

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

Wednesday, June 11, 2008 ~ **11:00**
Ukiah Valley Conference Center
Chenin Blanc Room
200 South School Street
Mendocino County

APPROVED Minutes

A. CALL TO ORDER

Chairman Hemphill called the meeting to order at 11:05 a.m.

B. ROLL CALL

Directors present: Simonson, Ziedrich, Kelley, MacDonald, Meyers, Ollivier, Woolley, Colfax, and Chairman Hemphill

Directors Absent: None

Also Present: Executive Director Mitch Stogner, Legal Counsel Christopher Neary, Recording Secretary Heather Lindsteadt

C. AGENDA APPROVAL

Upon Motion by Director Ollivier seconded by Director Meyers the agenda stood as presented.

D. PUBLIC COMMENT

No Public Comment

E. COMMITTEE REPORTS

1. Willits Rail Yard Ad Hoc Committee Report

Executive Director Stogner updated the Board on the successful removal of 5 cars that were located in the Willits yard.

Mr. Stogner said that NCRA is requesting from Caltrans permission to retain \$17,000 from sale of the rail cars that were purchased with Prop 116 funds so that the funds can be used to purchase another piece of equipment.

Rod Whitney said that car number 1016 and 1023 were located adjacent to one of the cars that was removed. He said that the cars are open and he will work toward securing the cars soon.

Christopher Neary said that general clean-up and weed abatement has been done in the Willits yard.

Peter Koch said that there was an issue with his siding. He said that ALCO was given permission by his tenant to remove 600 feet of siding from his property and he will be looking

into the situation, and until the siding is replaced, NCRA will not be able to use the property for storage of equipment.

F. CONDUCT OF BUSINESS

1. Consideration of Application for Leave to Present Late Claim; Claim of Dana Lukes and Claim of Christopher McGarry

Legal Counsel Neary updated the Board on two tort claims that were submitted to NCRA. He said that there were two motorcycle accidents on Hwy 101 at a crossing north of Willits. He said that the attorney for the plaintiffs originally sent the claims to the Victim Compensation of the Government Claims Board, mistakenly thinking that NCRA was a State Agency for that purpose. He added that after the 6 month statute of limitations had expired, they filed an application to present a late claim to NCRA.

Legal Counsel Neary said that in his opinion they meet the criteria to submit an application to present a late claim. He said that the Board is required to act on the application within 45 days. He said that he recommends that the Board accept the application to file a late claim submitted by the attorney for the plaintiffs, understanding that such an action does not mean the Board accepts the claim itself. He said that the suit would be an item for discussion at a future Board meeting.

Legal Counsel Neary said that NCRA was created by the state. He explained that NCRA is a regional agency, and therefore has many attributes of a local agency and many attributes of a state agency, and the confusion by the plaintiff's attorney is understandable. He added that for some purposes NCRA is a state agency and other purposes NCRA is a local agency. He said that there was a recent case involving an agency which is similar to NCRA and the Third District Court of Appeals determined that hybrid agencies, such as NCRA, can be considered both State and Local.

Legal Counsel Neary said that it may be possible that Caltrans is the Agency responsible for the crossing where the accident happened.

Director Meyers asked if NCRA's General Liability insurance would cover the claim.

Legal Counsel Neary said that he was unsure whether NCRA's general liability insurance covered these types of claims. He pointed out that the decision to approve or deny the application for late filing was unrelated to the question of NCRA's insurance coverage.

Motion to allow the claim submitted by Christopher McGarry and return to the Claim to the full Board for further discussion at a later date made by Director Kelley, seconded by Director Meyers approved by the following vote AYES: 8, NOES 1

Motion to allow the claim submitted by Dana Lukes and return to the Claim to the full Board for further discussion at a later date made by Director Kelley, seconded by Director Meyers. AYES: 8, NOES 1

2. Consideration and Possible Approval of Resolution No. 2008-05 Willits Rail Yard - Railcar Storage

Legal Counsel Neary updated the Board on the security issues involving storage of privately owned railcars in the Willits rail yard and summarized Resolution 2008-05 that outlines NCRA's responsibility to keep the Willits yard secure. He said that NCRA is accruing expenses involved with the effort to secure the Willits yard, and that he recommended approval of the resolution so that NCRA can recoup some of the costs incurred in securing privately owned railcars by billing the owners of the railcars.

Motion to adopt Resolution 2008-05 made by director Myers, seconded by Director Kelley.

Director Woolley suggested inserting the language in Section 801.6(9) "Plus an administrative fee of ten percent 10% of known security costs." Director Woolley's suggestion was adopted.

Director Meyers asked if there was a current agreement in place between NCRA and the owners of the privately owned railcars, and asked if the owners will receive notice of the work and the associated fees. He also asked if any of the cars were owned by NCRA and if any of the cars could be moved from the property. Legal Counsel said that there is no agreement between the NCRA and rail car owners, and that the owners would receive advance notice of the new policy, and said that there is no way to move any of the cars off of the property without incurring the substantial expense of hauling them out by truck. Legal Counsel added that NCRA has looked at alternate locations to store the cars but he has not identified any acceptable alternatives to the current location.

