

Date: August 17, 2017
Memo to: Chairman Hemphill
From: Mitch Stogner
CC: Chris Neary

This is in response to your request that I summarize my understanding and position relative to the issues and transactions currently before us. Based on the July 12 and the August 9 Board meetings, the various discussions over the last 3 months with NWP Co., Guillon Inc., and the correspondence and meetings with Caltrans and the CTC, I recommended that the NCRA Board take the following actions with respect to the Schellville crossing revenue, the Petaluma easement revenue and the repayment of funds earmarked for Depot site improvements.

Schellville Crossing Revenue - \$290,000 (currently projected closing date of 8/23/17)

As soon as funds are available, deposit \$290,000 in the NCRA agency account and issue a check as soon as possible to NWP Co. for \$290,000 as a partial repayment of the approximately \$4.1 million owed to NWP Co. for completion of the Lombard to Windsor Freight Rail Project.

Separately, NWP Co. has indicated that it urgently requires, and will use all of these funds to pay for emergency maintenance and repair costs they have estimated as follows:

\$75,000	Black Point Bridge Repair
\$78,000	Hwy. 37 crossing surface
\$100,000	Hwy. 121 crossing surface
\$19,952	Crossing Agreement legal costs
\$25,000	Repair of excavator axle
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\$297,952	Total

Petaluma Easement Revenue - \$900,000 (currently projected closing date of 10/1/17)

As soon as funds are available deposit \$900,000 into NCRA agency budget. (**Note:** \$100,000 of the original \$1 mil. agreement has already been paid from escrow to NWP Co., \$50,000, as credit against funds owed by NCRA to NWP Co. for completion of the Lombard-Windsor Freight Rail Project. The other \$50,000 was paid to NCRA and deposited in the Mendocino Savings Bank as partial repayment for the \$500,000 borrowed from funds to pay NCRA's 50% share of the Cox, Castle legal bill.

The remaining \$900,000 from Petaluma Easement transaction should be apportioned as follows:

\$450,000 Deposit to NCRA account in Mendocino County Savings Bank to replace what we borrowed in April to pay NCRA's 50% share of the Cox Castle bill;

\$185,288 Payment to the law firm of Neary & O'Brien for legal costs related to the FOER lawsuit;

\$264,712 Payment to NWP Co. to be credited against the approximately \$4.1 million NCRA owes NWP Co. for the Lombard to Windsor Freight Rail Project.

Note: The NCRA payments to NWP Co. as listed above total \$604,712, which is a very significant repayment. In April of 2016, NWP Co. was reimbursed \$686,906.73, including interest for costs incurred in the remediation of the Depot Site. Although much remains, if the above payments are made, NCRA will have paid a total of \$1,291,618 toward debt to NWP Co. in the last 18 months or so.

Note: Caltrans argues in a letter dated August 8, 2017 that it is entitled to 10% of the \$1 million Petaluma Easement revenue as per a letter agreement of August 18, 2016. The agreement says that prior to sale of excess property NCRA must:

1. Declare the property excess to the needs of the project;
2. Sell for Fair Market Value;
3. Return to the state, its proportionate share of its contribution to the original purchase/project (i.e. 1996 purchase of Willits, Healdsburg, and Lombard segments in which the state contributed 10% to the purchase price).

Note: Although the argument can be made that Caltrans cannot require NCRA to pay 10% (\$100,000) from the sale of the Petaluma Easement, it is prudent to retain that amount in the agency fund while negotiations with Caltrans/CTC are pursued.

Depot Improvements as per the March 2016 Off Site Improvement Agreement with the JCC

I recommend that the outstanding \$450,000 borrowed from the Mendocino Savings Bank account, (which was established pursuant to Resolution 2016-02 and which obligated the funds to be used solely for the Depot Site Improvements), be returned to the Mendocino Savings Bank account as soon as the Petaluma Easement escrow closes.

