



February 18, 2009

The Honorable Michael Bennet
Senator
U. S. Senate
702 Hart Senate Office Building
Washington, DC 20510

Dear Senator Bennet:

We are writing today to encourage you to act quickly and save both the Colorado Metropolitan Planning Organizations (MPOs) and the Colorado Department of Transportation (CDOT) more than \$82 million.

As you know, the American Recovery and Reinvestment Act of 2009 (ARRA) will bring about \$400 million to Colorado for investing in transportation infrastructure. However, anticipated rescissions in the FY09 Appropriations Omnibus Bill coupled with rescission language in the Energy Independence and Security Act of 2007 may simultaneously eliminate about \$82 million from Colorado's transportation programs (see attachments).

The first and most immediate problem facing the State of Colorado is the FY09 Appropriations Omnibus Bill, which may result in an approximate \$3 - \$5 billion in rescissions. Those rescissions will cut about \$1.5 million from real program funds in Colorado and lays the groundwork for more severe cuts on September 30 of this year, the last date of SAFETEA-LU, when \$8.7 billion more rescissions are expected (resulting in the lost of the \$8.2 million mentioned above).

The solution to the rescissions issue is multipronged and will require several steps to address. However, the immediate concern is the FY 09 Appropriations Omnibus Bill and the State's MPOs and CDOT together make the following request, in order of preference:

Grant a waiver to all states that allows an exemption from the 2007 Energy Independence and Security Act of 2007's "proportionality rule" for rescissions

OR

Carve out a Colorado-specific exemption to eliminate rescissions where a decrease of actual dollars will occur (Colorado exemption from proportionality rule).

At a time when Congress is working diligently to keep people employed, rescissions to transportation funds will cause the state's MPOs to lay off personnel. This is especially troubling during a time when the AARA asks MPOs and CDOT to get projects underway in very short order.

The enclosed documents from the Denver Regional Council of Governments (DRCOG) and CDOT are offered as background. Please feel free to contact anyone on the list below should you have questions or concerns.

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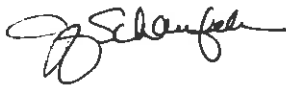
Representatives from both CDOT and the Colorado MPOs have visits set up with some of our Colorado delegates the last week of February, but we fear those visits may be too late. ***We urge action on your part to help resolve the negative impact rescissions have on transportation programs and jobs in Colorado.***

Thank you for your attention to this important matter.

Sincerely,



Russ George, Executive Director
Colorado Department of Transportation
303.757.9201



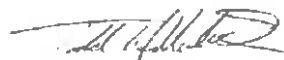
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Rescissions

A rescission is when Congress decides to rescind or “take back” apportionment from previous or current fiscal years, usually through an appropriations bill. Each year the states Department of Transportation (DOT) are apportioned a certain amount of funds in each of the formula programs. The DOT’s are then given obligation authority (a percentage) that limits what the DOT is allowed to spend of that apportionment. When a rescission occurs Congress is typically targeting the amount between the obligation authority (lower amount) and apportionment (higher amount) that each state has on their “books”. This is called the unobligated balance. A rescission moves these unobligated balances from the DOT’s account back to the highway trust fund account. Rescissions have been occurring since SAFETEA-LU’s inception.

Since FY 2005, Colorado has had to rescind \$170.3 million. We are anticipating having to rescind another \$159.2 million in the remaining year of SAFETEA-LU. These rescissions are going to take place in the following way: FY09 Appropriation and the SAFETEA-LU Authorization rescission. First, the FY09 rescission is an estimated \$3 billion nationally, which would result in approximately \$40.8 million for Colorado. The second is built into the SAFETEA-LU authorization act and is estimated to be \$8.7 billion nationally or \$118.4 million for Colorado.

Rescissions would normally not be a significant issue for the states, as the states can have the funds rescinded from the portion that they were not allowed to spend anyway. By rescinding funds from the unobligated balances, no project dollars are lost. However, since the inception of SAFETEA-LU there have been rescissions each year which has caused our unobligated balances to dwindle.

Until FY 08, each state had the discretion to choose which accounts to rescind funds from, such as Interstate Maintenance (IM) or National Highway System (NHS). Many of the states first cut the accounts that were directed to the large MPOs, like DRCOG, rather than cutting dollars in the accounts the department controls. To prevent this inequity, Congress in 2007 through the Energy Bill restricted state DOTs from having the discretion to choose which federal accounts to rescind money from. Instead, each account must now be drawn down proportionally (this is known as the ‘proportionality rule’), except that some programs such as STP-Metro cannot be touched at all. CDOT had taken the opposite approach of many states. CDOT chose to not rescind from the accounts to the three large metropolitan areas in Colorado (under the STP Metro program) and instead rescinded additional dollars from the accounts CDOT controlled in order to keep the MPO areas “whole.” We “did the right thing.”

But now that Congress has taken away the flexibility of which accounts to rescind, Colorado faces a situation where instead of turning back money we were not allowed to spend, we will have to rescind “real” dollars in our construction account, rather than from the unobligated balances. This means instead of rescinding up to \$159.2 million in dollars we couldn’t spend anyway, we instead will be cutting about \$81.5 million in REAL PROJECTS, while leaving the MPO “STP Metro” account with over \$98.5 million in unobligated balances that can’t be spent under the current authorization act. In other words, we will be punished for doing the right thing over the last five years.

