

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

Wednesday, March 12, 2008 ~ **11:00**
Healdsburg City Council Chambers
401 Grove Street
Sonoma County

Approved MINUTES

A. CALL TO ORDER

Chairman Hemphill called the meeting to order at 11:07 a.m.

B. ROLL CALL

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

Directors Absent: None

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

C. AGENDA APPROVAL

Director MacDonald said that he noticed that the Operator Committee met earlier in the morning and that the agenda included a closed session item pertaining to the City of Novato litigation. He said that he has requested from Legal Counsel Neary an explanation as to why the litigation is being discussed in the Closed Session during the Operator Committee rather than the regular board meeting. Director MacDonald said that he would like the full Board to discuss the issue of whether the Operator Committee should retain sole jurisdiction over strategic decisions involving the Novato lawsuit, or whether that issue should be under the jurisdiction of the full Board.

Chairman Hemphill said that the board did take proper action to delegate the Novato litigation to the Operator Committee on October 10. He said that the agenda may be amended to include the item on the Agenda for further discussion. Director Woolley said that the item would need to be an emergency for immediate action that arose after the posting of the agenda. Legal Counsel said that the issue should be revisited at the April 2008 meeting as a Conduct of Business item.

Upon Motion by Director Kelley, seconded by Director Simonson, the Agenda stood as presented by unanimous AYE votes.

D. MATTERS FROM THE BOARD

Director Meyers asked Staff for an update regarding the video broadcast of NCRA Board meetings on the internet and also the posting of the Board Packets on the Website.

Executive Director Stogner said that he has advised Mrs. Lindsteadt to make the Board Packets available on the Website, but that he did not feel NCRA should incur additional costs and time to video the meetings. Chairman Hemphill agreed that adding additional monthly cost to an already stretched agency Budget is not advisable at this time.

Director Meyers said that the Board information was not posted to the Website until Monday and he understands that there are costs associated with videotaping and broadcast of the meetings. He asked staff to continue to research economical ways to video the meetings. Director Meyers said that he would like to have Staff MEMO's included with each agenda item.

Director Meyers asked if the Edge Wireless lease agreement has been finalized. Legal Counsel reported that the agreement and the terms have been finalized in accordance with the Board's direction.

Director Meyers asked if the Q-Fund transfer had taken place. Executive Director Stogner said that the transfer of the \$5.5 million dollars back to the CTC happened on February 28 and that Caltrans also received approximately \$800,000 interest that had accrued in the Q-Fund account, and that NCRA was able to retain approximately \$5,000.00 in interest.

Director Meyers said that he would like to receive his packet on Saturday rather than by Fed Ex on Monday and said that he noticed that the agency spends a lot of money on Fed Ex Charges each month, and suggested that NCRA use US Postal service for its mailings.

Director Meyers said that he would like to schedule a Board Workshop in the future. Director Kelley asked staff to put together a calendar of possible dates for a workshop in July or August.

Director Woolley thanked Dave Anderson and Angel Lucero of American Rail Consultants for their attendance at the Humboldt Trail Planning meeting in Humboldt County. He said that there are many agencies involved in the planning group to support trail development in Humboldt County. He said that formal action is not required by the NCRA Board at this time, but that action by the Board will be needed in the near future.

Director MacDonald asked if NCRA could receive agency funding if NCRA allowed construction of a trail on its right-of-way. Director Woolley said that Coastal Conservancy grants are being looked at as possible funding for the development of trails in Humboldt County.

Director Ollivier stated that there was a 3 to 2 vote at the Harbor Commission meeting in favor of development of the Redwood Dock and that will affect the NCRA in a big way.

E. CONSENT CALENDAR

- 1. Approval of Minutes Regular Board Meeting – February 13, 2008**
- 2. Approval of Financial Statements – February 2008**
- 3. Approval of Warrants Issued Agency 787010–February 2008**
- 4. Approval of Warrants Issued TCRP 787101 – February 2008**
- 5. Approval of Warrants Issued Fish & Game 787408 – February 2008**
- 6. Approval of CalCard Statements – February 2008**

Director Kelley moved to approve the consent calendar, seconded by Director Ollivier.

