



MEMO

To: NCRA Board of Directors

From: Executive Director Mitch Stogner

Date: May 12, 2010

Subject: Agenda Item E.3 – Proposal to Address Requirement for Continuously Welded Rail (CWR) through Novato

Under the November 3, 2008 Novato Consent Decree, NWP Co. is prohibited from operating any trains through the Novato city limits until continuously welded rail (CWR) is installed in the low Emission Engine District as defined.

On April 14, John Williams, Dave Anderson and legal counsel met with Novato's City Attorney and Novato public works staff to propose an alternative to the existing CWR requirements in the Novato Consent Decree. The City Attorney, Mr. Jeff Walter, suggested that Mr. Williams and NCRA make a proposal in writing that he could provide to the Novato City Council for its consideration.

Attached is a letter to be signed by NCRA and NWP Co. legal counsel, respectively, that reflects NCRA's proposed alternative to the requirement for CWR through downtown Novato.

Staff Recommendation: Approve the proposed letter to be sent to Novato City Attorney, Mr. Jeff Walter, regarding the current requirement for CWR through downtown Novato.



North Coast Railroad Authority

419 Talmage Road, Suite M

Ukiah, CA 95482

Jeffrey A. Walter
Attorney at Law
Walter & Pistole
670 W. Napa Street
Suite F
Sonoma, CA 95476

Dear Jeff,

Following on our discussions of April 14, 2010, this is a Joint Proposal by NCRA/NWP Co. for modifications to the Novato Consent Decree (NCD) dated October 20, 2008. The proposed modifications of the NCD address the provisions of Section VII, "Performance of the Track Welding Work", and all related Sections and references to that work. Location references for the Novato Welded Rail Project are contained in Attachment A.

Subsequent to the execution of the NCD in October 2008, a ballot measure was passed that provided funding for the construction and operation of the SMART Commuter Rail Service along the NWP main line, from Larkspur to Cloverdale. SMART's current projection is that the reconstruction by SMART of the NWP Main Line to enable passenger rail commuter operations will be completed and operations will begin in the 2014-2016 time frame. Relevant to this NCRA/NWP Co. Proposal is that SMART plans to completely remove the existing track structure and related components between Larkspur and Cloverdale and replace them with all new track structure and components, including new ballast, cross ties, and Continuous Welded Rail. That new track structure would be constructed on NWP's Main Line through the City of Novato, including, as relevant to this Proposal, from Ignacio at MP 5-25.82 through downtown Novato and continuing to Petaluma, Santa Rosa, and beyond. As a consequence of SMART's reconstruction of the NWP Main Line through Novato, that portion of the Continuous Welded Rail contemplated in the NCD will be completed by SMART in its currently projected construction time frame of 2014-2016.

It is SMART's stated intention to sell or scrap all the existing track structure and components in the NWP Main Line and replace them with new track construction. It is the collective opinion of NCRA/NWP Co. that, in view of SMART's planned dismantling and reconstruction of the existing track structure, compliance by NCRA/NWP Co. with the requirements of the NCD Section VII, "Performance of the Track Welding Work," would result in wasteful expenditures of public monies, which should be avoided. Moreover, between Ignacio at MP 5H-25.57 and the easterly City

Limits of Novato at MP 5H-28.0, there exist few sensitive noise receptors that warrant track welding to eliminate the existing rail joints.

To minimize train noise from rail freight operations through the City of Novato, while also minimizing the unnecessary expenditure of public funds, NCRA/NWP Co. offer to the City of Novato the following Proposal:

1. NCRA/NWP Co. will support in full an application by Novato for the designation of Quiet Zones at Grandview Avenue, Renaissance Avenue, Hanna Ranch Road, Olive Avenue, and Rush Creek Place. NCRA will apply for and spend an amount of not less than \$1.25 million of ISTEA funds for the installation at those five crossings of additional crossing protection devices (i.e., additional flashers and gates, median strips, etc.) to be determined in consultation with the City of Novato.
2. In order to minimize train noise, and despite FRA authority to operate trains at speeds of 40 mph, NWP Co. will commit to operate its freight trains at speeds not greater than 25 mph between the west end of the Black Point Bridge at MP 5H-28.6 and the northerly city limits of Novato at MP 5-29.1. NCRA has calculated that the proposed speed reduction to 25 mph would reduce train noise by 37.5 percent. This voluntary speed restriction will expire when the track welding contemplated in Paragraphs Nos. 4 and 5 has been either completed or determined by the parties to the NCD to be unnecessary.
3. As the City is aware, Section XI, "Fund for Implementation of Ameliorative Measures" of the Novato NCD, provides that NCRA/NWP Co. shall pay to Novato the sum of \$100,000.00 thirty days prior to the commencement of NWP Co. train operations to fund measures or improvements that will assist in ameliorating the effects of the train operations of NCRA/ NWP Co. in the Novato area. As part of this Proposal, NCRA/NWP Co. agrees to accelerate payment of that amount to the date of execution of an Amendment to the NCD that incorporates all aspects of this Proposal.
4. If, not sooner than six years following the execution of an Amendment to the NCD, SMART has not provided Continuous Welded Rail on the NWP Main Line through Novato and the parties agree that such installation by SMART is unlikely to occur within the foreseeable future, then, in response to a request by the City, NCRA/NWP Co. shall weld, within 180 days, all of the rail joints on the NWP Main Line between Ignacio at MP 5-25.82 and the Novato Northerly City Limits at MP 5-29.1.
5. Upon completion of any proposed real estate development in the Hanna Ranch Road area, and at the request of the City, with notice of 180 days, NCRA/NWP

Co. shall promptly weld the rail between Ignacio at MP 5H-25.57 and the second Novato Creek Bridge at MP 5H-26.26.

6. Upon the execution of an Amendment to the NCD, in consideration of this Proposal, all restrictions of any kind on the operation by NCRA/NWP Co. of freight trains or locomotive engines that are currently conditioned upon the completion of the Track Welding Work shall be eliminated and/or modified in accordance with the Amendment to the NCD.
7. All of the provisions of the October 20, 2010 NCD that refer to or in any way address Track Welding Work shall be modified and superseded in an Amendment to the NCD to conform to the provisions of this Proposal.

Jeff, thank you in advance for the consideration of this Proposal to the City of Novato. Please let us know if there are questions.

Sincerely,

Christopher J. Neary
Attorney at Law
North Coast Railroad Authority

Douglas H. Bosco
Attorney at Law
Northwestern Pacific Railroad Co.

Attachment A
Location References for Novato Welded Rail Project

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A. Lombard Branch, Ignacio to Lombard (west to east)

1. **Ignacio, MP 5H-25.57 (Lombard Branch) equates to MP 5-25.82 (NWP Main Line); location where Lombard Branch connects to NWP Main Line.**
2. **Second Novato Creek Bridge, MP 5H-26.26; adjacent to Highway CA 37.**
3. **Novato Easterly City Limits, MP 5H-28.0.**
4. **Black Point Bridge, West End, MP 5H-28.6.**
5. **Low Emission Engine District, Easterly Boundary, MP 5H-33.7.**

B. NWP Main Line, Ignacio to Cloverdale (south to north)

1. **Ignacio MP 5-25.82 (NWP Main Line) equates to MP 5H-25.57 (Lombard Branch); location where NWP Main Line connects to Lombard Branch.**
2. **First Novato Creek Bridge, MP 5-26.93.**
3. **Atherton Avenue Overpass, MP 5-28.60.**
4. **Novato Northerly City Limits, MP 5-29.1.**
5. **Low Emission Engine District, Northerly Boundary MP 5-35.5.**

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