

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

Wednesday, September 10, 2008 ~ **10:00**  
Ukiah Valley Conference Center  
200 South School Street  
Ukiah  
Mendocino County

**APPROVED Minutes**  
Approved by the NCRA Board of Directors on October 8, 2008

**A. CALL TO ORDER**

Chairman Hemphill called the meeting to order at 10:05 a.m.

**B. ROLL CALL**

**Directors Present:** Meyers, MacDonald, Simonson, Ollivier, Ziedrich, Kelley, Colfax, Woolley (arrives 10:25 a.m.), Chairman Hemphill

**Directors Absent:** None

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

**C. AGENDA APPROVAL**

Agenda stood as presented

**D. PUBLIC COMMENT**

No public comment.

**E. CONDUCT OF BUSINESS**

*Agenda item E. 1 was moved until later on the agenda to allow Director Woolley's participation.*

**2. Consideration and Possible Approval of Resolution 2008-14 Supporting State of California Ballot Proposition 1A, The Safe, Reliable High-Speed Passenger Train Bond Act for the 21 Century.**

Executive Director Stogner updated the Board on a request he received from the High Speed Rail Authority. He said that the High Speed Rail Authority requested NCRA's support for Prop 1A which is a \$9.950 billion bond measure that will be on the November 2008 ballot. He said that the funds will be used by the High Speed Rail Authority to complete the first phase of a 220 MPH high speed rail system that will run from San Francisco to Anaheim. He also said that with endorsement of Resolution 2008-

14 NCRA would be adding its name to a long list of cities, counties, and transit districts that have declared support for the project.

Director Ollivier said that High Speed Rail is a convenient way to travel and he said that he fully supports adoption of the High Speed Rail Authority's Bond Measure Prop 1A.

Motion to approve and adopt Resolution 2008-14 made by Director Ollivier, seconded by Director Kelley.

Director MacDonald asked if there was any benefit to NCRA in its support of the Resolution.

Chairman Hemphill said that any action taken by the NCRA Board that supports resumption of rail service in California is beneficial to NCRA.

Director Kelley said that NCRA's endorsement will not necessarily directly benefit NCRA. He said that if the High Speed Rail Authority receives funding there is a possibility that it may release funding for other rail corridors in the future.

Director Meyers said that although he may vote for the Prop 1A Bond Measure in November, he does not have enough information before him to make a decision and said that he would abstain from the motion.

Director MacDonald said that he would abstain from the Motion as well.

Resolution No. 2008-14 was adopted. **AYES: 6, NOES: 0, ABSTAIN: 2, ABSENT: 1**

**3. Consideration and Possible Approval of Application to California Special Districts Risk Management Authority (SDRMA) to provide NCRA with Workman's Compensation Insurance.**

Executive Director Stogner updated the Board on NCRA staff's recent attempt to enroll in the California Special District Risk Managements Authority (SDRMA) Workman's Compensation Insurance Program. He said that the program offers multiple benefits including a reduction in the annual premium for Workers Compensation coverage and enrollment in California Special Districts Association (CSDA).

Director Kelley asked if there was a contract term and asked if staff researched other coverage with different agencies that provide Workman's Compensation coverage. He also asked what agency budget item would realize the savings in the reduction of costs for this coverage.

Director Meyers said that there is a required 3 year term.

Director Meyers thanked staff and said that NCRA could get out of the 3 year contract, but NCRA would be required to pay for the coverage even if it was not enrolled through SDRMA. He asked if State Fund has any penalties for cancelling the policy. He asked what "Self Insurance" meant. He also said that it appears that it is a good program. He pointed out that the Resolution before the Board seemed to need a revision.

Legal Counsel Neary said that by joining SDRMA, which self insures, in effect NCRA is self insuring.

Director Meyers said that Resolution 2006-16 gives the Executive Director the authority to sign off on the policy and asked if that should be changed so that instead of giving the Chairman or the Executive Director the authority to sign off, it should read Chairman and the Executive Director have to jointly sign off on coverage to self-insure.

