



North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, Ca 95482

NORTH COAST RAILROAD AUTHORITY (NCRA) REGULAR BOARD MEETING

Wednesday, December 9, 2009~ **10:30 a.m.**
Hamilton Field
West Wing Auditorium
503 South Palm Drive
Novato, Marin County

Approved MINUTES

A. CALL TO ORDER

Chairman Hemphill called the meeting to order at 10:30 a.m.

B. ROLL CALL

Directors present: Clendenen, Wagenet, Meyers, Kelley (arrives at 10:37), Wolter, Colfax (arrives at 10:37), MacDonald, Chairman Hemphill

Directors absent: Atkins

C. AGENDA APPROVAL

Motion to approve Agenda items A through L made by Director Meyers, seconded by Director Wagenet. Approved **AYES: 8, NOES: 0, ABSTAIN: 0, ABSENT: 1.**

Director MacDonald requested an explanation about two agenda items listed as Anticipated Litigation and asked why the items were not identified.

Legal Counsel recommended discussing the matters raised by Director MacDonald prior to convening Closed Session.

D. PUBLIC COMMENT

Mike Arnold – Mr. Arnold said that if the current version of the DIER is not amended to address significant CEQA violations the Board could expect a lawsuit initiated by at least three

environmental organizations. He said that a lawsuit would be time consuming and expensive. He suggested that both sides sit down and talk about possible solutions.

Nadananda – Friends of the Eel River – Nadananda requested an extension of the December 31 deadline for submission of comments to the recirculated DEIR.

Bob McClure – Mr. McClure spoke on behalf of Dairyman's Feed Supply Cooperative in Petaluma. He said that the Cooperative has 100 dairy and poultry members in Sonoma, Marin, Del Norte, and Humboldt Counties that the monthly volume of feed manufactured is close to 10,000 tons. He said the rail system is vital to the family farms especially in the current economy to help keep feed prices competitive.

Joey Mendoza – Third generation dairyman. He said that the rail line is needed to help keep dairy farmers in business. He said that he has had to sell two dairies because he could not compete because the cost of transporting feed grains by truck. He said that the return of freight trains is good for the environment and said it is time for people to rally in support of the return of trains to the region.

Chris Morrison – Standard Structures, Lumber Manager – Mr. Morrison said that Standard Structures currently utilizes 30-40 railcar loads per month to Napa. He said that the lumber has to be hauled by truck from Napa to Windsor and that every rail car turns into 4 trucks on highway 101, and said that his company is very anxious for the return of rail service.

Dave Cabrini – Standard Structures, Plant Manager – Mr. Cabrini said that with the return of rail service to Windsor will allow Standard Structures to increase its workforce, broadened its range of distribution and remain competitive. He said that along with increased employment comes dollars spent in the local community. He said that Standard Structures would be able to supply 120 foot transmission poles to alternative energy wind farms in the Midwest.

Pete McRae – Lakeport Citizen – Mr. McRae said that he understands that people do not want a freight train rumbling past their homes. Nevertheless, he said that Lake County may want to expand its economic base in the future, and if other areas are successful in stopping the freight trains, Lake County could not even participate in the benefits of freight transportation. He also said that freight trains decrease fuel consumption, decrease pollution and reduce traffic along 101.

Steve Birdlebough – Mr. Birdlebough thanked the board for its commitment to move forward on the Operating Agreement with SMART. He said that the restoration of rail service must involve both passenger and freight service, and supports NCRA's efforts.

John Diamante – He said that the rail line touches or directly services Trinity, Humboldt, Alameda, Marin, Del Norte, Lake County, Mendocino, San Francisco, Solano and Napa. He said that it is an important aspect of the economy of Northern California. He said there are many types of people who are against the resumption of rail service on the North Coast, and argued that train opponents do not understand the needs of the region. He thanked the Board for its efforts and said that he looks forward to the return of rail service.

