

**NORTH COAST RAILROAD AUTHORITY (NCRA)
BOARD OF DIRECTORS REGULAR BOARD MEETING**

Wednesday, April 9, 2008 ~ **11:00**
Petaluma Community Center
320 N. McDowell Blvd, Petaluma
Sonoma County

Approved Minutes
Approved May 14, 2008

A. CALL TO ORDER

Chairman Hemphill called the meeting to order at 11:13 a.m.

B. ROLL CALL

Directors Present: Simonson, Ziedrich, Colfax, MacDonald, Meyers, Chairman Hemphill
Directors Absent: Woolley, Kelley, Ollivier
Also Present: Executive Director Mitch Stogner, Legal Counsel Christopher Neary, and Recording Secretary Heather Lindsteadt.

C. AGENDA APPROVAL

Chairman Hemphill recommended that Agenda Items E.1 and E.2 be switched.

Upon Motion by Director Meyers Agenda Item E.2 was moved to Agenda Item E.1 and Item E.1 was moved to Item E.2. Motion seconded by Director Ziedrich, and carried unanimously (6-0).

D. PUBLIC COMMENT

The following speakers addressed the Board to voice their support for the resumption of freight rail service on the North Coast:

Peter MacRae, Tom Slivka, John Barry, Barry Buckley, Steve Mahrt, Nicholas Matteis, Jerry Peters, Bill Kortum, Nick Tibbetts, Efren Carrillo, Mike Pechner, Pat OHalloran, John Marten, Harrie Yager, David Schonbrunn, Jerry Peters, Arnold Riebli, Jose Mendoza Jr., Jeff Casey, Mitchell Mulas.

The following speakers addressed the Board and voiced their support of the Novato lawsuit against NCRA:

Sharon Stammler, Chrissy Theran

E. CONDUCT OF BUSINESS

1. Review of Closed Session Attendance Related to Novato v. NCRA

Legal Counsel Neary said that he presented his Opinion to the Board and recommended approval of Director Meyers' request to submit the issue of conflict of interest to the Attorney General's Office in the form of a request for an Attorney General's Opinion. He also added that the Marin County representatives would have to decide for themselves whether they have a conflict of interest regarding the City of Novato vs. NCRA lawsuit, while we await an Opinion from the Attorney General's Office.

Motion made by Director Simonson, seconded by Director Meyers, to seek the Attorney General's opinion regarding the Conflict of Interest issue. Motion carried by the following vote AYES: 4, NOES: 2, ABSTAIN: 0, ABSENT: 3

Director Meyers said that he also prepared an Opinion regarding the conflict of interest issue and hoped that the Board had received a copy. He said that NCRA has far more serious issues to deal with. He read a list of 11 issues that he felt should take precedence over the conflict of interest issue. Director Meyers' Opinion is hereby made part of these minutes by reference.

Director Meyers said that he received Legal Counsel Neary's Opinion regarding the potential conflict of the Marin County representatives. He said that he believes that the Opinion contains factual errors and does not include the Attorney General's decisions on similar issues. He also pointed out that Legal Counsel's opinion does not include the issue of the Operator Committee's oversight of the Novato Lawsuit.

Director Meyers requested that his opinion be posted to the website.

Director Meyers requested that the motion made by Director Simonson be amended to include submission to the Attorney General's Office of the issue regarding delegation of authority of the lawsuit to the Operator Committee.

Director MacDonald said that he concurs with Director Meyers' opinion. He said that exclusion of Directors' participation in Closed Session is not a discretionary action of the Board. He said that Legal Counsel Neary's suggestion that the Board formally request that the Marin County representatives state whether or not a conflict exists prior to attendance in closed session is offensive. He said that he found such a requirement distasteful and that if the Board formally asked him to take an oath concerning conflict of interest, he would refuse.

Director MacDonald requested the tapes of the January 31 and March 12 Operator Committee Meetings and the January 10 Closed Session tapes. He said that if he is denied his request for copies of the tapes, he is requesting that NCRA preserve and not destroy the tapes of those meetings. He said that he hopes the Board does not adopt Legal Counsel's Opinion and said that the Board should rescind the prior decision to delegate the Novato lawsuit to the Operator Committee, and should discuss all Novato lawsuit strategy with full Board participation.

Director Ziedrich observed that recent meetings of the NCRA Board had become extremely unpleasant and almost combative. He said that members of the Board have become distrustful of fellow Board members because of the perceived conflict that the Marin Directors may have. He added that he has been reminded, as a City of Healdsburg Council Member, that even having a perceived conflict is a very important issue and that each Director should be cognizant of that

issue. He commended Director Meyers and MacDonald's involvement with the City of Novato and the County of Marin and said that their close ties to the City of Novato have raised questions regarding perceived conflict, given Novato's lawsuit against NCRA.

Director Simonson said that the Marin Board members' motives were transparent and he said that he thinks that their actions on the Board have led to the perception of conflict of interest.