Director Meyers said that NCRA takes a risk because it is a new enrollee in the program and may potentially have to make up any problems in the pool. He also said that he is confident that it is a good program.

Executive Director Stogner said that the Resolutions were provided by SDRMA and said that staff would ask SDRMA if the language should be changed.

Motion by Director Kelley to approve Resolution 2008-15 and Resolution 2008-16 and approve submittal of the SDRMA Workman's Compensation application with the assurance from staff that Director Meyers' questions will be discussed with SDRMA prior to submittal of the application, seconded by Director Ollivier carried unanimously (9-0).

#### **4. Discussion and Possible Action Regarding NCRA Draft Trail Guidelines.**

Chairman Hemphill said the Trail Guidelines would not require further action now, but that NCRA made a commitment to the Operator to add it to the agenda at each meeting to provide for public comments.

Executive Director Stogner said that the guidelines have been added to the NCRA Website and also sent to FRA, CalTrans, Cities, Counties and bicycle coalitions and that Director Meyers has requested that the Guidelines be sent to other short line railroads, FHWA and the STB.

Director Ziedrich said that he is surprised by the 100 foot set-back that is noted in the Guidelines. He said the City of Healdsburg currently has a trail that is not 100 feet away from the tracks. He also said that there is a section about animals using the trails. He said that it may be unrealistic to ban dogs from the trail. He also asked if NCRA or NWP Co., or both would have the authority to make exceptions to the guidelines.

Director Simonson said that he does not support any trail along the railroad right-of-way. He asked if the guidelines prohibit trails from Healdsburg North and if so, would they interfere with SMART's plans for a trail.

John Williams, NWP CO. said that he prepared the guidelines and reviewed them with the FRA, PUC and he said he relied upon various resources including the Rails to Trails Conservancy, Burlington Northern, and Union Pacific guidelines along with the Metrolink guidelines.

He said that as far as animals are concerned the reason that animals are prohibited from trails is because of the possibility of stray animals getting onto the railroad tracks and causing accidents. He said that guidelines are specifically created to address safety

issues, liability issues and future capacity of the rail line. He said that the CPUC sent a letter that said that the guidelines appear adequate but that they reserve the right to consider any trail proposal on a case by case basis. He said that he met with the PUC and said that they are fairly satisfied with the guidelines.

Director Meyers asked Mr. Williams to list the websites that he referred to in his creation of the guidelines.

Director Woolley said that he has noticed that there are buildings right up against the right-of-way and asked if those buildings would be impacted by approval of the guidelines.

Mr. Williams said that the Northwestern Pacific rail line is an old rail line and that many structures were built before PUC regulations were enforced and that any existing structures would remain, and that the guidelines would only apply to new development.

Director MacDonald asked if most derailments happened at crossings and if some sort of delineation should be made for trails that are near crossings as opposed to rural areas along the line.

Mr. Williams said that derailments can occur anywhere along the right-of-way.

Roger Graber said that he has personally witnessed train derailments. He said that loose loads create a hazard because of chains or tie downs coming undone and can seriously injure anyone near the railroad tracks.

Chairman Hemphill requested the Directors submit their comments to staff so that they can be considered in the preparation of the final document.

**1. Consideration and Possible Approval of a Support Letter to the Coastal Conservancy Regarding City of Arcata Trail.**

Director Woolley thanked everyone who was involved in preparing the letter to the Coastal Conservancy. He said that Karen Diemer was available to answer any questions that the Board may have.

Chairman Hemphill requested that the last sentence in the letter that reads: "Therefore it might be wise for the Conservancy to await finalization of the Trail Guidelines prior to the approval of the planning grant," be removed from the letter.

Karen Diemer thanked staff and the Board of Directors for the time spent on the letter. She said that the City of Arcata is requesting funds from the Coastal Conservancy that would allow the City of Arcata to prepare planning documents for the trail. She said that she reviewed the letter that was before the Board and there is a reference to NCRA's legal authority and asked how the City of Arcata would coordinate with NCRA's legal counsel.

