks – freight carriers may simply deny a request for access, require very high access fees, or require purchase of the property and improvements. Acquisition often occurs in cases where a rail line is not considered “strategic” for a railroad’s core freight service franchise. Washington County’s (Oregon) purchase of trackage owned

¹⁵ Much of the information reported in this case study was provided through interviews and reviewing the state’s website: New Mexico Department of Transportation. 2008. Belen to Santa Fe Commuter Rail Project Overview; and, William T. Harris. Manager of Passenger Rail, New Mexico DOT. Face-to-face interview July 15, 2009.

by Union Pacific in Beaverton and Tigard for the recently constructed Westside Express Service (WES) Commuter Rail is an example of this kind of a transaction.

Public Acquisition of Rail Lines for Passenger Service

Although advocated by some, acquiring completely new rights of way for passenger rail service is not realistic in most cases because anticipated ridership, revenue, and available capital funds cannot justify the required investment. Even if such barriers can be overcome, planning, design, and construction of a new passenger rail line can take at least a decade. New corridor acquisition is a long and potentially contentious exercise; disputes over compensation, environmental issues and route selection are regular features of the process. This reality leaves shared use of existing freight corridors, with all its logistical difficulties and disadvantages, as the only practical option for new or expanded passenger rail services.

Public purchases of rail lines for passenger service have occurred less often than similar purchases for protection of threatened freight operations. Rail lines are sometimes acquired from private railroads in bankruptcy or financial duress as the only means of protecting a valuable existing passenger rail operation. Such a scenario drove large-volume commuter rail operators in the Northeast to purchase strategic lines of the Penn Central rail network during its bankruptcy and service meltdown in the late 1970s. Conrail, the federally-sponsored successor for most of the Penn Central lines, was relieved of any significant passenger-related service burden as it began the long process of restructuring the Northeast rail network. Commuter railroads in the Northeast have been “masters of their own destiny” for over three decades through outright control of trackage in most of their service lanes.

An analogous series of line purchases by the Southern California Regional Rail Authority (SCRRA) occurred in the early 1990s and established the foundation for the 388-mile commuter rail system that operates in that region today. Southern Pacific Railroad and, to a lesser extent, the Santa Fe Railway were in financial duress and anxious to raise cash in a way that would not detract from their respective freight service franchises. One strategy was selling right of way, while retaining freight operating rights. Under normal circumstances freight railways are reluctant to cede control of fixed assets such as right of way, as competition among freight railroads has long relied on geographic position and the ability to leverage ownership of a given route or service territory to enhance market premiums. The 1970s to early 1980s constituted a unique period of opportunity for SCRRA as it was able to step in to secure a stable, long term foundation for future commuter services through the acquisition of many miles of railroad serving the Los Angeles basin.

Another example of rail ownership for passenger rail is in the State of New Mexico. The state purchased rail lines for intercity and commuter rail services in the Belen-Albuquerque-Santa Fe corridor. This particular rail alignment offers regular freight service, is in relatively good operating condition, and has not been threatened with abandonment. Rationale for public purchase of the lines rested on several key objectives:

- Corridor integrity and cost - taking advantage of a unique opportunity to acquire and secure a long and strategically located public rail corridor;

- Operations control;
- Security of public investment;
- Control of investment planning; and
- Continuation of freight service obligations by BNSF Railway Company.

A short history of the New Mexico public rail corridor is instructive for states considering purchase of an active rail line.

Origins of the New Mexico Rail Runner Express

The State of New Mexico's interest in providing public transportation alternatives for travel around the state started with its support of intercity bus transportation in the late 1990s. After a rocky start, new service contracts oriented primarily toward bus service for commuters working in Santa Fe and living in the Albuquerque metro area were awarded to intercity bus operators in 2003. The express bus service, branded as New Mexico Park and Ride, proved enormously successful and built an early ridership foundation for the Rail Runner Express train service (Figure 4), which incorporates ridership characteristics of both commuter rail and intercity passenger rail.