Director Colfax expressed concern that Director MacDonald and Director Meyers undermine NCRA by continually highlighting problems and perceived shortcomings of the agency. He said that he has been involved with many Boards through his seat as a County Supervisor, and has had much experience dealing with both actual and perceived conflicts. He said that he is concerned about Director Meyers' and Director MacDonald's motives in continually attempting to obstruct the mission of the agency. He added that the transparency issue needs to be dealt with, and said that in a situation such as the one NCRA is dealing with regarding possible conflicts, where two members appear to disagree with the fundamental and express objectives of the organization, those members should not be allowed to shape and direct the goals and objectives of the organization.

Director Colfax said it would be the responsible, transparent, and honorable thing to do for the two Marin members to recuse themselves from issues involving the Novato Lawsuit. He said it is not up to NCRA to be more transparent. He said it is up to the Marin members to be more transparent in terms of their actions as members of the NCRA Board.

Chairman Hemphill said that he is in favor of the recommendation to seek the Opinion of the Attorney General's office.

Doug Bosco addressed the Board and said that he represents NCRA's Operator, NWP CO. He said that ironically, it was Marin County that came to him while he was a member of Congress, and pleaded with him to help save the railroad.

Mr. Bosco said that his interest is that his client NWP Co., is also affected by the lawsuit. He said the lawsuit will not stop the railroad from reopening, but it will cost time, money, and delays. He said the law provides that, in litigation matters, the Board has a right to discuss the litigation in absolute secrecy, when it comes to legal strategy involving the NCRA and its legal counsel.

Mr. Bosco said that he does not know the two Marin County Directors. He said that he has extensive experience with the Brown Act and litigation issues. He said that he concedes that - just because people are appointed by the County of Marin does not automatically mean they must be excluded from Closed Sessions involving a Marin County lawsuit. Nevertheless, he said it would be inappropriate for any Director to use his or her position to provide information, strategy, or suggestions to an adverse party in litigation. He added that NWP Co. has the right to complete confidentiality with respect to the legal strategy being discussed, and that if he feels that the confidentiality has been breached, he will refrain from discussions of any issues relative to the Novato litigation.

Roger Graber said that the NCRA Board of Directors has bent over backwards to accommodate the Marin members and said he believes they are conflicted.

Mike Pechner said that he received an email which he read into the record. He said that it was from Director MacDonald to Novato City Manager Dan Keen. He said that it directly points

to improper communications between Director MacDonald, Novato City Manager Dan Keen, and Novato legal counsel, Jeff Walter.

Director MacDonald said that he was trying to get additional information about Signal Contract No. 2 before attending an NCRA Board meeting. He said that he was not divulging any Closed Session information and added that the briefing mentioned in the email with Jeff Walter never happened. He said he would still like a briefing regarding the Signal Contracts, and said that he does not think such a request is unreasonable.

David Schonbrunn said that the reason Marin County is involved with the NCRA Board is because the City of Novato recognized they were in an adverse position with the NCRA. He said he also believes that the only reason that Marin is represented on the Board is to perpetuate a conflict of interest. He said he is personally offended that the Marin county members claim that they have no conflict. He said the conflict was so apparent that former Directors Arnold and Leland had to resign, and he said that just because there are two new Marin members does not change the interests that are being represented. He asked where their allegiance lies. He asked if they are protecting NCRA, or is their real motive for joining the Board to protect Novato from the NCRA. And he added that until they can answer that questions, they should not be allowed anywhere near Closed Sessions.

Barry Buckley spoke briefly and suggested that Director MacDonald resign from the NCRA Board.

Chrissie Theran thanked Directors Meyers and MacDonald for their decision to join the NCRA Board.

Director MacDonald said that everyone needs to make the distinction between a conflict of interest, and a difference of opinion.

Motion to amend the original motion to include the Attorney General's Opinion on the determination of the appropriateness of delegation of the Novato litigation to a Standing Committee of the Board made by Director Meyers, seconded by Director MacDonald carried by the following vote: **AYES: 6, NOES: 0, ABSTAIN: 0, ABSENT: 3**

Chairman Hemphill said that the issues regarding the Novato lawsuit were a tremendous diversion and have cost the NCRA time, and money. He said that NCRA's goal is to restore rail service on the North Coast, and that he hopes that there will be a point in time where the Marin members will not be caught in the crossfire of a lawsuit supported by Marin County.

2. Consideration and Possible Approval of Drainage Easement - Alton Ca.

Project Manager Dave Anderson updated the Board on the Easement Request by CalTrans for a Grant of Easement for drainage in Alton, Ca. He said that CalTrans has requested .156 acres at railroad milepost 263.0 for its proposed drainage for compensation totaling \$2500. He said that NCRA's Operator, John Williams has outlined his concerns and added that CalTrans is currently working on resolving Mr. Williams' requirements.