Director MacDonald said that everyone is aware of the sensitive financial situation that NCRA has been in historically and he has reviewed the February financial statements and summarized his understanding of the operating budget. He said that NCRA has no (minimal) Current assets and the current liabilities exceed \$1 million dollars, not including the Car Hire debt. He said that he noted that the accounts payable is \$450,000. Director MacDonald said that the Board needs to be aware of the financial situation and not just approve the financials without addressing the seriousness of the financial status of the agency. He asked if Legal Counsel's billings were included in the accounts payable. He requested staff prepare a short term and long term cash flow. He said that now that the Q-Fund money is no longer an option, NCRA needs to take a serious look at potential funding for future operations and fully understand the financial statements.

Chairman Hemphill said that he appreciated Director MacDonald's concerns and said that NCRA's enabling legislation did not provide administrative funding for the daily activities required to carry out the mandate of repairing the line and resuming freight service. He invited Director Macdonald to find alternative funding and added that any new opportunities for revenue enhancement would be appreciated.

Executive Director Stogner said that the agency is in a much better financial situation than it has been in years as a result of property leases and advance lease payments by the Operator. Nevertheless, he said, there remains a need to increase the agency revenue total from \$750,000 to approximately \$1 million per year, an increase of about \$250,000 per year.

Chairman Hemphill said that a cash flow projection would be an important piece of information for the Board to have.

Director Meyers abstained from Agenda Items E.2 through E.5. and added that he would like to have the financial statements signed by the Executive Director or an accountant or an auditor to vouch for their accuracy.

Chairman Hemphill said that NCRA has a written policy in place that discusses the policies that are followed by staff to oversee the financial information.

Motion to approve the Consent Calendar Items E.1 – E.6 carried by the following vote: **AYES:** 7, **Noes:** 0, **Abstain:** Meyers items E.2 through E.5, MacDonald item E. 2., **Absent:** None

F. PUBLIC COMMENT

No Public Comment

G. CONDUCT OF BUSINESS

I. Consideration and Possible Action Regarding Approval of FY 07-08 Budget Amendment - Resolution No. 2008-03

Recommendation: Approve Resolution 2008-03

Executive Director Stogner summarized the need for a budget amendment to compensate for the repayment of the Q-Fund loan and interest to the State and also the increased legal fees associated with the City of Novato litigation.

Director Woolley motioned to approve Resolution No. 2008-03, seconded by Director Ollivier.

Director MacDonald asked why legal services were increased by \$105,000. He also asked how much of the increase is directly related to the City of Novato vs. NCRA and how much is directly related to NCRA vs. City of Novato. He also asked staff if NCRA has received current invoices that will be included in the \$105,000 increase for legal services.

Director Stogner explained that staff is requesting a budgetary increase for legal services with the expectation that NCRA will exceed the current \$95,000 budget amount because of the litigation with the City of Novato.

Legal Counsel Neary said that his invoices are not a matter of public record. Executive Stogner said that at the current time Legal Counsel has incurred approximately \$85,000 worth of invoices directly related to the Novato litigation.

Director MacDonald said that before the Board approves any budgetary amendment for legal services, the Board should continue the matter to a future meeting so that the Board can have a discussion in closed session to review the expenses that are associated with the Novato litigation.

Director MacDonald made a secondary motion to continue the item to a future meeting seconded by Director Meyers.

Director Kelley said that he will not support the secondary motion made by Director MacDonald. He said that the resolution before the Board is simply to make a budgetary appropriation increase to cover the anticipated costs of litigation related to the Novato lawsuit.

Director Colfax said that he will not support the secondary motion made by Director MacDonald because the budgetary amendments are a staff duty and should be carried out by staff.

Director Ziedrich echoed the points made by Directors Kelley and Colfax and said that he will not support the secondary motion made by Director MacDonald.

Director Meyers said that he will not support the secondary motion made by Director MacDonald but added that he does agree that there is a need for the Board to review the expenditures that are being incurred. He suggested that a Closed Session item be dedicated to the review of expenditures.

