

From: [Bernard Meyers](#)
To: California.Transportation.Commission@CATC
Subject: Comments regarding Agenda Items 60 and 61 for Dec. 2 and 3, 2020
Date: Tuesday, December 1, 2020 11:37:00 AM

EXTERNAL EMAIL. Links/attachments may not be safe.

To: Hilary Norton, Chair, California Transportation Commission and Commissioners

Dear Ms. Norton and Members of the Commission:

These comments are directed to Agenda Items 60 and 61, dealing with the North Coast Railroad Authority (NCRA) and SB 1029.

I was a Director of the NCRA from 2007 - 2013, appointed by the Marin County Board of Supervisors (MCBOS). Prior thereto I served for 15 years as an attorney with the US Department of Justice Antitrust Division and was a two term Mayor of Novato. I supported SB 1029. I wrote letters in support and testified before the CTC and the Legislature. I continue to support the spirit of SB 1029 - namely, to dissolve NCRA and to build a world-class trail along or next to the right-of-way, even though that effort may not be completed within our lifetimes.

What I oppose is that excessive taxpayer funds will apparently be paid to the company holding the freight lease with NCRA - the North Western Pacific Railroad Company (NWP), as well as \$2.4 million to the federal government *for the benefit* of NWP. The freight lease was entered into in Sept. 2006 and I contend it was not based on a public bid but was a creature of back room machinations and Brown Act violations (Memo to NCRA of May 24, 2011). Furthermore, many of the obligations supposedly owed by NCRA to NWP are in violation of California law and all of the debts need a through vetting before determining whether the amounts claimed are lawful or have offsets. One other NCRA debt also appears to be excessive.

I have reviewed all of the CalSTA Report referenced in Item 60 as is available (<https://calsta.ca.gov/-/media/calsta-media/documents/sb-1029-assessment-of-ncra-report-to-legislature-111220.pdf>; Appendices C, D and E are missing). It is generally well-done, but omits several items and I would like to submit comments and questions. The Report states that "NCRA is a quasi-government entity which lacks formal government oversight, and [this] has resulted in a lack of transparency, public mistrust and significant debt." (page 9; see also pages 17 and 50). The Report should add "misgovernance". Exactly 10 years ago I reported to the MCBOS these omissions. I am heartened to see them recognized today and hope that no further taxpayer funds will be misspent because of the misgovernance. The transfer of the freight rail rights and liabilities should only be undertaken *after* a through review of the lawfulness of the claims, a consideration of all offsets and the consequences of the transfer.

I request an audit of NCRA's alleged obligations to NWP that *includes a through search for all underlying documents and communications both at NCRA and from NPW*. Only thereafter can a determination be made of the legality of each claim and whether there are any offsets permitted to the State. Well before any payments of State funds are considered the public should be provided with full disclosure of the basis thereof.

I intend to appear at your hearing and welcome any questions. I would also be pleased to

provide the CTC with material supporting my comments.

Sincerely yours,

Bernard Meyers, Novato, CA

From: [Mike Arnold](#)
To: [Weiss, Mitch@CATC](#); [California Transportation Commission@CATC](#)
Cc: ["Wells, Steve"](#)
Subject: Additional Comment on Memo Summarizing NCRA Transfer for Dec 2/3 CTC Meeting
Date: Wednesday, December 2, 2020 9:50:42 AM

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Mr. Weiss

It has come to my attention – because Appendix C was mailed to a colleague but not posted– so I'm getting this second hand -- that the value of the FRA loan to NCRA/NWP Co. was not deducted from what is owed Mr. Bosco.

There are some basic financial principles to recognize if what I've been told is true.

- 1) NWP Co has been making quarterly payments on this loan and is OBLIGATED to do so until the loan is paid off or the FRA decides to waive requirements for future payments.
- 2) The present value of those required quarterly payments is easy to calculate in a spreadsheet. But given how low interest rates currently are, the PV of those payments is likely to far exceed principal outstanding on the loan.
- 3) As this loan is a liability of NWP Cos being taken over by the state in the transaction, this value represents a benefit to the seller (NWP Co) and a cost to the buyer (the state) and should be incorporated in the amount NWP Co. is owed in settlement. Anyone with a finance background would make this argument. We can debate the exact value, but it surely is not zero. So ignorance of this value represents a gift to the seller and should be explicitly treated as such. The CTC may decide to make such a gift, but it should be explicit that it is doing so.
- 4) I believe to ignore this value and not explicitly identify this value a gift in the transaction is a reportable deficiency in governance and I intend to do so, if the CTC does not address this issue later today or tomorrow whenever the agenda item is discussed.

