



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

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

Wednesday, October 14, 2009~ **10:30 a.m.**  
Healdsburg City Council Chambers  
401 Grove Street  
Sonoma County

---

### **Approved Minutes**

#### **A. CALL TO ORDER**

Chairman Hemphill called the meeting to order at 10:32 a.m.

#### **B. ROLL CALL**

**Directors present:** Wagenet, Colfax, Kelley, Wolter (leaves at 11:25) , MacDonald, Meyers, Atkins, Clendenen, and Chairman Hemphill

**Directors Absent:** None

**Also Present:** Executive Director Mitch Stogner, Legal Counsel CJ Neary, Project Manager Dave Anderson, Transportation Planner Angel Lucero, Recording Secretary Heather Lindsteadt

#### **C. AGENDA APPROVAL**

Upon Motion by Director Meyers, seconded by Director Kelley the agenda was approved unanimously (9-0-0) with the following changes:

1. "and Workshop" was removed from title;
2. Item G. 2 was removed.

#### **D. RECOGNITION OF OUTGOING DIRECTOR**

##### **1. Eric Ziedrich – Director**

Chairman Hemphill presented a "Golden Spike" to Eric Ziedrich for his years of service on the NCRA Board. Chairman Hemphill thanked Director Ziedrich for his sage advice, leadership and dedication to the goal of rail service on the NWP line. He pointed out that Director Ziedrich, as Mayor of Healdsburg, will continue to be a valued ally and advisor on rail issues affecting his city.

Chairman Hemphill also introduced newly appointed Cities Representative, Cloverdale City Councilmember Gus Wolter. He said that Director Wolter brings a wealth of experience and local government expertise to the NCRA Board.

**E. PUBLIC COMMENT**

**Pat Higgins** – Humboldt Bay Harbor District – requested that the Board begin discussions regarding the Harbor District loan that comes due on December 31, 2009. He said he values the strong working relationship that exists between the 2 agencies, and looks forward to a mutually agreeable plan to address repayment of the Harbor District loan.

**F. CONDUCT OF BUSINESS**

**1. Discussion and Possible Approval of Sutter Securities Engagement Letter – Potential Capital Financing Programs**

Dennis Ciocca of Sutter Securities presented the Board with a proposal that would enable Sutter Securities to act as investment bankers to the NCRA for purposes of evaluating the potential future issuance of taxable or tax-exempt debt. Mr. Ciocca said that Sutter Securities has worked on funding opportunities for BART, CalTrans and Port of Humboldt Bay. He said that Sutter Securities would only receive compensation if and when NCRA was able to issue debt.

Director Meyers requested the following changes to the Sutter Security Engagement letter:

1. Insertion of a termination clause such as 90 days;
2. Insertion of a non-exclusivity clause.

Directors Colfax, Clendenen and Meyers generally questioned whether it was necessary to issue a Request for Proposals (RFP) for the services that Mr. Ciocca was proposing.

Mr. Ciocca said that the NCRA Board would be able to entertain proposals from other investment firms during the term of his Engagement, but that NCRA may be prohibited from taking one of his financing ideas and going to other firms to seek better pricing.

Upon Motion by director Wagenet, seconded by Director MacDonald staff was directed to return to the Board in November with an updated Engagement Letter that takes into account the issues the Board has raised regarding termination and exclusivity. Motion carried unanimously **AYES: 9, NOES: 0, ABSTAIN: 0, ABSENT: 0**

*Director Wolter leaves 11:25*

**2. Discussion and Possible Approval of Issuance of Request for Proposals (RFP) – Property Management Services**

Executive Director Stogner explained NCRA's agency revenue sources. He said that NCRA receives no administrative funding from the state. He said that the administrative revenue comes from lease of railcars, operator lease fees and property management. He said that staff believes that the property could possibly bring in additional revenue and said that it is necessary to contract with a property management firm to increase property

revenue for the agency. Executive Director Stogner said that the property management firm would evaluate and update current lease agreements, seek out “stealth” crossings, and negotiate new property leases according to NCRA’s Property Policy guidelines.

Director Meyers requested some minor changes to the RFP such as changing the due date for proposal submission, request that property firm supply NCRA with a hard copy and electronic copy of its property management data base related to NCRA, and inserting language that explains that the firm can contract with local property managers if necessary. He also said that NCRA should not be indemnifying anyone and requested that that section be removed, and that the insurer be insured by an A&MBEST company. He also requested that the Board be provided all proposals that are submitted.

Upon motion by Director Meyers, seconded by Director Wagenet the Board unanimously approved issuance of the Request for Proposals (RFP) for Property Management Services. Motion carried: **AYES: 8, NOES: 0, ABSTAIN: 0, ABSENT: 1** - Wolter

**3. Consideration of a Claim - Paragon Subrogation Services, Inc./California State Automobile Association/Julie Dewitt. Authorize counsel to send Notice of Action on Claim.**

Director MacDonald recused himself from this item and left the room.

Legal Counsel Neary summarized the issue and requested that the item be moved over to the November meeting due to receipt of additional documents the day before the meeting.

Upon motion by Director Wagenet, seconded by Director Kelley the item was moved to the November 18, 2009 Board meeting. Motion carried. **AYES:8, NOES: 0, ABSTAIN: 0, ABSENT: 1**-Wolter

**G. CONSENT CALENDAR**

**1. Approval of Minutes - Regular Board Meeting – September 12, 2009**

Upon Motion by Director Meyers, seconded by Director Kelley item G.1 was approved with changes as requested by Director Meyers. Motion carried. **AYES: 7, NOES: 0, ABSTAIN: 0, ABSENT: 2** Wolter, MacDonald.