Lionel Gambill – Mr. Gambill said that the climate crisis is the most serious crisis the world has ever faced. He said that the NWP Railroad line is a vital artery for the 4 counties and far more sustainable in the long term than highway 101. HE said the return of freight trains to the North Coast is good for the environments, good for the economy, and good energy policy.

Alan Tacy – Petaluma Citizen. –Mr. Tacy said that NCRA has the right to run excursion trains which would help the local economy and put people to work. He said that he spent his entire career as an economic analyst for the SP and strongly supports the return of trains to the historic Northwestern Pacific railroad line.

Mike Pechner –Mr. Pechner said that he has been a long time supporter of SMART and NCRA. He summarized the history of the NCRA and the efforts of Ruth Rockefeller to preserve the NWP line. He said that NCRA is the only state agency that does not receive state funding for operations. He said that he thinks that there are members on the Board that are attempting to derail the efforts to resume rail service. He read from an email from Tom MacDonald to Judy Arnold that stated that the funding for NCRA should be stopped. He said that the mandate of NCRA is to resume rail service on the north coast and he suggested that Director MacDonald resign from the Board.

Jerry Peters – Co-Chair of Government Affairs of the City of Novato Chamber of Commerce. Mr. Peters said that the City of Novato Chamber of Commerce is in support of the resumption of freight rail service between the interchange and Willits on the NWP line.

Carolyn Glendening – Aide to Marin County Supervisor Judy Arnold. Mrs. Glendening said that Supervisor Arnold wanted the Board to know that the Marin County Board of Supervisors unanimously reappointed Director MacDonald and Director Meyers to additional 2 year terms on the NCRA Board. She said that Marin appreciates the professionalism and dedication they have both brought to their positions on the NCRA Board.

E. PRESENTATIONS

Executive Director Stogner read the following statement from Dominic Grossi, President of the Marin County Farm Bureau in lieu of the Presentations:

“ As a non governmental, non profit, voluntary membership corporation, Marin County Farm Bureau works to protect and promote agricultural interests and find solutions to the problems of the farm, the farms home and rural community. Marin County’s agricultural production topped \$55,000,000 million in 2008.

I am writing to discuss the importance of freight rail transportation because this has a direct correlation to business and to agriculture. Often the costs to move goods –either to acquire parts or to ship finished products – can make the difference between business success and business failure. As congestion and gridlock increases on California highways – and locally on Highway 101 – the cost to move goods by truck are increasing and placing new cost burdens on our businesses. It is time for freight rail to begin service again – because fewer trucks and more freight rail will provide ‘goods movement’ benefits to business/agriculture as well as “quality of life” benefits to our farms and communities.

To illustrate that point, using freight rail instead of more trucks can result in cleaner air, reduced fuel use, and less traffic congestion. With approximately 30,000 dairy cows in the regions which will eat about 20 pounds of concentrated feeds every day, about 600,000 pounds of feed comes in on trucks to Sonoma and Marin every day. This equates to about 12 truck and trailer loads daily. These trucks could be eliminated from our congested roadways and their exhaust from our air if freight rail hauling capacity were restored in Marin County.

I cannot stress enough the importance of reviving freight rail service in our community to help our agricultural producers become more efficient and competitive. This will also have great benefits to our community at large. I hope your Board will continue to move forward in trying to restore freight rail.

Sincerely,

Dominic Grossi, President
Marin County Farm Bureau”

F. CONDUCT OF BUSINESS

1. Discussion and Possible Acceptance of Request for Proposal from Epic Land Solutions, Inc. For Property Management Services and Authorization to Staff to Negotiate Contract with Epic Land Solutions, Inc. for Property Management Services

Executive Director Stogner reported that NCRA received one response to the Property Management RFP that was issued on October 16 from EPIC Land Solutions. He requested the Board authorize staff to enter into negotiations with EPIC Land Solution for Property Management Services.

There was a brief discussion on the fee structure of an agreement and if EPIC Land Solutions understood NCRA’s financial constraints. Executive Director Stogner said that he spoke to Jim Overcamp with EPIC and he said that he explained that the fees for services need to be paid from revenue received over and above the normal annual revenue that NCRA currently receives.