Mike Arnold, PhD
Novato CA
415-382=1264

From: Weiss, Mitch@CATC [mailto:Mitch.Weiss@catc.ca.gov]
Sent: Saturday, November 28, 2020 9:51 AM
To: Mike Arnold
Subject: RE: Comment on Memo Summarizing NCRA Transfer for Dec 2/3 CTC Meeting

I will pass your comments along to Steven Keck and to CTC Commissioners.
Mitch

From: Mike Arnold <arnold@alcopartners.com>
Sent: Saturday, November 28, 2020 9:15 AM
To: Weiss, Mitch@CATC <Mitch.Weiss@catc.ca.gov>
Subject: Comment on Memo Summarizing NCRA Transfer for Dec 2/3 CTC Meeting

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Please forward to Steven Kleck, if possible and to CTC Commissioners.

My comments on this memo and associated reports are brief

Here is the reference memo in the agenda packet for the Dec 2/3 CTC meetings

From: STEVEN KECK, Chief Financial Officer
Reference Number: 4.11, Action Item
Prepared By: Kyle Grading, Chief
Division of Rail and Mass Transportation
**Subject: NORTH COAST RAILROAD AUTHORITY, STRATEGIC PLAN UPDATE AND
TRANSFER OF SOUTHERN SECTION, RAILBANKING OF NORTHERN SECTION
RESOLUTION G-20-81**

To Whom it May Concern

Nowhere in any of the discussions regarding the transfer of NWP Co freight assets – including the recently issued report by CALSTA, has there been consideration of the state of California’s financial exposure to voter rejection of a tax extension measure in Marin and Sonoma counties.

Based on the trouncing that SMART took on March 3rd, the CTC should at least consider a “what if” scenario.

What happens if voters do not pass a tax extension measure prior to March 2029, when the current sales tax expires? The reason that the CTC should consider this question is that passenger rail service may be terminated along with the agency, but freight service may be required by the STB regulations to continue. Will this be a state responsibility? And if freight service is not generating net (positive) revenues, who will be funding the oversight and operation of the freight trains. Abandonment of freight service is a federal matter, not controlled by the state, and for sure the CTC should minimize this potential scenario by “assumption.”

As there has been no report on the costs and benefits to SMART associated with owning the freight assets, no one has any idea of whether this ownership of freight assets will generate net revenues for SMART. No one has assessed what revenue opportunities exist from SMART taking over these assets, nor has there been an assessment of potential loss of revenues from the parking of tanker cars in Schellville to these calculations. SMART may have recently undertaken such a study, but it has not been completed nor reviewed in the public.

While I agree it is not the state's responsibility to make the assessment of the purchase to SMART, the state needs to recognize that no one has made such an assessment and that this lack of knowledge puts future state revenues at risk.

As someone who participated in the campaign to defeat Measure I, the CTC should consider the implications of just how badly SMART lost that election. A comparison between voter approval of Measure Q in 2008 and Measure I (2020), shows that SMART lost 88,000 yes votes and gained 20,000 no votes in the process. It is an assumption that SMART can pass a tax extension measure in the future. There is significant well funded opposition in the two counties to oppose the extension and whether the agency survives will be determined by the voters.

Given state requirements for a 2/3 vote to extend the sales tax for this rail system, the CTC should at least consider the possibility of SMART's dissolution when considering approving the transfer of freight assets to public ownership.

Thus far, I appear to be the only person that has mentioned that the exposure of the state to this scenario ought to be considered prior to the approval of the transfer.

Mike Arnold, PhD
Novato

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707 964 6371 TEL
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November 30, 2020

Tab 60

State of California
Department of Transportation – California Transportation Commission
1120 N Street, MS 52
Sacramento, California 95814

Re: California Transportation Commission Agenda for December 2-3, Ref. Nos. 4.35 and 4.11

Dear Chair Norton & Commissioners,

Mendocino Railway hereby opposes the adoption of Resolution G-20-81 and the approval of any transfer of the North Coast Railroad Authority's freight contract to the Sonoma-Marín Area Rail Transit District ("SMART"), the transfer of all freight rights over the Northwestern Pacific Railroad ("NWP") south of the Sonoma-Mendocino county line to SMART, the transfer of real property from Healdsburg to the Sonoma-Mendocino county line to SMART, and the railbanking of portions of its right-of-way north of Willits (the "Resolution"). Mendocino Railway hereby also states its objections to the 2020 Legislative Report, the *Assessment of the North Coast Railroad Authority and Viability of a Great Redwood Trail* (the "Report").