In the meantime, per the direction confirmed at the July 12 Board meeting, Guillon Inc. is committed to the completion of the improvements totaling roughly \$2,648,000 (\$958,000 – NCRA + \$1,690,000 – JCC) under an accelerated project schedule and a contract amendment revising the terms and timing of progress payments and extending the completion date until at least June 30, 2018. The Board was very clear that it supported sole source, negotiated contracts, all cost-savings efforts and innovations that the project manager could employ.

Steve provided a preliminary list of schedule milestones as follows:

2017 Late Season Work

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|------------|--|
| 8/18/17 | Submit bridge design drawings w/peer review complete |
| 8/21/17 | Finalize & distribute contract documents |
| 8/23/17 | Authorize prime contracts |
| 8/23-24/17 | Stake for grading, |
| 8/25/17 | Receive permits from CDFW and RWQCB |
| 9/1/17 | Finalize insurance, bonds and administrative details |

9/5/17	Install construction fence and signage
“	Commence site clearing, import fill, grading and compaction
9/11/17	Commence storm drain, sewer and water systems (at Clay & RR)
“	Commence bridge excavation and mobilize pile driver
9/18-20/17	Drive bridge foundation piles
“	Button up Clay/RR area, install SWPPP BMP's, modify fencing
9/21-10/6/17	Form, reinforce and pour bridge abutments and wing walls
10/13/17	Complete structure to above high-water elevation
“	Restore streambed for flowing and habitat
10/20/17	Complete storm drain, sewer and water lines
10/30/17	Install remaining erosion control measures

2017-2018 Preparation for Spring Completion Work

Winter	Progress on pre-cast, post-tensioned bridge deck & railing, if feasible
“	Finalize joint trench utility designs and extension contracts
“	Revise and refine administrative, contract documents as needed
“	Complete design of traffic signal modifications
“	Maintain SWPPP compliance throughout rain events

2018 Completion of Improvements

March/April	Complete traffic signal modifications
“	Complete bio-swales
“	Complete bridge, storm drain connections, water pipe crossing & tie-in
“	Complete joint trench, hydrants, vaults and transformers
May/June	Restore subgrade, install curb & gutter, install sidewalks and ramps
“	Place and compact aggregate base rock and asphaltic concrete
“	Complete striping and signage
“	Activate traffic signals and streetlights
“	Remove fencing & signage, open street to public
June 30, 2018	City accept improvements

I realize there are risks related to the timely completion of the Depot Improvements as contemplated by the Off-Site Improvement Agreement; but I think it would be a huge mistake to abrogate the agreements we have with the JCC, the City of Ukiah, Guillon Inc. and our Board adopted Resolutions. I think we should only take this step if the JCC leaves us no other choice.

Accordingly, I think we should re-pay the Mendocino Savings Bank as soon as possible with the Petaluma Easement revenues, and focus all of our efforts on completing the Depot Improvements, as contemplated by the March 2016 Off-Site Improvement Agreement, under a contract amendment and revised payment schedule agreeable to the JCC.

Staff Recommendation

- 1) Approve use of Schellville crossing funds (\$290,000) as a partial repayment of the approximately \$4.1 mil. owed to NWP Co. for completion of the Lombard-Windsor Freight Rail Project;
- 2) Approve use of Petaluma Easement funds (\$900,000) to repay \$450,000 borrowed from the Mendocino County Savings Bank to pay NCRA's 50% share of the Cox, Castle legal bill; to pay \$185,288 to the law firm of Neary & O'Brien for legal costs related to the FOER lawsuit; and to pay \$264,712 to NWP Co. as partial repayment of the approximately \$4.1 mil. owed to NWP Co. for completion of the Lombard-Windsor Freight Rail Project;
- 3) Approve the competitive bid exemptions, negotiated contracts, all cost saving efforts and innovations that the project manager can employ to meet the accelerated project schedule and amendment to the March 2016 Off-Site Improvement Agreement, revising the terms and timing of the progress payments and extending the completion date until at least June 30, 2018.