~~**2. Approval of Minutes – Regular Board Meeting – June 10, 2009**~~ (item removed per prior motion)

**3. Acceptance of Financial Statements – September 2009**

Director MacDonald expressed concern that the Board is not presented with accrual financial statements and that the TCRP trial balance continues to reflect agency interest payable and the Budget amendments are not yet reflected in item G.3 .

Upon Motion by Director Meyers Seconded by Director Kelley Item G.3 was approved. Motion carried: **AYES: 6, NOES: 2** - Meyers, MacDonald, **ABSTAIN: 0, ABSENT: 1** Wolter

4. Approval of Warrants Issued - Agency 787010 – September 2009
5. Approval of Warrants Issued - TCRP 787101 – September 2009
6. Approval of Cal Card Statement – September 2009

Upon Motion by Director Meyers Seconded by Director Kelley Items G.4 -G.6 were approved. Motion carried: **AYES:** 8, **NOES:** 0, **ABSTAIN:** 0, **ABSENT:** 1 Wolter

## **H. STAFF REPORTS**

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

- a. **SMART/NCRA Operating Agreement Discussions**
- b. **Status of ISTE A Funding**

Executive Director Stogner updated the Board on the discussions between NCRA and SMART. He said that the operating agreement is currently being drafted. He also reported that SMART and NCRA staff are discussing the possibility of SMART becoming the lead agency on the ISTE A funds. He said the funds could be used for signal replacement from Windsor to Cloverdale and Novato Consent Decree mitigation, as well as projects that could benefit both NCRA and SMART.

### **Public Comment**

**Nadananda**, representing Friends of the Eel River, asked about the FRA application and questioned whether federal RRIF funds could be used for signal repairs.

Executive Director Stogner explained that his summary related to the ISTE A funding, which was different than the FRA application.

### **c. DEIR Status Update**

Executive Director Stogner said that the DEIR is currently being finalized and that he expects that recirculation of the DEIR could happen in early November. He said that it should be available prior to the November Board meeting in Humboldt County.

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

Dave Anderson, NCRA Project Manager reported that all the repairs will be complete at the end of October with the exception of the repairs at Novato Creek Bridge, which are delayed until NCRA receives one more permit from the Army Corps of Engineers. He also reported that he will be walking the rail property with the City of Novato Engineer and SMART to discuss issues related to the Novato Consent Decree next week

### **3. Legal Counsel – C.J. Neary**

No report

## **I. OPERATOR REPORT**

**1. NWP Co. – John Williams**

Doug Bosco reported to the Board that NWP Co. continues to receive interest from shippers along the line who are anxious to take advantage of shipment by rail. Mr. Bosco reported that there are lots of potential shippers, like wineries, coming in which is very encouraging. They also need to deal with UP. The Chair noted that the wine industry has grown in the last 20 - 30 years. Mr. Bosco also stated that "going green" is very fashionable, and NWP is.

**J. MATTERS FROM THE BOARD**

Director MacDonald asked about the status of the FRA (RRIF) loan application. He said that it is \$3 mil joint application with NWP. He said that the original application was submitted in December 2008 and resubmitted with revisions July 2009 He had asked to have it on the agenda for this meeting. He said he was concerned because he has not heard about the application and said that the Board has never taken action on the application. He said it needs to be before us, and he was concerned about the use of the funds, the collateral pledged, the scope of the project, and the categorical exclusion.

Chairman Hemphill said that staff has been given broad direction to pursue every possible fund source.

Chairman Hemphill said that all any final application that is approved by a federal agency will have to be discussed and approved by the Board.

Director Kelley said that the Board needs to have time to further review the application and that he would like to table the conversation until the matter is brought before the Board in an official manner.

Director Meyers said that when NCRA sends an application, if it is signed under penalty of perjury, and if the Executive Director signed off on something that may have been improper, he could face serious repercussions.

Executive Director Stogner said that anytime a public agency seeks federal funding, there is an extensive dialogue between the grantor and loan recipient. He said that it is imperative that staff have the authority to quickly respond to requests from granting agencies in a timely manner. He said it would be difficult to be competitive for receipt of grant funds if staff had to get approval every step of the way from the Board.

Chairman Hemphill requested that staff present to the Board in November a summary of the RRIF loan application and said that the Board will have the final approval of RRIF loan.

Director Wagenet said that he expects a report rather than an action item in November.

Director Meyers asked if the audio of the meetings could be added to the website.

Director MacDonald said that he is still concerned about Director Liability and asked about Director & Officers insurance. He said he has had many people tell him that the Board members should have D&O insurance.

Chairman Hemphill directed staff to seek quotes for Director & Officer's insurance and asked that legal counsel provide the Ad-Hoc Committee with an opinion paper regarding Director liability. Chairman

Approved by NCRA BOD  
With Amendments 111809

Hemphill requested that an Ad-Hoc committee meeting be scheduled prior to the regular November Board meeting.

*The Board convened to Closed Session at 1:03 p.m.*

**K. CLOSED SESSION**

1. Conference With Legal Counsel--Anticipated Litigation  
Significant exposure to litigation pursuant to Subdivision (b)(3)(A) of Section 54956.9  
(one case)

*The Board reconvened into Open Session at 2:00 p.m.*

**L. ANNOUNCEMENT OUT OF CLOSED SESSION**

Legal Counsel reported that the Board met with its counsel on one item of Anticipated Litigation, received information and gave direction. No action taken.

**M. ANNOUNCENMENT OF NEXT MEETING**

**Please Note Date Change**

November 18, 2009 – 10:30 a.m.  
Eureka City Hall Council Chambers  
531 "K" Street  
Eureka – Humboldt County

**N. ADJOURNMENT**

Chairman Hemphill adjourned the meeting at 2:05 p.m.

---