Upon Motion by Director Meyers, seconded by Director Simonson the Alton Drainage Grant of Easement of .156 acres for total compensation of \$2500 was approved conditional upon NWP

Co's approval. Motion carried by the following vote: **AYES: 6, NOES: 0, ABSTAIN: 0, ABSENT: 3**

Director Ziedrich leaves the meeting at 1:30 p.m.

3. Consent Calendar

- a.** Approval of Minutes Regular Board Meeting – March 12, 2008
- b.** Approval of Financial Statements – March 2008
- c.** Approval of Warrants Issued Agency 787010 – March 2008
- d.** Approval of Warrants Issued TCRP 787101 – March 2008
- e.** Approval of Warrants Issued Fish & Game 787408 – March 2008
- f.** Approval of CalCard Statement – March 2008

Motion to approve the Consent Calendar made by Director Meyers, seconded by Director Simonson.

Director MacDonald noted that NCRA received the anticipated rent money and also paid a number of invoices and asked why the Account Payables were not reduced. He asked what the financials mean and requested a MEMO outlining the financial documents. He said that he can't approve Item E.3.b. He suggested having the financial documents approved on a quarterly basis rather than monthly. He also offered to donate a day or two of his time to visit the office and set up a rolling cash flow and help with modifications to the Board Package.

Director Meyers requested that the financial documents be accompanied by a MEMO from the Executive Director vouching for the accuracy and legitimacy of the financial documents. He said that Item E.3.c-f have no cover memo. He said that unless there is a MEMO approving and outlining major financial highlights he cannot approve b-f.

Chairman Hemphill said that Directors can contact staff and ask questions about the financial documents prior to the Board meeting. He also said that a cash flow document would be helpful and asked staff to begin to develop that for Board review.

Executive Director Stogner said that Sonoma County does NCRA's accounting, Aycock and Edgmon do NCRA's single-year audit, and Mustola Management oversees staff accounting. He said that Scott Catania is in attendance and can answer any questions.

Motion carried including Director Meyers' amendments by the following vote: **AYES:3, NOES: Macdonald Item 3.b, Meyers Items E.3 b, c, d, e, f –ABSTAIN: 0, Absent: 4**

F. COMMITTEE REPORTS

1. Willits Rail Yard Ad Hoc Committee Report – Legal Counsel Neary

Legal Counsel Neary said that the Ad Hoc Rail Car Committee met with the City of Willits Ad Hoc Committee and said that the City has suspended any formal proceedings in connection with

its abatement notice. He reported that there will be a follow up meeting set for April 24 at 11:00 at the Willits Yard.

G. STAFF REPORTS

1. Executive Director – Mitch Stogner

Executive Director Stogner said that Director MacDonald requested a discussion regarding the SMART DEIR. He said that SMART referenced NCRA's Notice of Preparation and Project Description which is on the NCRA website. It states that NCRA is estimating a maximum 3- round trips per week in year one, and 3-round trips per day in year two if everything goes as planned on the Russian River Division (Willits south to Lombard). He said that NCRA will draft a technical comment letter in response to the SMART DEIR which will be presented to the Board at a later date.

Director MacDonald asked if the Board would have an opportunity to review the response to SMART's DEIR before it was sent. Executive Director Stogner said that it will be a very technical response and that the Board would be copied on any document that was sent to SMART regarding its DEIR. MacDonald referenced the November 27 letter to SMART and asked about the 4 new freight sidings that were mentioned in that letter. He asked for an update on the sidings and asked if the sidings are new construction or maintenance to the existing line.

Dave Anderson said that the sidings are under evaluation and that the sidings need to be reviewed. He said any sidings that are of use will be incorporated in NCRA's Environmental Document. He said that part of the environmental process is to review issues and decide whether there is a negative impact and if it is decided that one or all of the sidings presents a problem, it will be discussed in NCRA's environmental document.

Director MacDonald said in the November 27 letter and the SMART's DEIR, NCRA has agreed to use Tier – 3 locomotives which is different from statements made by NCRA previously and he asked if the Operator has provided written confirmation that he will be using Tier -3 locomotives.

Legal Counsel said that all of the information will be covered in NCRA's environmental document and NCRA should not be speaking for the Operator.

2. Project Manager – Dave Anderson

Dave Anderson presented a PowerPoint presentation outlining the schedule and also repairs that have been completed and are currently underway.

3. Legal Counsel - Chris Neary

No report

H. OPERATOR REPORT

I. MATTERS FROM THE BOARD

Director Meyers asked that the Arcata and Mad River Trail issue be agendaized for the May meeting. He also asked staff to confer with Director Woolley on whether the Annie and Mary Trail issue should be an action item or informational item.

J. CLOSED SESSION

The Board did not convene into Closed Session

K. ANNOUNCEMENT OF NEXT MEETING

May 14, 2008 – 10:00 a.m.
Humboldt County Board of Supervisors Chambers
825 5th Street
Eureka
Humboldt County

L. ADJOURNMENT

Chairman Hemphill adjourned the meeting at 2:20 p.m.