Background

Mendocino Railway is a Class III common carrier public utility railroad that in 2004 purchased the California Western Railroad/Skunk Train ("CWR"), which railroad traverses the 40-miles of forest between Fort Bragg and Willits, California. One of the reasons Mendocino Railway purchased the CWR was the announcement by the North Coast Railroad Authority ("NCRA") of its intention, and its receipt of the needed funding, to reopen the NWP line to Willits, allowing Mendocino Railway to reestablish a freight connection between Fort Bragg and Willits and the rest of the nation via the CWR's connection to the NWP at Willits.

To that end, Mendocino Railway has since its purchase of the CWR invested millions of dollars in refurbishing the line to accommodate this freight traffic, with a number of customers in both Fort Bragg and Willits expressing interest in shipping via the interstate railroad system when the NWP is reopened to Willits.¹

¹ While the CWR has experienced a tunnel collapse that has temporarily prohibited traffic between Fort Bragg and Willits, Mendocino Railway is actively seeking the funding needed to reopen this tunnel so that the CWR can again carry freight and passengers between Fort Bragg and Willits. This tunnel collapse has not, in any event, impacted the desire of customers on the eastern end of CWR's line connect to the interstate railroad system via the NWP.

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In order to assist with the restoration of railroad traffic across the NWP, Mendocino Railway has for many years been engaged in discussions with the NCRA, NWP.Co., SMART, and Senator McGuire and his staff concerning how Mendocino Railway could purchase some or all of the

NWP line, or at least obtain the operating rights to some or all of the line, to justify the investment needed to reopen the line to Willits. Mendocino Railway was well into discussions with NWP.Co. as to exactly that end when SMART began waving government money around in front of NWP.Co., causing NWP.Co. to terminate its discussions with Mendocino Railway and focus on the much larger payments, and significant debt relief, that NWP.Co. believed it could obtain from SMART and its governmental funding.

Objections to the Resolution and the Report

While Mendocino Railway fully supports the notion of rails with trails, a trail system should not be allowed to destroy a potentially viable and much-needed railroad. This Commission's approval of the Resolution will create significant roadblocks to restoring freight service and could altogether prevent the CWR from reconnecting to the interstate railroad system, rendering Mendocino Railway's investments in the CWR worthless. This Commission would, in one fell swoop, not only carry out what would effectively amount to a governmental taking of the value of the CWR, but would gut a good portion of the economic viability of the businesses in Mendocino County that have been desperate for the NWP to be reopened. For these reasons, we object to the proposed Resolution and ask the Commission not to pass that Resolution.

Mendocino Railway also object to the Resolution to the extent that it is based on the Report. As the Task Force tasked with preparing the Report itself acknowledges in the Report, it did not in investigating the options and preparing its Report analyze the cost to rehabilitate the NWP north of SMART's interchange, the possibility of the line being acquired by a private railroad operator, or the possibility of the NCRA's right-of-way being sold to a private railroad operator.

In fact, although SMART, the NCRA, NWP.Co. and Senator McGuire and his staff were all aware of Mendocino Railway's interest in the NWP, no one ever even informed Mendocino Railway of the Task Force's existence, such that the Task Force notes in its Report that "no interested parties reached out during the assessment period", as if the Task Force had no obligation to investigate any potential alternatives to simply giving

SMART its desired rights and as if it was the obligation of any interested parties to somehow intuit the Task Force's existence and charge.²

² Report, page 89, which states, "NCRA could sell its right-of-way to a private rail operator. However, with no strong economic draw on the north coast, the associated environmental liability, and costs to rehabilitate the line, the probability of a private railroad company acquiring NCRA is low. The Task Force did not analyze this scenario and no interested parties reached out during the assessment period."

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The Task Force seems merely to have assumed, as a given and without conducting any investigation, that the highest and best use of the NWP would be to transfer the NCRA right-of-way and freight operations easement on the southern portion of the NWP to SMART, railbanking the entirety of the line north of the Sonoma-Mendocino county line, permanently isolating all of the communities north of the Sonoma-Mendocino county line from access to the interstate railroad system. In fact, it appears from the Report that the Task Force's entire goal was not to investigate available options but rather simply to find justification to gift SMART with the portions of the NWP that are usable to SMART and to abandon the rest, damn the costs to the impacted communities or State taxpayers.

Proposed Alternative

Mendocino Railway has previously proposed a plan to Senator McGuire and his staff, to SMART, to the NCRA, and to NWP.Co. that Mendocino Railway believes would meet SMART's needs, the State's desire for a trail, and the need of Mendocino Railway and the residents and businesses of Mendocino County: that Mendocino Railway be allowed to assume ownership of the NWP line between Willits and SMART's interchange, allowing Mendocino Railway to restore railroad traffic across that portion of the line and preserving access to the interstate railroad system to the residents and businesses of Mendocino County. Mendocino Railway agrees that the portion of the NWP north of Willits is too great of disrepair to allow for economic railroad operation at this time and should thus be railbanked to preserve such an opportunity for the future should it again become economic to operate over that portion of the line.