In August 2003, New Mexico Governor Bill Richardson formally announced the state's intention to initiate passenger rail service from Belen to Santa Fe. The announcement was not well received by residents of some areas as New Mexico is still a very rural state, interstate highway congestion is scarce, and support for public transportation is thin given the history and traditional development patterns of the intermountain west. Still, the Richardson administration believed it was essential to anchor the transportation needs of the state's "economic heart," by extending public transportation along the Interstate 25 corridor to provide alternatives to private vehicle travel. The proposed rail service was planned for development in phases, serving first the Belen-Albuquerque-Bernalillo region, the state's largest metropolitan area, and then extending northward to the state capital of Santa Fe.

Figure 4: New Mexico Rail Runner Express



Acquisition Process

From the earliest phases of planning the Rail Runner passenger service, the rail corridor owner, BNSF, was engaged with New Mexico state officials. BNSF had maintained the track to an excellent standard, given the presence of Amtrak's daily transcontinental train and despite the relative dearth of freight activity resulting from the completion of double-tracking on the Los Angeles-to-Chicago alignment and substantially reducing BNSF's need for the Belen-to-Raton corridor as a capacity overflow route. In summary, the line represented a rare circumstance – a well-maintained, high-speed freight alignment with only a handful of freight trains each week.

Initially the state provided BNSF with several potential passenger service use arrangement options, including: sale of time slots to the state; sale of a permanent easement; and, outright sale of the rail line with retention of freight operating rights. As discussions progressed throughout 2004 it became evident that sale of the line to the state was the simplest and most appropriate solution. In September 2004 Governor Richardson signed a memorandum of understanding with BNSF describing the parties' intent to complete a transfer of ownership of the line along with a formal, long term joint use agreement for BNSF to continue freight rail services on the corridor. Intensive negotiations ensued, leading to completion of final agreements in November 2005.

Actual purchase of the rail line was divided into three geographic sections that roughly reflect the overall passenger rail development sequence for the alignment. Belen-to-Bernalillo was the earliest project phase and positioned the Rail Runner service as a metro commuter operation in the Albuquerque area. The second project phase, Bernalillo-to-Lamy, provided the right of way needed, in combination with some newly-constructed trackage beyond that point, to extend commuter rail service northward to Santa Fe. The final segment, from Lamy to the Colorado state line, is seen as a long term investment in regional connectivity with adjoining states as plans mature for a major north south "I-25" intercity rail alignment connecting El Paso to Denver. Freight service continues over this portion of the line, but future extensions of New Mexico's passenger operations will depend on complementary passenger corridor efforts by adjoining states.

The agreed sales prices for the different phases reflect, in part, differing land values over different portions of the alignment. The 51 miles between Belen and Bernalillo were purchased for \$50 million; the next 48 miles between Bernalillo and Lamy cost \$20 million; while the final 170-mile section to the Colorado state line cost the state only \$5 million.

Figure 5: New Mexico Rail Ownership



Prepared by Parsons Brinckerhoff

Lessons Learned

New Mexico Department of Transportation Secretary Rhone Faught summarized the rationale for purchase of the Rail Runner alignment quite simply when responding to critics in 2005: “We control our own destiny on the line.”¹⁶ The State of New Mexico may operate as many passenger trains as it wants on a schedule of its choosing, provided that passenger operations do not unreasonably impact BNSF freight operations. The state assumed the rights to control the day-to-day operations of dispatching over the alignment in 2008. The state and its regional partners also assumed full control of capital planning for the Rail Runner alignment, which is an important consideration given the large amount of public funding involved in the line’s construction and operations.

The state-supported passenger rail operation has been quite popular, moving over 370,000 passengers in the fiscal year ending June 30, 2008. New Mexico’s success in building this new service has surprised many and is a testament to the advantages of proceeding with limited federal participation. The Belen-to-Santa Fe route is a hybrid service, incorporating ridership characteristics of both commuter rail and intercity rail. The project would have been unlikely to win support from the Federal Transit Administration under the federal “New Starts” program, and the associated planning and process requirements would have delayed implementation by at least two or three years. Capital funding was provided through Governor Richardson’s Investment Partnership program, a bonding regime approved by the 2003 legislature. Total investment for the Rail Runner operation was around \$300 million.

The simplicity of a bilateral negotiation structure between the state and railroad without federal involvement facilitated the development of an agreement to shift ownership into the public sphere. A two-year time frame for reaching such an accord sharply contrasts with other examples where the federal funding role has major influence over negotiations, usually significantly extending their duration.

