



**MEMO**

**To:** NCRA Board of Directors  
**From:** Executive Director Mitch Stogner  
**Date:** March 10, 2010  
**Subject:** **Agenda Item F – Discussion Items**

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**Status of Lombard – Windsor Repair Project – Lifting of Emergency Order 21**

As previously reported, the 62-mile Lombard-Windsor repair project is substantially complete. 56 crossing signals have been replaced or repaired; 53,000 new ties have been inserted; 21,000 tons of ballast have been applied to the trackway; repairs to 40 timber bridges and 3 moveable bridges are complete, and the Schellville levees have been repaired.

Before NCRA/NWP Co. formally request inspection by the FRA, the following additional work, which will be financed by NWP Co., needs to be completed:

- Destress, respike, and anchor about 8 miles of continuously welded rail (CWR) from Sears Point to Blackpoint Bridge;
- Vegetation control along entire right-of-way;
- Installation of wayside bridge signals at Haystack, Blackpoint, and Brazos;
- Minor additional trackwork and welding from Ignacio – Windsor.

The operator estimates total cost of this work to be less than \$1 mil.

These 4 projects are among the 10 projects contained in NCRA's January 20 letter to FRA; the letter was included in the Board packets and discussed at the February 10 Board meeting in Healdsburg.

If the RRIF loan of \$3.18 mil. is approved by the FRA, and the NCRA Board approves the terms and repayment schedule, staff will request Board authority to use proceeds from the RRIF loan to repay NWP Co. for the financing of these 4 projects.

**Status of RRIF loan**

On January 20, a letter was sent to the FRA outlining the 10 projects for which NCRA/NWP Co. request funding under the RRIF low-interest loan program. IF the FRA

approves NCRA's request, staff will seek Board authorization to execute the loan documents.

As previously stated, at least 4 of these projects will be financed and managed by the Operator in conformance with state and federal contracting law, and NCRA's Policies and Procedures, with the expectation that RRIF funds would repay the operator for this work.

On March 2, the FRA staff advised NCRA staff that the FRA Credit Council would review NCRA's project application, including the 10 projects to be funded and the environmental clearance for each, this month. A full presentation to the FRA Credit Council is expected in April.

### **Status of November 5, 2009 Russian River Division EIR.**

On November 10, NCRA staff advised all interested parties that it has revised and re-circulated NCRA's March 9, 2009 DEIR, incorporating revisions to the March Draft to accomplish the following:

- Reflect current NCRA Trail Guidelines;
- Include an Appendix A which lists BMP's and NCRA's plans and procedures;
- Additional technical corrections throughout the March 9 DEIR.

The comment period was extended to January 14, 2010. It was also made clear in the Notice of Availability that previous comments to the March 9, 2009 DEIR would be considered part of the public record, but that written responses to comments, to the March 9 draft, would not be included in the final EIR. Therefore, the public was advised to submit new comments to the November re-circulated DEIR. Responses to these comments will be included in the FEIR.

NCRA received extensive comments on January 14. Staff met with the environmental consultants (Kleinfelder) on February 10 and February 24 to begin assimilating comments and developing responses.

The goal is to have an FEIR complete sometime in June, allow 2 weeks for public review, and request Board certification in June or early July.

### **SMART/NCRA Revised Operating Agreement**

As reported previously, NCRA lawyers and SMART lawyers began meeting last July to develop a new Operating Agreement involving joint use of the NWP line between Highway 37 (Ignacio) and Cloverdale. On September 24, SMART submitted a "redline" version of the proposed agreement for NCRA's review. After conducting a review of operating agreements employed by other California railroads with shared-use agreements, and thorough review of the many existing documents that govern use of the NWP track, NCRA/NWP Co. submitted a "redline" response to SMART's initial draft on January 11, 2010.

On January 28, SMART Chair, Debora Fudge, sent a letter to NCRA's Chair Hemphill objecting to NCRA's January 11 Draft. Chair Hemphill responded on February 11 with a further explanation of NCRA's justification for the suggested revisions, and recommended continued negotiation of the issues in dispute.