CDOT is engaging the MPO’s, our congressional delegation, and key congressional committee staffers in an effort to fix this problem and prevent \$81.5 million in cuts this year. Colorado’s fix would be to allow Colorado to rescind money proportionally in each account (as required by the law passed in 2007) until we reach a zero balance of unobligated (can’t spend) funds. At that point we would not have to cut “real” dollars but would instead regain the flexibility to reduce funds in accounts that still have unobligated balances that we are not allowed to spend. It doesn’t make sense to cut real dollars when accounts have large balances in dollars we will never be able to spend.

Apportionments	Remaining Unobligated Balances after \$3 B Rescission
Interstate Maintenance (IM)	(\$1,329,053)
National Highway System (NHS)	\$7,775,001
Enhancement	\$12,811,275
STP Flexible	\$6,672,928
CMAQ	\$18,633,659
Bridge	\$7,649,354
Metro Planning	(\$564,557)
Recreational Trails	(\$199,040)
Equity Bonus	\$7,638,495
Safety	\$46,008,372
STP Metro	\$141,794,043

Negative amounts are a loss of real project dollars

Apportionments	Remaining Unobligated Balances after \$8.7 B Rescission
Interstate Maintenance (IM)	(\$22,476,372)
National Highway System (NHS)	(\$20,585,321)
Enhancement	\$10,145,670
STP Flexible	(\$310,932)
CMAQ	\$9,969,117
Bridge	(\$645,938)
Metro Planning	(\$1,637,216)
Recreational Trails	(\$577,216)
Equity Bonus	\$7,638,495
Safety	\$41,993,822
STP Metro	\$129,421,530

Negative amounts are a loss of real project dollars

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Apportionments	Remaining Unobligated Balances after \$11.7 B Rescission
Interstate Maintenance (IM)	(\$33,606,540)
National Highway System (NHS)	(\$35,511,806)
Enhancement	\$8,742,720
STP Flexible	(\$3,986,647)
CMAQ	\$5,408,831
Bridge	(\$5,011,881)
Metro Planning	(\$2,201,773)
Recreational Trails	(\$776,257)
Equity Bonus	\$7,638,495
Safety	\$31,992,362
STP Metro	\$98,597,845

Negative amounts are a loss of real project dollars

All charts assume 100% obligation authority for metro planning and recreational trails and proportional rescissions.

DRCOG Planning Funds and Rescissions

Authorized and appropriated amounts are rarely the same; generally, appropriated funds are less than what is authorized. The difference between funds Congress authorizes and funds Congress appropriates isn't expendable (authorized money - appropriated money = false money).

Even though it is not expendable, this "false" money is chronicled in FHWA/DOT's books. And because the law allows rescissions of "false" money, no actual money has been depleted by rescissions here in Colorado.

Then the 2007 Energy bill was passed. It said rescissions would come from all core transportation programs proportionally. This language is a result of several states rescinding from CMAQ funds exclusively. That's when the trouble for CDOT and the Colorado MPOs began.

Due to the language in the Energy bill, CDOT no longer takes "false" money from accounts solely where it exists, but rather, rescinds some from all transportation programs. Remember, the Energy bill says take funds from the programs proportionately. In perhaps oversimplified terms, if CDOT takes 10% from a program that has lots of false money, they also have to take a percentage of money from all the other programs whether or not they too have false money left in them. If there's no false money, CDOT must deduct real dollars!

I should note here that DRCOG and other MPOs (in Colorado and elsewhere) disagree that MPO planning funds are a "core transportation program"; we don't believe they should be impacted by the Energy bill because planning funds come off the top of all the core transportation programs to pay MPO staff to manage the core transportation programs. It is important to note that states' planning & research funds are derived in the same manner as MPO planning funds, but those funds have not been interpreted as being subject to rescissions by the Energy bill.

What we know for now is that rescissions in FY08 reduced DRCOG's transportation budget by about \$.5M. We're hearing the next appropriations bill (for FY09) could call for \$8-\$30B in rescissions. DRCOG cannot say precisely what that means for our planning funds, but it is expected to be a very substantial reduction. Pueblo and Grand Junction MPOs, and possibly the North Front Range MPO will have to stop operations if this continues; DRCOG and Pikes Peak COG will have to layoff a significant number if rescissions continue in this manner.

If rescissions come in at \$11.7B (that's the amount we'd been hearing up until two weeks ago), CDOT estimates they'd have to rescind about \$160M. If they have to do it proportionally as directed by the 2007 Energy bill, \$80M of real money would have to be cut from various transportation accounts.

As we understand the situation in Colorado, CDOT hasn't rescinded from certain transportation accounts in the past so the false money has built up a huge balance in some accounts while other have none. CDOT believes that they have in excess of \$100M in false money, so they'd like to be able to rescind just that, rather than rescind real money from any account - including the state's MPO's planning funds.

It is our belief that Congress did not intend to take away real dollars with rescissions, but rather, use rescissions as a tool to wipe the false money off of the books.

To fix this, working from **our preference to our least preferred**:

1. No rescissions
2. Exempt MPO planning funds (see justification above)
3. Restrict rescissions to false money until all the state's false money is exhausted. Once all false money is depleted, the state DOT and the statewide planning partners, i.e. MPOs, **shall mutually agree** on where and in what proportion to take further rescissions, i.e. "real" money.
4. Colorado would happily settle for an exemption or waiver from the provisions in the 2007 Energy bill.