

New Mexico - Selected Recent Passenger Rail Developments

	topic	
28-Nov-2005	purchase agreement	NMDOT Secretary Rhonda Faught and BNSF vice president signed a purchase agreement to buy approximately 300 miles of BNSF right of way, from Belen to Trinidad, Colorado, from BNSF. The document states, "NMDOT is acquiring the property interests for its Commuter Rail Project." The state was to pay \$50 million for the portion from Belen to Bernalillo (closing January 2006), \$20 million for Bernalillo to Lamy (closing January 2007), and \$5 million for Lamy to Trinidad, CO (closing December 2008).
2005	purchase agreement	quoting a 2012 news story: At the time, transportation Secretary Rhonda Faught said the purchase of the northern section was "necessary to close the deal with Burlington Northern Santa Fe." Insiders say that's likely because the section of track in the Albuquerque metropolitan area, which connects to the main "Transcon" line through Vaughn, was the most lucrative of the three sections for the train company. "We believe the purchase of this section of track is sound and is a good investment for future transportation uses," Faught said in a 2005 statement.
8-Dec-2005	answers to questions about the purchase	The Secretary of Transportation responded to questions from the Legislative Finance Committee's staff, who noted "this purchase constitutes the largest single capital acquisition in state history and has been done absent public or legislative comment, review or oversight." The questions had to do with authority, timing, risk, and environmental conditions. Regarding risk to the state from environmental contamination, the memorandum states, "Protection from accepting past environmental liability exists in the purchase and sale agreement corresponding to each railway corridor segment."
26-Feb-2006	Attorney General opinion on Agreement	NMDOT had requested an Attorney General opinion on provisions in the Agreement regarding indemnification. re: whether an indemnification of BNSF for liability relating to use of its tracks for commuter rail constitutes indebtedness that must be paid for from general revenues, which is prohibited in the Constitution. The AG opinion states the use of a special escrow fund that has a specific revenue source other than the general taxing power of the state is lawful. re: whether the Agreement is a construction contract under NMSA 56-7-1, which prohibits parties to a construction contract from agreeing to indemnify another party from its own negligence. The AG opinion states the Agreement is not a construction contract. The Attorney General also suggested some amendments to the Agreement.
2006	commuter rail opens	Rail Runner commuter rail service from Belen to Bernalillo started in July 2006 and was extended to Santa Fe in 2008.

2007	freight service stops	BNSF stopped its freight train service on the route in 2007.
2008	purchase of northern section	NMDOT and BNSF were to close the sale for the Lamy to Trinidad section in the final phase of the agreement in December 2008, for \$5 million.
Jan-10	maintenance costs	In January 2010, BNSF announced to Amtrak that all maintenance costs for continued operation of the Southwest Chief between La Junta, Colorado, and Lamy, New Mexico, would have to be borne by Amtrak, if Amtrak wished to continue operating service over the same right-of-way.
Aug-10	repair dollars	The state Transportation Commission voted to recommend that the DOT set aside \$2 million for capital improvements or repairs to the line once the state takes title.
7-Dec-2010	track purchase delayed by environmental issues	from a news story: NMDOT Secretary Gary Girón said that "all of the funds, the \$75 million, have been paid; however, the agreement and the terms have not been signed. We have not been able to complete our environmental clearance work to make sure there is not significant liability for the department." According to a news story, New Mexico resisted taking title to the last section of track because of potential environmental problems. The NMDOT rail manager testified at a legislative hearing that about 10 sites had been identified as potentially needing cleanup, and NMDOT had not been given permission to examine those sites. They involve rail yards and other locations, but wouldn't interfere with train travel on the track. Under the 2005 agreement, BNSF could agree to clean up environmental problems, but a NMDOT official said the liability involved in some cleanups can run into the hundreds of millions of dollars. An official with the Rio Metro Regional Transit Authority, which manages the Rail Runner, told legislators "the state can walk away from that line if there are environmental conditions that aren't acceptable." Only Amtrak's twice-a-day Southwest Chief was using the route.
7-Dec-2010	maintenance estimate	from a news story: DOT officials said that Amtrak's contribution to the yearly \$6 million maintenance costs would be about \$200,000 once the state takes ownership of the track. The tab for track maintenance would come from the already-strained state road fund.

25-Apr-2011	notice to BNSF: no purchase	from a letter from NMDOT to BNSF: "[D]espite NMDOT's payment of \$5,000,000 in December 2008 pursuant to the terms of the Agreement, BNSF has failed to convey ownership of the rail tracks and related properties to NMDOT. To date, there has been no Closing, nor . . . an extension of the Closing Date." NMDOT Secretary Dominguez stated that, pursuant to other provisions in the Agreement, "NMDOT is accordingly exercising its rights to terminate the Agreement and is requesting a refund of \$2.325,000, which is half of the Earnest Money. In addition, NMDOT requests a refund of the additional \$350,000, which NMDOT paid in excess of the amended purchase price."
5-May-2011	new governor wants to renegotiate with BNSF	from a news story: Governor Martinez (who took office in January 2011) announced a plan to renegotiate the deal with BNSF to buy 180 miles of track from Lamy to the Colorado state line. The Governor cited potential savings: \$8 million a year in maintenance, \$500,000 a year in liability-insurance premiums to cover crashes at grade crossings (note: the Passenger Rail Investment and Improvement Act of 2008, Section 209, requires Amtrak to pass through to the states an increased percentage of operating costs, including indemnification), and \$2 million paid to BNSF as a down payment.
17-Jan-2012	budget constraints noted in budget analysis	from the FY2013 budget recommendation of the Legislative Finance Committee to the full Legislature: - NMDOT faces significant funding constraints as a result of debt obligation incurred through the GRIP [Governor Richardson Investment Partnership] program. Long-term debt obligations represent nearly 20 percent of revenue obtained from federal and state sources. Between FY24 and FY27, the state road fund will be obligated to pay all outstanding debt not eligible for federal reimbursement, estimated at \$38.9 million in FY24, \$112.3 million in FY25, \$111.3 million in FY26, and \$66.6 million in FY27; for FY13, NMDOT requested \$155.8 million for debt service and debt service principal; approximately \$23 million of that was related to Rail Runner debt obligations; - approximately \$1.3 billion in bonds had been issued under GRIP, with \$260.4 million remaining unissued; - projections indicated a maintenance gap of \$203.2 million and another \$314 million gap for long-term highway and bridge rehabilitation and replacement; - the Rail Runner projected a surplus of \$593,600, but \$5.4 million in federal revenues would no longer be available in FY2013; its sustainability was being studied. A NM legislative fiscal analyst stated the outlook in the upcoming report is similar; it will be released in January 2013.
Oct-12	state's future plans	from a NMDOT official: NMDOT does not intend to acquire the line used by the Southwest Chief from BNSF. No estimates are available for environmental cleanup, maintenance and insurance. The agency's budget contains no passenger rail line items.

2013	state rail plan	NMDOT completed a draft State Rail Plan in late 2011 to guide future passenger rail development. It expects to finalize the report in early 2013 after conducting another round of public meetings and stakeholder meetings.
<p><i>Sources: Purchase and Sale Agreement, 11/28/2005; memorandum, NMDOT to Legislative Finance Committee, 12/8/2005; State of New Mexico, Report of the Legislative Finance Committee to the Fiftieth Legislature, Second Session; January 2012, for Fiscal Year 2013; conversation with Legislative Finance Committee analyst Randall Soderquist; news stories: http://www.santafenewmexican.com/localnews/Chief-at-crossroads, http://www.abqjournal.com/news/state/072310452223newsstate12-07-10.htm</i></p>		
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