Secondary motion made by Director MacDonald to continue agenda item G.1 failed by the following vote: **AYES:** 1, **NOES** 8, **ABSTAIN:** 0, **ABSENT:** 0

Motion made by Director Woolley to approve Resolution No. 2008-3 carried by the following vote: **AYES:** 8, **NOES:** 1, **ABSTAIN:** 0, **ABSENT:** 0

2. Consideration and Possible Action Regarding Approval of Invitation to Bid for Sale of Surplus Passenger Cars

Recommendation: Approve issuance of Invitation to Bid for Railcars

Executive Director Stogner summarized the issue relative to the railcars that are currently located in the Willits rail yard. He said that on January 31, 2008 the City of Willits issued a Notice of Nuisance requesting removal of the railcars that are currently located in Willits. He said the Ad-Hoc Willits Yard Committee met and prepared an action plan to resolve the nuisance issue. He said that part of the action plan is to sell and remove passenger cars that are creating a nuisance.

Executive Director Stogner thanked Rod Whitney for all of his hard work toward securing the Willits yard and for the clean-up of immediate hazards that were noted in the City of Willits Notice of Nuisance.

Chairman Hemphill said that NCRA's Operator, NWP Co. requested that two cars be removed from the invitation to bid. Chairman Hemphill said that the two cars to be removed are car no. 1016 and car no. 1023 and said that he supported that request.

Director Colfax motioned to approve the Invitation to Bid with car no. 1016 and car no. 1023 removed, seconded by Director MacDonald.

Director Meyers asked what would happen if there were no bids or very low bids and also asked if the April 2, 2008 date would provide enough time to potential bidders. He also asked if the June 30 date for removal of the cars would be sufficient time for purchasers.

Chairman Hemphill said that NCRA hopes to achieve the highest amount of value and that the funds received will be repaid directly to the State because State funds were used to purchase the cars. He said that it is important to comply with the action plan that we prepared for the City of Willits and it is very important to remove the railcars as quickly as possible.

There was a brief discussion regarding NCRA's right to reject any and all quotes and it was decided that the Invitation to Bid would be reworded to read "NCRA reserves the right to reject any or a portion of quotes."

Director Colfax expressed his appreciation to the Mayor of Willits and also to NCRA staff for resolving a potentially volatile situation.

Motion to approve the Invitation to Bid for sale and disposal of railcars carried by the following vote: **AYES: 9, NOES: 0, ABSTAIN: 0, ABSENT: 0**

H. STAFF REPORTS

1. Executive Director – Mitch Stogner

- a. TCIF Application Update
- b. Signatures

Executive Director Stogner updated the Board on the CTC meeting on February 14. Mr. Stogner said that he has provided a summary of the allocations to date. He said that all of the TCRP funds have been allocated with the exception of the Local Match to the ISTEA and Consent Decree funds.

Mr. Stogner said that the CTC has made recommendations relative to the Prop 1B (TCIF) grant. He said that the CTC did not recommend approval of the Joint Harbor District/NCRA application. He said that NCRA will continue to push the CTC to approve the TCIF grant.

Mr. Stogner also said that the Draft Supplemental EIR has been issued by SMART.

Director Meyers said that he had reviewed the SMART Supplemental Draft EIR and then requested a copy of a letter dated November 27, 2007 signed by Executive Director Stogner that was referenced in the Draft SEIR. Director Meyers said that the Chairman was cc'd and he requested that letters of that nature be reviewed by the Board and also sent to the entire Board.

Executive Director Stogner said that he will copy the Board on future letters that include significant information.

Director Meyers said that he notes discrepancies in the SMART Draft SEIR and the Prop 1B application that the NCRA submitted to the CTC regarding the amount of railcars vs. the amount of trucks removed from the highway. He suggested that the error be discussed, and then corrected. He also noted that there was not any discussion with respect to freight originating North of Willits. He said the mission of the NCRA is to resume freight service North of Willits and said that freight originating North of Willits should have been indicated in the SMART Draft Supplemental EIR.

Executive Director Stogner said that NCRA has stated numerous times that freight originating North of Willits will be dependent on a geotechnical study, an aerial mapping study, and a complete EIR/EIS as well as a financial feasibility study.

Director MacDonald said that the SMART SEIR did mention freight service North of Willits under the heading Speculative Option Number 1 and Speculative Option number 2

2. Project Manager – Dave Anderson

Dave Anderson, NCRA's Project Manager said that TCRP Project 32.4, Urgent Repairs Phase 1 of the King Salmon Levee repairs is 90% complete. He said that Phase 2 has not been fully permitted yet and the only permit remaining is from the Coastal Commission. Mr. Anderson said that the issue will be discussed at the Coastal Commission's April 08 meeting.