John Williams, NWP Co. said that he does not want to see a real estate company strip railroad property and sell it for their profit. He also said that he has not heard of EPIC Land Solutions and wants to be sure that the Board remembers that he has property rights under his lease.

Upon Motion by Director Meyers, seconded by Director Kelley, staff was directed to enter into contract negotiations with EPIC Land Solutions for Property Management Services. Motion carried **AYES: 8, NOES: 0, ABSTAIN: 0, ABSENT: 1**

2. Approval of Final Grant of Right of Way for Permanent Public Crossing at Railroad Milepost 70.85 (Quaker Hill)

Legal Counsel Neary said that the Board approved an agreement with Quaker Hill in September 2009. He said that after the September approval NWP Co. raised issues regarding payment to the Operator of the following fees:

1. Distribution of insurance proceeds received as a result of accidents at crossing;
2. Distribution of maintenance fees received from Quaker Hill;
3. Legal Counsel Neary has worked with Quaker Hill’s attorney regarding Operator Indemnity. He said that the indemnity should be for the

additional insurance costs, due to accidents, to insure the crossing and that the Operator will have an increased premium of \$8,200 related to the crossing. He said that the agreement will read "NCRA shall indemnify the Operator for any increase in insurance premiums attributable to accidents." He said that NCRA is assuming responsibility for any of the Operator's increase in premiums due to an accident at the crossing.

4. Legal Counsel Neary said that he proposed a procedure for termination of the easement if Quaker Hill fails to make payments as required by the agreement. He said that the best way to enforce the agreement is to add a provision that states that in the event that there is a need to enforce the agreement, in court, the litigation costs would be paid by the losing party.

Legal Counsel Neary requested Board authorization to amend the Quaker Hill agreement and gather the required signatures.

Director Meyers said that the agreement was acceptable to Quaker Hill, NWP Co. and NCRA. He said he is concerned that the agreement has been brought back to the Board. He said that the MEMO that was provided by Legal Counsel is being amended on the spot and the current amendments are not adequate. He asked why the agreement needed to be amended today.

Director MacDonald said that often times the insurance is paid for by the contractor and he hopes that NCRA can try to have the contractor pay the insurance costs during construction. He also wanted to know if the insurance company understood that there were no trains operating on the line.

Director Kelley said that he is hesitant to make a decision because the MEMO is being changed and he would like to see the changes to the agreement in final version. He also expressed his displeasure that the Board is being asked to approve an agreement that has already been approved.

Motion by Director Wagenet seconded by Director Colfax that the Board approve the Quaker Hill agreement subject to the changes outlined by legal counsel.

John Williams pointed out that he said at the September 2009 meeting that he would not accept the liability for the crossing. He said that he is not willing to assume the responsibility for Quaker Hill's crossing. He said he supports Legal Counsel's modifications and requested that the Board support the motion.

Quaker Hill's representative, Craig Harrington said that the first three items being discussed are issues between NCRA and NWP Co. He said that the obligation for the payment of the maintenance fee and to maintain the insurance is included in the easement document and is the responsibility of the property owner.

Roger Graeber said that the crossing needs a crossing light. He also said that it will cost more than \$50,000 to repair the crossing if a vehicle runs into it. He asked if SMART has been involved in the negotiations.

Motion by Director Wagenet seconded by Director Colfax that the Board approve the Quaker Hill agreement subject to the changes outlined by legal counsel. **AYES:** 4 **NOES:** MacDonald, Clendenen, Meyers, **ABSTAIN:** Wolter, **ABSENT:** 1

3. Election of Officers - Effective January 2010

Vice-Chair Kelley said that he has concerns with changing officers until the DEIR has been brought before the Board for certification. He also said that he has significant time constraints because he has recently been appointed President for the Statewide Association for California Water Agencies and he is running for reelection and will not have the time to serve as an effective Chairman to the Board. He nominated Allan Hemphill as Chairman for the next year or until the DEIR is certified.

Chairman Hemphill said that he will agree to continue serving as Board Chairman at least until the DEIR is certified.