Director Meyers asked if the rail cars have created an environmental impact such as the Baykeeper situation in Humboldt County. He also asked if NCRA should have an agreement with the owners of the private rail cars related to the environmental issues that may occur. He asked if the cars are leaking fluids could that present environmental hazards.

Legal Counsel Neary said that the storage of the cars at the present location should not present environmental liability issues. He added that NCRA would like to see the cars removed from the property, but until such time as that can be accomplished, NCRA should be able to recover some of the expenses of securing the cars.

Director Meyers asked what the term "non-Union Pacific-Agent-leased railcars" meant. He also said that the policy should be effective beginning June 11 or later. Legal Counsel Neary said that Union Pacific (UP) owns some of the cars that are located in Willits. He said that he wanted to make it clear that the UP cars are exempt from the policy to charge the owners for storage.

Director Meyers also suggested alternate language be added to the Resolution as follows: "Said fee shall be charged for each such railcar or locomotive on and after June 15, 2008, shall be billed at the end of each calendar month and shall be due and payable on the 1st of succeeding month, with the first such payment due as of July 1, 2008. Director Meyers also requested that in Section 801.6(9) the word "monthly" be inserted so it would read "A monthly fee per vehicle." The Second maker of the motion approved Director Meyers' amendments to the original motion.

Motion to adopt Resolution 2008-05 passed with amendments by the following vote, AYES: 9, NOES: 0

G. CONSENT CALENDAR

- a. Approval of Minutes Regular Board Meeting – May 14, 2008
- b. Acceptance of Financial Statements – May 2008
- c. Approval of Warrants Issued Agency 787010 – May 2008
- d. Approval of Warrants Issued TCRP 787101 – May 2008
- e. Approval of Warrants Issued Fish & Game 787408 – May 2008
- f. Approval of CalCard Statement – May 2008

Upon Motion by Director Kelley seconded by Director Woolley the Consent Calendar was approved with Director Ziedrich abstaining from Item G.a. Minutes – May 14, 2008. (9-0)

H. STAFF REPORTS

1. Executive Director – Mitch Stogner

Executive Director Stogner updated the Board on the MOU between the City of Petaluma and NCRA. He said that the recommendations that were made at the Board meeting in Eureka have been discussed with the City of Petaluma's attorney. He said that the Petaluma City Council will discuss the MOU at its July 16 regularly scheduled Council meeting.

Mr. Stogner said that Director Meyers asked for an update on the Draft EIR for the Russian River Division. He said that a number of factors are influencing the timing of the release of the EIR. He said that once the draft is released there is a 45 day comment period and also public hearings are held. He said that the Board would then adopt the Final Draft EIR and the notice of determination will be considered by the Board.

Legal Counsel Neary said that the Board probably would not take action on the EIR until the October 2008 meeting.

Executive Director Stogner said that the California State Farm Bureau recently sent letters of support for the restoration of freight rail service because of the cost of fuel has greatly escalated the costs of feed grains. He said that there is a real concerted effort on behalf of the Farm Bureau at the state level as well as the Marin County Farm Bureau to get the line running as quickly as possible so that local dairies could begin importing feed from the central valley by rail, rather than prohibitively expensive truck transport.

Chairman Hemphill asked if the letters from the Farm Bureau have been forwarded to Marin County Board of Supervisors, and the Novato City Council. Mr. Stogner said that the Farm Bureau automatically sent letters to both Marin County and City of Novato.

2. Project Manager – Dave Anderson

Mr. Anderson presented the Board with a Power Point presentation which updated the repair efforts along the NWP rail line.

Director Ollivier requested that staff forward the PowerPoint presentation to KPIX Channel 5. He said that KPIX aired a story on the railroad, and said that it is important they remain updated on the progress to restore service along the NWP.

Mr. Anderson said that NCRA is using the brush cutter and weed eating machines in Healdsburg and Santa Rosa area. He said that 3 fires have started in the area and SMART requested that NCRA use its equipment from Healdsburg to Petaluma to remove brush and abate fire hazards. He said that he would like to continue the abatement north of Healdsburg if NCRA's budget allows. He said that although NCRA has the equipment, paying to operate the equipment does present budget challenges..

Director Colfax said that the County of Mendocino Chief Administrative Officer, Tom Mitchell, discussed the possibility of a prison crew helping in the weed abatement efforts in Mendocino County. He said that he would get staff in touch with the County.

Director Woolley thanked Mr. Anderson for visiting Humboldt County recently and said that if NCRA has access to the equipment, staff should put together a budget for weed abatement so that he can present it to the agencies that may be able to help with cost sharing, or offer manpower to assist with the weed abatement in his county.