Mr. Anderson said that the Schellville Levee Repairs contract was awarded to Ghilotti Brothers. He said that the dewatering and repairs of the levee and the repair of the pumps is a Fish & Game project and that the dewatering should be complete soon.

Mr. Anderson said that TCRP 32.9 includes three projects. Signal contract S-1 for repairs to signals from Lombard to Santa Rosa is on schedule but there is a permit issue with the City of Novato that is holding up work. He said that the contractor said that there may be a claim against NCRA if the delay continues. Contract S-2 for repairs to signals from Santa Rosa to Windsor is

due to be complete in July 2008 and is on schedule. He said the contractor has mobilized and is awaiting shipment of the signal equipment.

With respect to Timber Bridge Contract T-3, he said that NCRA is beginning work on the Wingo Bridge and also Railroad Slough Bridge.

Director Meyers said that he was asked by NCRA Staff to meet with City of Novato officials to discuss the encroachment permit issue. He said he did and was hopeful an amicable resolution with the city could be reached.

3. Legal Counsel - Chris Neary

Legal Counsel Neary said that the Black Point Bridge was damaged and the Coast Guard fined NCRA \$2 million. He said that NCRA challenged the fine and was able to repair the bridge and get the fine reduced to \$20,000.

Mr. Neary said that the Hearing Officer handling the Black Point Bridge issue recently retired and the new hearing officer sent NCRA a bill for \$20,000 and also noted that the appeal was still active. Mr. Neary said he will be compiling the necessary information and submitting it to the court.

Legal Counsel Neary reported on the City of Novato lawsuit. He said that NCRA was before the Court on March 11 with a Motion to Strike. Mr. Neary said that if the Motion to Strike is granted, a large portion of the lawsuit would be resolved.

Director MacDonald said that he was disappointed to see that the City of Novato litigation was not listed on the Closed Session agenda and said perhaps a Closed Session discussion would be beneficial.

Legal Counsel Neary said that the Board delegated the Operator Committee the responsibility to oversee the litigation. He stated why, in his opinion, there is a substantial question as to whether the Marin Directors should be able to sit in the Board's closed sessions covering the Novato case. He is concerned that there could be a waiver of the attorney client privilege or work product privilege.

Chairman Hemphill said that the item regarding delegation of the Novato litigation to the Operator Committee will be agendaized at the April meeting.

Director Meyers said that he met with Legal Counsel and thought that the issue of the Marin Directors ability to sit in on the Closed Session had been resolved. He said that both he and Director MacDonald have already sat in on two Closed Sessions related to the Novato Litigation. He requested Legal Counsel contact the FPPC and the CA Attorney General's Office to discuss the matter and added that just because the Marin Directors may have a different opinion, does not mean they should be denied access to Closed Session items related to Novato Litigation.

Director Woolley said that the discussion is not appropriate at this time and should be agendaized for a future meeting.

I. OPERATOR REPORT

- 1. NWP CO. - John H. Williams – No Report**

Chairman Hemphill adjourned the Board to Closed Session at 1:20.

J. CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL

Existing Litigation Govt. Code 54956.9(a) NWPY v. NCRA

2. CONFERENCE WITH LEGAL COUNSEL

Anticipated Litigation Govt. Code 54956.9 (b)
Significant Exposure to Litigation (one case)

The Board reconvened into Open Session at 1:45 p.m.

K. ANNOUNCEMENT OUT OF CLOSED SESSION

Executive Director Stogner reported that the Board met with Council on one item of Existing Litigation. Gov Code 54956.9 (a), NWPY v. NCRA and one item of Anticipated Litigation, Gov. Code 54956.9 (b), received information and gave direction, no action was taken.

L. ANNOUNCEMENT OF NEXT MEETING

April 9, 2008 – 11:00 a.m.
Petaluma Community Center
320 N. McDowell Blvd.
Petaluma

M. ADJOURNMENT

Chairman Hemphill adjourned the meeting at 1:50 p.m.