Upon motion by Director Wagenet, seconded by Director Wolter, Allan Hemphill was nominated for the position of Chairman to NCRA Board. **AYES:** 7 **NOES:** 0 **ABSTAIN:** 1-Meyers **ABSENT:** 1

Director Myers asked how the Board handles succession of officers. He said that for three years the Board has not rotated the Chair and Vice Chair between the counties. He said that it should be Humboldt County's turn to be represented and nominated Director Clendenen.

Upon Motion by Director Kelley, seconded by Director Colfax, Director Wagenet was nominated as Vice-Chairman. **AYES:** 5 **NOES:** MacDonald, Meyers **ABSTAIN:** 1- Clendenen **ABSENT:** 1

G. CONSENT CALENDAR

1. Approval of Minutes - Regular Board Meeting – November 18, 2009
2. Acceptance of Financial Statements – October 2009
3. Acceptance of Financial Statements – November 2009
4. Approval of Warrants Issued - Agency 787010 – November 2009
5. Approval of Warrants Issued - TCRP 787101 – November 2009
6. Approval of Cal Card Statement – November 2009
7. Extension of Temporary Crossing Agreement – Tyriss
8. One Year Extension of Lease Agreement – 419 Talmage Road, Ste M (Ukiah Office)

Director Meyers said that he made changes to item G. 1, November 18 Minutes and said if staff believes the changes to be accurate, and the Board approves, the changes should be made.

Chairman Hemphill asked Director MacDonald if he was questioning the veracity of Sonoma County's financial statements, agenda item G.2 and G.3.

Director MacDonald said that he understands that staff is working on preparing accrual basis financial statements. He said that he does not question the accuracy of the Sonoma County cash basis but added that he would like to see a current listing of accounts payable and accounts receivable.

Executive Director Stogner said that beginning in January the Board will be provided quarterly accrual financial statements.

Director Meyers also said that item G.8 has some date errors that should be corrected. He suggested that the date December 31, 2011 be changed to December 31, 2010.

Upon Motion by Director Meyers, seconded by Director Kelley the Consent Calendar was approved. **AYES:** 6 – Meyers' approval for Item G.8 includes his requested changes noted above **NOES:** 2 Meyers and MacDonald opposed Items G.2 and G.3. **ABSTAIN:** 0 **ABSENT:** 1

I. STAFF REPORTS

1. Executive Director – Mitch Stogner

a. SMART/NCRA Operating Agreement Discussions

Executive Director Stogner said that the Operating agreement is in draft form and legal counsel is reviewing. Legal Counsel Neary said that he is responding to the second draft. He said SMART staff and negotiators are being extremely cooperative.

Doug Bosco said that John Williams has reviewed the draft document and made a number of suggested revisions. He also said that the issues surrounding crossings along the railroad are very important and NCRA and NWP CO. are going to need to work with SMART to prepare a viable way to deal with crossings.

b. DEIR Status Update

Executive Director Stogner said that the recirculated DEIR for the Russian River Division has been issued.

Angel Lucero, NCRA's Transportation Planner, summarized the DEIR distribution process. She said NCRA has gone above and beyond the CEQA requirements.

Director Meyers requested a copy of the comments to the original DEIR that was issued in March 2009.

Angel Lucero said that she is working with Kleinfelder to prepare the disk with the original comments for the Board.

A discussion ensued about how the public can submit or resubmit comments.

Legal Counsel Neary said that commenters on the original DEIR were notified of the availability of the recirculated DEIR. He said that commenters will need to resend their comments if they

would like their comments acknowledged. He said that it is the individuals' decision as to whether or not they want to resubmit their prior comments, or prepare new comments to the recirculated DEIR.

Director Myers requested that the entire Board receive a hard copy of the recirculated DEIR.

PUBLIC COMMENT

Public Citizen Name Unknown – He said that the SMART's DEIR was much larger than NCRA's DEIR a redline version was provided to the public. He also said that there is no requirement under CEQA for public distribution of the comments to the DEIR until the final version is released.