3. Legal Counsel - Chris Neary

Legal Counsel Neary said that the Court of Appeals denied NCRA's application for Writ of Prohibition on Monday, June 9. He said that the Appellate Court decision was not a ruling on the merits, and said that he will prepare an appeal to the injunction that was issued on February 6 by the Marin Superior Court. He requested an Operator Committee meeting to discuss the next steps in the litigation with Novato.

Mr. Neary said that he is hopeful that NCRA will be removed from the Baykeepers lawsuit soon.

Mr. Neary said that NCRA has received a demand from California Redwood Coast (CRC) Company for resolution of the judgment against NCRA. He said that he will meet with CRC's attorney and develop a plan.

Mr. Neary reported on the CBS Billboard issue. He said that he is hopeful that the agreement for removal of 5 billboards that are on NCRA's property will be finalized by the time the Board meets in Humboldt County in September. He said that there are

billboards located on property for which NCRA only has an easement, and negotiations for removal of those billboards will require further discussion.

Director Meyers asked to receive copies of all NCRA litigation briefs including the Baykeeper suit. Legal Counsel Neary said that he would send Director Meyers the briefs as soon as practicable.

Chairman Hemphill thanked Mr. Neary for all of his efforts and said that he is appreciative of all of his hard work and dedication, and encouraged him to continue the legal battle to restore rail service to the North Coast.

I. OPERATOR REPORT

1. NWP Co. – John Williams

Mr. Williams said that he is very concerned about thefts of electrical equipment, track, and equipment along the right-of-way and said he would like to see NCRA be diligent in prosecuting anyone who steals anything that belongs to NCRA or NWP Co.

Mr. Williams said that the Timber Heritage Association (THA) needs NCRA's help. He said that THA has been doing weed abatement between Arcata and Samoa, all by hand. He requested that NCRA try to get its brush cutter up to Humboldt County to help THA quickly remove the weeds and shrubs along the right-of-way between Arcata and Samoa. He said that the weed abatement would be a good first step for the THA plans to establish excursion train service around Humboldt Bay.

J. MATTERS FROM THE BOARD

Director Ziedrich said that the weed abatement is extremely important. He asked if it was possible to give the City of Healdsburg permission to enter onto NCRA right-of-way to help with the weed abatement efforts. He said that it is important that we abate fire hazards at the earliest opportunity.

Executive Director Stogner said that NCRA has legal fees, consent decree issues, insurance, and a capital program to administer. He said that he requested funding from the state to handle one issue – weed abatement along the right-of-way. He added that this is a very specific budgetary need that has never been addressed. He said NCRA has no money to deal with emergency property maintenance issues that are completely unrelated to whether NCRA runs trains or not. As the landlord of 316 miles of right-of-way, he said that the NCRA needs to find creative ways to deal with the serious fire danger that is apparent, especially during very dry fire season.

Director Meyers suggested contacting the local ROTC and Fire Departments to see if NCRA can garner resources to help with the weed abatement.

Director Woolley said that NCRA needs to come up with budgetary figures so that the agencies that may be able to help will have firm numbers to look at when NCRA is requesting help with emergency maintenance. He requested staff to prepare a budget that addresses fire abatement need.

Approved Minutes
Approved at the Regular NCRA Board meeting on July 9, 2008

Director Colfax said that NCRA has the responsibility to maintain its property and agreed with Director Woolley that an estimate of the funding need would be helpful.

Director Ollivier agreed that it may be possible to secure private and public contributions to hire local workers to remove fire hazards along the rail line.

The Board convened into Closed Session at 1:10 p.m.

K. CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION (3 cases)

Government Code 54656.9(a) and 54956.9 (c)

- (1) NWPY vs. NCRA
- (2) City of Novato vs. NCRA; Superior Court of California, County of Marin; case # CV074645
- (3) NCRA vs. Superior Court (City of Novato) Court of Appeal, State of California, First Appellate District, Division 3, Case # A121290

2. CONFERENCE WITH REAL ESTATE NEGOTIATORS

Gov Code Section 54956.8

Negotiators: Mitch Stogner, Christopher Neary

Negotiating Parties: NCRA, Quaker Hill Developers

Under Negotiation: Public Crossing Easement at Mile Post 70.85, price, terms, maintenance, liability.

The Board reconvened into Open Session at 1:40 p.m.

L. ANNOUNCEMENT OUT OF CLOSED SESSION

Legal Counsel Neary reported that the Board met on 3 cases of Existing Litigation, received information, and gave direction. He also reported that the Board met with its real estate negotiator, received information and gave direction. No action taken.

M. ANNOUNCEMENT OF NEXT MEETING

July 9, 2008 – 11:00 a.m.
Sonoma County
City of Healdsburg Council Chambers
401 Grove Street

N. ADJOURNMENT

Chairman Hemphill adjourned the meeting at 1:45 p.m.