Chairman Hemphill said that Legal issues arise because of NCRA's statutory right and the effects of a trail project within the boundaries of NCRA's right-of-way. He said that it creates legal issues that will need to be addressed.

Karen Diemer said that she noted a reference in the letter that refers to the final approval of the trail and mentions NCRA's Project Manager and NCRA's Operator. She said that she is very appreciative of the NWP Co's interest in the trail project but that she has reviewed the trail guidelines and is concerned that the guidelines would negatively impact the City of Arcata's ability to construct a trail along the railroad right-of-way. She urged the Board to retain 100% authority for the approval of a trail along the right-of-way.

Chairman Hemphill said that it is important to recognize that NCRA has an Operator and NCRA has certain obligations under the agreement between NCRA and NWP co. He said that the operator will be a crucial voice in any approval of the trail.

Karen Diemer said that she also urges the Board to think about the process that will ensure open communication with the City of Arcata. She also said that the trail guidelines offer NCRA a good opportunity to test the effectiveness of the document. She said that there is a public perception that Arcata does not want the rail any longer and that the City has singlehandedly taken actions to try to prevent the resumption of rail service. She also said that there is a public perception that NCRA has abandoned its line on the North Coast. She said that there is a lot of maintenance that has been neglected by NCRA and so the City of Arcata has had to maintain its roads and culverts. She said specifically there have been 3 times that the City of Arcata has removed tracks so that Arcata can repair culverts. She said that NCRA has given Arcata permission to remove the tracks and in return Arcata would restore the tracks. She said that Arcata is not a railroad contractor and unfortunately NCRA is not in the position to offer any assistance in maintaining the culverts or preparing a plan for replacement of the tracks.

Ms. Diemer said that the Arcata City Council is unanimous in its support of the rail line and resumption of freight and passenger service on the North Coast.

Director Kelley said that the City Council of Arcata should be copied in the letter. He also said that a statement should be added at the end of the letter that reiterates NCRA's support.

Director Woolley added that the NCRA Board of Directors makes the approvals no matter what guidelines are in place, or any other issues that may arise, the Board is ultimately responsible for approval.

Su Corbaley, staff for the California Coastal Conservancy, said that it is important that the Coastal Conservancy know that NCRA is willing to participate and work with the conservancy and the City of Arcata in the planning process for the trail.

She thanked the Board for issuing a letter as part of her packet to the Coastal Conservancy that will request \$ 1 million in planning and final engineering and design for development of a trail within the rail corridor. She said that Conservancy staff is committed to having an open dialog and working with NCRA and its Operator. She said that if there are issues that are insurmountable, they will be identified early and can be discussed and hopefully resolved. She said that the rail line is important to the economic viability of the North Coast but that the Conservancy believes that resumption of freight service can be done with trails. She pointed out that there have been recent tragedies along the highway on the North Coast involving bicyclist and she thinks that the trail in the NCRA right of way could help alleviate further tragedies.

Director Woolley said that there are areas where a trail may not work along the NCRA right-of-way and asked if the planning documents will include other options for the areas where the NCRA right-of-way is not feasible.

Sue Corbaley said that she is seeking not only a planning grant request, but if it is feasible to construct a trail in the right-of-way. She said she hopes that NCRA would work with the Conservancy and the City of Arcata cooperatively.

Director Meyers said that Arcata is asking for funding to do a study. He said that he is pleased that Arcata is pursuing the grant. He added the first part of the second paragraph of the proposed letter is not necessary. He said that it is reserved for the NCRA Board to determine if it will agree any trail proposal. He said that although NCRA wants the opinion of the Operator, Legal Counsel, and Project Manager, it is not up to them to approve any project and added that it is up to the NCRA Board of Directors. He requested that section be removed from the current version of the letter.

Director Woolley said that staff, at all levels, has taken the time to put the letter together and that this is not the time to change all the wording of the letter. He said that it is time to approve the letter.