¹⁶ Albuquerque Journal Sentinel. 2005. New Mexico, BNSF Sign Track Agreement.

Appendix E: Oregon Rail Lines in Public Ownership and/or Operation

City of Astoria municipally-owned trackage, 5.04 miles comprising the far western end of the Portland-to-Astoria branch line. In a combined abandonment decision and notice of interim trail use decided December 5, 1995 and effective January 17, 1996, the Interstate Commerce Commission granted Burlington Northern Railroad Company (now BNSF Railway Company) authority to abandon the subject trackage and, at the same time, accepted the City of Astoria's request for interim trail use/rail banking under 16 U.S.C. 1247(d) with the proviso that the parties enter into a trail-use agreement within 180 days after December 18, 1995, a deadline which the parties met.

City of Lebanon municipally-owned trackage known as the Santiam Spur, about 0.7 mile of track connecting the city-owned Lebanon Industrial Park to the Albany & Eastern Railroad main line. Date of acquisition unknown; the spur apparently was part of a package deal involving acquisition of the industrial park, formerly a Crown-Zellerbach paper mill.

City of Prineville Railway, 18.3 miles, built 1918 and continuously owned and operated by the City of Prineville.

Lake County's rail line, serving Lake View, currently (2010) operating as Lake Railway, 54.5 miles (72% located in the State of California), acquired January 22, 1986 by Lake County from Southern Pacific Transportation Co. Lake Railway is owned by

Coos Bay Rail Link, the Oregon International Port of Coos Bay, purchased the 111 mile line from Central Oregon & Pacific Railroad March 13, 2009, and 22.37 miles acquired from Union Pacific Railroad July 23, 2010, and 2 miles pending lease from Longview Portland & Northern Railway (LP&N) in 2010. Except for the LP&N portion, this line originally constituted a branch of Southern Pacific Railroad diverging at Eugene and ending at Coquille.

Port of Tillamook Bay Railroad, 83.8 miles from Banks to Tillamook; Interstate Commerce Commission on August 22, 1986 granted authority to Southern Pacific Transportation Company to abandon the line but allowed the Port of Tillamook Bay (POTB) to operate the line for at least two years to determine viability; POTB purchased the line on February 1, 1990 with funds provided by the State of Oregon Economic Development Department.

State-owned railroad right of way, approximately 155 miles of corridor real estate formerly belonging to BNSF Railway Company that was donated in 1997 and 1998 to the State of Oregon. The properties are administered by the Rail Division of the Department of Transportation. The state-owned rights of way are located beneath railroad facilities owned by Portland & Western Railroad, Inc., between (1) the Willbridge section of Portland and Tongue Point near Astoria, (2) United Junction on the Astoria Line and Banks, (3) Hillsboro and Forest Grove, (4) St. Mary's Junction and St. Mary's in Beaverton, and (5) Greton (Tigard) and Perkins Road crossing north of Keizer. The donation agreement between BN and the state granted Portland & Western an exclusive easement for operating a railroad in these corridors.

Westside Express Service, TriMet, 5.48 miles between Tigard and Beaverton. In 2006 Washington County purchased the right-of-way and track from UPRR and transferred via quickclaim deed to TriMet for the operation of the WES commuter rail service. The freight rail operating rights were retained by UPRR and then transferred to PNWR.

Wallowa Union Railroad, 63.08 miles; prior owner/operator Idaho Northern & Pacific Railroad (INPR) was granted authority by the Surface Transportation Board (STB) to abandon 60.58 miles of railroad between Elgin and Joseph effective April 17, 1997, but did not act on that authority; the STB on June 7, 2002 approved an acquisition and operation exemption by Wallowa County to acquire from INPR and operate 62.58 miles of railroad between Elgin and Joseph. Wallowa and Union Counties subsequently formed in 2003 the Wallowa Union Railroad Authority (WURA) to own the railroad. On July 13, 2006, WURA filed a notice of exemption with the STB to acquire from Union Pacific Railroad an additional 0.5 mile of rail line (MP 20.50 to 21.0 leased to INPR) in Elgin, to complete the current public ownership of 63.08 miles in Union and Wallowa Counties.