

July 9, 2008 Board of Directors Regular Meeting

June 27,2008

ARCATA MAD RIVER RAIL TO TRAIL UPDATE

The concept of "railbanking" the Arcata Mad River Railroad (A&M) portion of the NCRA holdings was presented to your Authority at its May, 2008, meeting in Eureka. This report will revisit what was proposed and what has occurred since that time. The revisiting is for those that were not in attendance and also to make each report to you a stand alone document. My oral report will quickly summarize the previous portions and dwell on new information and where we hope to go from here.

The A&M portion of your tracks is situated between the north city limit of the City of Arcata (West End Road) at your mile post 295.57 and runs to just east of Blue Lake, a distance of just over seven miles. The post mile of 295.57 is the northern limit of that portion of your property that is leased to NWP. It is at a point called "Korblex." The A&M is not leased to NWP. It has no rails or ties. Those railroad essentials were removed sometime after 1994. The A&M contains four trestles and a bridge across the Mad River.

The railroad was completed in 1888 to bring logs out of the woods and then later, lumber from the mills. A transfer with the original NWP occurred at Korblex. Due to the age of the railroad the alignment is too confined to accommodate modern trains according to Frank Lovio, ex-NCRA maintenance superintendent. The major problem occurs just west of the Mad River bridge where the alignment is constructed for the 40 foot flat cars of earlier times but not the 80 foot variety of today. The curve has a center arc of 32 degrees and a minimal radius. As this is near my front yard, I can attest to many derailments in this area, especially when the tracks were under the control of The Eureka Southern and the NCRA who operated different equipment than the Simpson owned A&M.

I have asked Mr. Williams if he believes there are potential customers on this portion of the railroad. I have yet to hear back from him as of this writing. It would appear that Green Diamond (Simpson) would be the only potential user but whether or not the better way to serve them is by reinventing the A&M or trucking to a rail head is not a decision I can make. If there are potential customers that would scuttle the plan for a path we would like to know prior to expending great time and effort.

In checking the deeds for the A&M, they all refer to a strip of land either 10, 20, 30, or 33 feet wide. It is hard to place the exact location of many of the deeds but I believe the 10 foot sections are within the City of Arcata and not part of the current A&M line. What is obvious is that there are no wide spots that could be marketed for revenue for the NCRA.

Another problem with a potential sale of property would be that according to my contacts (surveyors, R/W agents, lawyers) the deeds all granted the railroad an easement for railroad purposes -- only. If the NCRA only has an easement, they cannot enter into an agreement to lease lands for other than railroad purposes. This might be contested because courts have sometimes decided that railroads are different and possibly the title is in fee. However, I can assure you that there are abutting owners who would go to court if a path were proposed or developed on the grounds that the railroad somehow owned the right of way.

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As mentioned and discussed with your Board previously, railbanking would solve our problem. Railbanking occurs under federal law and allows railroads to abandon their lines, with the right to re-establish them at a later time. In the intervening years the right of way can be used for other purposes, including multi-use paths. Under this process there is no need for determining who has fee title, for obtaining title reports, or even surveying -- as long as you remain within the existing ballast roadbed. The construction of such a trail is even exempt from environmental permitting processes. Railbanking does require two items that have been occupying our time and attention : A trail manager is needed and the railbanking has to proceed simultaneously with abandonment hearings.

There is an Interstate Commerce Commission (currently the Surface Transportation Board, STB) report from 1985 that many people have read and taken to mean that the Simpson Timber Company abandoned their tracks that year. If that were the case we would not be able to railbank, as railbanking has to proceed simultaneously with abandonment. We had heard previously from an STB attorney that the abandonment was flawed -- not complete -- however, when we requested a letter to that effect we were informed that they would not issue such a letter, not because it wasn't true, but because they don't issue definite statements such as that.

Shortly after 1985, however, Simpson Timber sold the A&M to the Eureka Southern Railroad and then the NCRA acquired ownership from the Eureka Southern. During Eureka Southern's ownership and until about 1994-95 under the ownership of the NCRA, trains were run on the A&M tracks.

With that knowledge more research was done and it came to light that the ICC/STB only gives permission to abandon (i.e. it does not do the abandoning itself). Even though Simpson had permission to abandon the railroad there is no indication they took the necessary steps to do so.

If they had abandoned the line, the property would have reverted to the owners of the underlying fee title and they would have had nothing to sell to Eureka Southern. If it was abandoned how is it that trains were still running?

I have been assured, though as of this date I have not seen the documents, that a title search was done when the NCRA acquired the property that shows the easement for the railroad which would not have existed had the line been abandoned.

Cal-Trans was contacted recently to see if they had any archival information on the matter. I was informed that about 1990, Cal-Trans HQ prepared a list indicating abandoned rail lines and active rail lines in the state and much study was done on the A&M for the reasons mentioned above and that the end result was they found no evidence that the line had been abandoned. It was listed in their report as an active line. We know that your NCRA Board has never taken an action to abandon and you have owned it since their report was prepared.

Our conclusion is that it has never been abandoned and is eligible for railbanking.

The other obstacle to overcome is the designation of a trail manager. The trail manager is not

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obligated to construct the trail but would be responsible for the liability that is currently the NCRA's. It is possible to railbank with yourselves as the trail manager and then farm out those duties as another, more appropriate entity is put in place to construct portions of the trail. While this is an option, your Board seemed quite clear that they were not in favor of it.

Most of our committee time has been spent dealing with the abandonment issue and we have not worked in depth on finding a trail manager. We are pursuing various potential solutions but they involve others and I do not want to go into all of them until we have had a chance to discuss it further with their leaders.

What we would like from the NCRA is:

1. A reaffirmation of the willingness to railbank the A&M.
2. Information as to whether or not potential customers are on the line that may pre-empt the trail.
3. A spot on your August agenda for another progress report.

Thank you for your time to hear this report and for your anticipated support of this project.

John Murray