Director Colfax said that he is concerned about all of the conditions that are outlined in the letter, and said that if the Board and the Coastal Conservancy are supportive of the letter, then he supports it. Director Colfax asked if NCRA's letter will accomplish the purpose that the City of Arcata and the Coastal Conservancy intended.

Su Corbaley said that the letter is acceptable as drafted with the last sentence removed. She also said that she is prepared to answer any questions her Board may have on September 25.

Chairman Hemphill commended the Executive Director and said that the letter accomplishes what needed to be done, and added that it is important that NCRA outlined some of the issues that may need further clarification later.

Upon Motion by Director Woolley the letter dated September 10, 2008 addressed to the State Coastal Conservancy regarding the City of Arcata's grant request was approved as amended by the following changes:

1. The last sentence in the second paragraph will be removed;
2. In the first sentence of the second paragraph the following wording will be removed: *“legal counsel and”*
3. The following language will be inserted as the third paragraph: *“With these understandings, the NCRA Board of Directors supports Arcata’s request for a trail planning grant which would apply to the NCRA right-of-way between Northern Arcata and Bracut Marsh .”*

Motion carried unanimously (9-0)

Director Woolley requested that the issue be agendaized for the October meeting so that staff and the Board can be updated on the outcome of the September 25 Coastal Conservancy meeting.

John Williams said that it seems to him that some members of the Board do not understand NWP Co’s rights as NCRA’s Operator. He said that NWP Co. has upheld all of its rights as outlined in the Operating Agreement and the agreement did not contemplate NCRA’s ability to give away or sell any of the railroad assets that are currently encumbered by the Operating Agreement between NCRA and NWP Co. He said the Operating Agreement needs to be renegotiated and allowances need to be made for any section of right-of-way that he will be unable to operate on. He said that if the City wants to study a trail, that it should study the trail, but that there is no room for a trail along that section of rail. He said that if the rail corridor is going to be converted to a trail, he needs a place for an alternative railroad alignment.

Mr. Williams said that tracks have been removed three times in the past 10 years. He said that 1000 feet of track was removed from West End Road by the City of Arcata and he considers such actions a degradation of the assets that NWP Co. needs protected under his lease agreement with NCRA.

## **F. CONSENT CALENDAR**

Upon Motion by Director MacDonald, seconded by Director Kelley, Consent Calendar items F.a. through F.f. were approved with Director Ziedrich and Director Colfax abstaining from item F.a. Director Meyers abstaining from item F.b and Director Meyers amending item F.a as follows:

Public Comment of the Minutes of the August 13, 2008 minutes should include verbatim comments from Maggie Herbelin.

On Page 3, fourth paragraph from bottom he added the word *“websites”* so that the minutes will read “Director Meyers requested that Mr. Williams list all the references and **Websites** used to create the trail guidelines.”

- a. Approval of Minutes - Regular Board Meeting – August 13, 2008
- b. Acceptance of Operator Committee Meeting Minutes – August 22, 2008
- c. Acceptance of Financial Statements – August 2008
- d. Approval of Warrants Issued - Agency 787010 – August 2008

- e. Approval of Warrants Issued - TCRP 787101 – August 2008
- f. Approval of CalCard Statement – August 2008

Director Meyers pointed out that there was no MEMO accompanying items F.c-F.f and added that staff should insert the MEMO into the packet, and with that assurance he would support approval of the financials.

## **G. STAFF REPORTS**

### **1. Executive Director – Mitch Stogner**

Executive Director Stogner said there will be a meeting on September 22 to discuss the EIR. He said that the team is discussing the final details of the report.

He said that on September 29, staff will meet with Caltrans and FHWA to discuss a scope-of-work that applies to the \$11 million in ISTEA funds. He said that this is an important meeting and hopes that progress can be made with the help of FHWA and CalTrans.

He said that the trackway contract (T-1 and T-2) will be advertized on September 12 and September 19 with the goal of award of contract before October 31.