Conclusion

The NWP has been in disrepair for some time. There has not been any need to rush through – or to outright skip – an analysis of the available alternatives for reopening the line to serve the people and businesses along the NWP. This rush, or omission, is all the more disconcerting given that Mendocino Railway has been on record for many years as to its interest in reopening the NWP between SMART's interchange and the City of Willits. We accordingly ask that the Commission not approve the Resolution and that the commission instead direct the parties, including Mendocino Railway, to engage in joint discussions concerning the future of the NWP.

If you have any questions or require further information, please don't hesitate to contact me at 707-964-6371 or via email at RJPinoli@SierraRailroad.com

Respectfully,



Robert Jason Pinoli
Vice President

From: [Bernard Meyers](#)
To: California.Transportation.Commission@CATC
Subject: Supplemental comments to CTC regarding Items 60 and 61 for Dec. 3, 2020
Date: Thursday, December 3, 2020 3:01:22 AM

EXTERNAL EMAIL. Links/attachments may not be safe.

To: Hilary Norton, Chair, California Transportation Commission and Commissioners
Dec. 3, 2020

This supplements my letter to you sent Dec. 1.

The State, under SB 1029, Section 17, appropriated \$4 million dollars for SMART to acquire NWPCo's freight rights and rail equipment. (Report, Page 7). "NWPCo has agreed to accept this payment provision." (Page 71) CalSTA now proposes to additionally pay NWPCo. for (1) loans NWPCo made to NCRA and (2) for a loan NCRA and NWPCo took out from the federal government. California law bars both of these proposed payments. They must not be approved.

1. NWPCo loans to NCRA

In addition to paying for NWPCo's freight rights and rail equipment, the CalSTA Report finds that NCRA has debts to NWPCo. of \$3,321,721 and proposes to pay NWPCo for these debts (Report, App. C, Table 2, Page 5). This payment is illegal as it does not take into account Cal. Government Code Sec. 93020(e) which limits NCRA's ability to enter into loans with anyone other than state or federal agencies:

93020. The authority [NCRA] **has all of the following powers:**

(e) To accept grants or loans from state or federal agencies. (emphasis added)

Therefore *NCRA did not have statutory authority to borrow money from anyone, other than state or federal agencies.* NWPCo is neither a state nor a federal agency. Thus NWPCo loans are in violation of NCRA's authority. As well, the interest NWPCo claims for the loans is invalid. If the Commission does not agree with what appears to be a complete bar the CalSTA payment, the Commission must request a legal opinion from the State as to the applicability of Cal. Gov. Code 93020(e) to NWPCo. loans before any CalSTA payment is authorized.

2. The RRIF Loan

The CalSTA Report states that:

"Assembly Bill 74, Budget Act of 2019-20 also appropriates \$8.8 million for expenses related to dissolving

NCRA, including operations, maintenance, and the **retirement of outstanding debts.** CalSTA was given

discretion over the use of those funds and plans to use \$2.4 million to retire the Federal Railroad

Administration RRIF Loan. Settling this outstanding debt will release both NCRA and NWPCo, as

co-borrowers, from their ongoing quarterly payment obligation to the Federal Railroad

Administration."

(Report, Page 76, emphasis added)

CalSTA mistakes the payment of the RRIF Loan as an *NCRA obligation*, merely because NCRA is a co-borrower. However, *between the co-borrowers, NWPCo. is responsible for the payment of the RRIF Loan, and NWPCo has been doing so from the 2011 Loan date through today. NWPCo does so because by contract, it is obligated to do so.* (Memorandum of Agreement re FRA Loan, Oct. 12, 2011, emphasis added):

4. Repayment of the RRIF Loan

...NWP Co agrees to pay to the NCRA the sum of [\$15,142] per month commencing on November 1, 2011

and continuing until the RRIF Loan is retired. The NCRA agrees to hold \$15,142 ...
received as aforesaid

in trust in a segregated trust account for payment of the quarterly payments of \$45,424 for the RRIF Loan.

Thus *between NWPCo and NCRA the RRIF Loan is not a debt of NCRA but of NWPCo.* Were CalSTA to use taxpayer funds to pay off the RRIF Loan, it would be making a unlawful gift of public funds for the benefit of NWPCo - unless CalSTA deducted the RRIF Loan payment from NCRA's lawful obligations to NWPCo. The CTC must not allow CalSTA to pay off the RRIF Loan as CalSTA proposes.

Sincerely yours,

Bernard Meyers, Novato, CA