Angel Lucero pointed out that SMART issued a supplemental EIR, whereas NCRA has issued an entirely new recirculated DEIR.

J. PROJECT MANAGER REPORT

1. Dave Anderson – AndersonPenna Partners

Mr. Anderson summarized the repair work. He said that it is challenging to pull all the loose strings together and get the project closed-out but that he is making progress. He said that NCRA is still waiting on a permit from US Fish and Wildlife service to commence work on one bridge. He said that he does not understand the hold up and is hoping to receive the permit before the Clapper Rail nesting season. He said that permission was granted to complete work to the bridge above ground and the bridge is operable with some limitations.

He reported that the signals are complete with the exception of repair of the track bonds which cannot be done until the contractor has completed the repairs.

Mr. Anderson also reported that HNTB has made a punch list for the track contractor. He said that he thinks it is time for the FRA to undertake a white glove inspection.

Director Meyers asked about the interest that is accruing on the Balfour Beatty invoices.

Director Clendenen asked for an update on the vandalism at the Cherry Tree crossing. Mr. Anderson said the repair to the crossing will be done after the track contractor has left the property. He said that NCRA has the materials to repair the crossing.

There was a brief discussion about how the trackwork and crossings could be better protected against vandalism.

Director Wolter asked if failure to pay the contractor invoices on time was a cashflow issue. Mr. Anderson said that it was a cashflow issue.

K. OPERATOR REPORT

1. NWP Co. – John Williams

No report

L. MATTERS FROM THE BOARD

Director Clendenen reported that he had on his calendar a meeting between Karen Diemer and John Williams.

Mr. Williams said that he has met with Karen Diemer and will be attending a Steering Committee meeting. He said he is prepared to give up use of the “L” Street corridor in exchange for the use of the “N” Street corridor exclusively. He said the city wants to utilize the “L” Street corridor for their trail. He said that he has purchased 5 coaches for Timber Heritage Association to refurbish and hopefully run an excursion train in Humboldt County.

Director MacDonald said that he hopes that NCRA can meet in the renovated Novato City Hall in the future. He also responded to Mike Pechner’s public comment. He said the email that Mr. Pechner read was provided to NCRA staff and board members as well as a civil grand jury. He said that if the entire email would have been read in its entirety it would be clear that he was questioning the economic viability of the repair and resumption of rail service. He said that he might, two years later, revise some of his comments. He also said that if a member of the public would like to see the emails, they are available.

Director Meyers said that he wants Staff Memos for all items on the agenda. He also requested that items that are mailed late, be added to the website as soon as possible.

Director Wagenet said that he met with the owner- operator of the Skunk Train in Willits. He said that the owner of the Skunk Train has a strong desire to get freight service to Willits so that he can begin shipping.

Director Wolter requested a copy of the MacDonald emails. He also asked about AB 1234 and asked if all Board members provide AB 1234 certification.

Responsive to Director MacDonald’s earlier inquiry, Legal Counsel said that the Board can adjourn to Closed Session under Government Code 54956.9 (b) (2) to discuss legal rationale for selection of Closed Session topics.

The Board convened Closed Session at 1:33 p.m.

M. CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION (1 cases)
Government Code 54656.9(a)
City of Novato vs. NCRA; Superior Court of California, County of Marin;
case # CV074645
2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Subdivision (b)(3)(A) of Section 54956.9
(two potential cases)

The Board reconvened into open session at 3:00 p.m.

Legal Counsel reported that the Board met with Counsel, received information and gave direction on 3 items. He said the Board unanimously approved an amendment to the Novato Consent Decree. He also

Prepared for Approval by NCRA BOD
On January 13, 2010

reported that, regarding the matter of anticipated litigation, the Board authorized a letter to the Harbor District.

N. ANNOUNCENMENT OF NEXT MEETING

January 13, 2009

Ukiah Valley Conference Center
200 South School Street
Ukiah, Mendocino County

O. ADJOURNMENT

Chairman Hemphill adjourned the meeting at 3:08 p.m.