Mr. Stogner said that he will be contacting Committee members for a possible Finance Committee meeting on September 22 to review the 08-09 Budgets and a possible Property Committee meeting on October 15 to discuss the updated Property Policy related to crossings.

Chairman Hemphill asked for an update on the scoping project in the canyon for the beginning steps of an EIR.

Dave Anderson said that the mapping has been received and the geotechnical report was completed and sent to him on September 8. He said those two documents will enable the team to complete a trip through the canyon and prepare the project description. He said that the project description is the preliminary step that needs to be completed in order to prepare a funding plan for any project.

### **2. Project Manager – Dave Anderson**

Mr. Anderson reported that the signal contract is substantially complete, and that there are a few remaining issues with the City of Petaluma and Caltrans, and then the signal contractor will be remobilized to complete the signals from Lombard to Windsor River Road.

He said that King Salmon project will be substantially complete soon and there are only clean up items and re-shifting of the track back onto the roadbed and placing the ballast.

He said that a final survey needs to be completed and submitted to the permitting agencies.

He reported that in Schellville the earthwork is complete, the breaches have been filled in, and the track has been stacked in preparation for the contractor to replace the track. He said that there is one issue remaining which is consideration of Phase 2, which will repair the outboard levees or convert the railroad roadbed into a levee. The decision will ultimately be FEMA's because FEMA is funding the project. He said that FEMA only funds the in-kind repairs and that converting the NCRA roadbed to a levee could be considered Hazard Mitigation and therefore may be eligible for FEMA funding.

Mr. Anderson said that the McCann rail thieves have been apprehended. He said that there was approximately \$200,000 in damage and that staff would be filing a damage report with the appropriate court.

Mr. Anderson said that the Draft Track Plans have been reviewed and HNTB is currently responding to John Williams' comments. He said HNTB will be meeting with John Williams and discussing cash flow issues.

He reported that there is a need to have Brazos Bridge repaired so that the work trains will be able to traverse across it. He said that the bridge has an engine that is operated by propane and he will be investigating the issue further and coordinate with the Coast Guard and NWP Co. to attempt to conduct a test operation of the Bridge.

Chairman Hemphill asked who was responsible for removal of graffiti from the new signal boxes. Mr. Anderson said that it is NCRA's responsibility and that the boxes are treated with an anti-graffiti protective layer and the graffiti is removed rather easily.

Mr. Anderson said that the NCRA equipment is in Humboldt County.

With respect to the McCann theft, Director Meyers asked if there was a procedure that NCRA could institute so that the \$200,000 might be returned. He requested that staff submit the claim to a collection agency so that there is a possibility to receive some of the money for repair of the track.

Executive Director Stogner said that the report will be submitted to the Court and that restitution is a possibility.

**3. Legal Counsel - Chris Neary**

No report

**H. OPERATOR REPORT**

**1. NWP Co. – John Williams**

No report

**I. MATTERS FROM THE BOARD**

Director Meyers asked if the Board meetings could be scheduled for 10:30 a.m. in each county. The consensus of the Board was that beginning the meetings at 10:30 a.m. in each county would be convenient for all Directors.

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

**J. CLOSED SESSION**

**1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (2 cases)**

Government Code 54656.9(a)

- (1) NWPY vs. NCRA, Arbitration Matter
- (2) City of Novato vs. NCRA; Superior Court of California, County of Marin; case # CV074645

Chairman Hemphill reconvened the meeting into Open Session at 2:55 p.m.

**K. ANNOUNCEMENT OUT OF CLOSED SESSION**

Legal Counsel reported that the Board met with counsel received information and gave direction. No action taken.

**L. ANNOUNCEMENT OF NEXT MEETING**

October 8, 2008 – 10:30 a.m.  
Sonoma County  
City of Healdsburg Council Chambers  
401 Grove Street, Healdsburg

**M. ADJOURNMENT**

Chairman Hemphill adjourned the meeting at 3:00 p.m.