On March 1, Chair Fudge sent a letter to Chair Hemphill explaining that SMART would agree to an all day session with NCRA to attempt to resolve issues relative to the new Operating Agreement; she also indicated that she has named SMART Directors Charles McGlashan and Valerie Brown to join her in these discussions. Chair Hemphill has not yet formally responded to Chair Fudge's March 1 letter, but has named Directors Kelley and Wagenet to join him as NCRA's counterparts in these talks.

### **Sale of the Ukiah Depot Property**

The Administrative Office of the Courts (AOC), acting as the staff agency for the Judicial Council of California, has identified Mendocino County as one of 9 counties in California eligible for state funding in Fiscal Year 2009-2010 for the construction of a new County Courthouse complex. Funding for the acquisition of land and construction of the new Mendocino County Courthouse is provided through the enactment of SB 1407 in 2008, which authorized \$5 billion in state revenue bonds for the trial court facility construction.

On December 14, 2009, the Judicial Council announced that the state Public Works Board has given formal approval for a new courthouse in Ukiah. According to the press release issued by the Judicial Council, "this approval marks the official start of the courthouse construction project, which will be managed by the state Administrative Office of the Courts (AOC)."

The County of Mendocino and the City of Ukiah have jointly determined that the Ukiah Depot site is the preferred location for the new County Courthouse complex which will cost an estimated \$120 million to complete. The City and NCRA have entered into discussions with a nationally recognized development firm, Weston Solutions Inc., to acquire, clean-up, and possibly construct the new courthouse on the 11-acre Depot site.

NCRA staff and City staff have spent several hours in meetings discussing the steps necessary to transfer ownership of the Depot site to the developer (Weston Solutions Inc.) for construction of the new courthouse. NCRA legal counsel, Chris Neary, drafted an issues paper for presentation to the CTC, CalTrans, and the Federal Highway Administration (FHWA) in Sacramento on January 25. The purpose of the meeting was to seek permission to sell the Depot property and to gain a common understanding of what conditions, if any, would be placed on this transaction.

As I have reported to the Board, CalTrans/CTC/FHWA staff seemed to agree with NCRA's contention that 90% of the cost of the Willits Segment (\$5.3 mil.) was covered by a federal loan that was deemed satisfied in 2005, and that 10% of the cost of the Willits Segment (\$590,000) was covered with state TCI funds. There also seemed to be agreement that NCRA would be required, at the discretion of the CTC, to repay the state 10% of the proceeds from the sale of the Depot property, the pro-rata share of the state's contribution to the purchase of the Willits Segment. Caltrans legal counsel, Matthew George, Chris Neary, and FHWA legal counsel have scheduled a meeting to discuss what conditions the federal government (FHWA) would place on the sale of the Depot property.

Legal Counsel Neary and Weston Solutions have agreed that the next step is the execution of an Option Agreement which grants Weston Solutions the exclusive right to purchase the Depot property from NCRA provided specific conditions are met. A meeting involving all the interested parties has been scheduled for March 15 in Ukiah. The goal is to finalize the Option Agreement between Weston Solutions and NCRA as soon as possible.

### **NCRA/SMART Joint Use of \$8.6 mil. In ISTEALU Funds**

NCRA and SMART staffs met jointly with staff representatives from CalTrans, CTC, and FHWA on January 25 in Sacramento to discuss the possibility of designating SMART as the lead agency for implementation of the ISTEALU funds. FHWA staff questioned whether transfer to SMART could be accomplished through a joint MOU, when section 1912 of SAFETELU (2005) names NCRA as the lead agency for receipt of the funds. CalTrans/CTC programming staff thought that such a transfer could be accomplished administratively, but suggested requesting a letter from Rep. Thompson to FHWA calling for the transfer.

NCRA and SMART staff met with a representative from Rep. Thompson's office on February 9 to request such a letter. Thompson's staff assistant said that the Congressman would need to see the agreed-upon scope-of-work before transmitting a letter to FHWA.

Accordingly, staffs for both agencies need to finalize the scope-of-work and gain Board approval of the projects to be funded in the shared corridor.

### **April 7/8 CTC meeting in Irvine**

On April 8, CTC will consider NCRA's request for an extension of several Program Supplements applicable to TCRP Project 32.9. The most critical is the Project Supplement that expired in 6-30-09 which has remaining funds of about \$2.5 million. The extension of previously approved Program Supplements is generally a routine matter, but does require the submission of several documents, and will require staff presence at the April meeting.