



MEMO

To: NCRA Board of Directors

From: Executive Director Stogner

Date: May 26, 2020

Subject: **Agenda Item E.1 – Discussion and Possible Action Regarding Partial SMART Buyout of 2006 Freight Contract between NCRA and NWP Co. Including SMART Assumption of Exclusive Freight Easement from Sonoma/Mendocino County Line (MP 89) to Napa Junction and Executing Related Agreements**

Brief Chronology of NCRA

- In 1989, the California Legislature enacted legislation creating the North Coast Railroad Authority (NCRA) to ensure the continuation of freight rail service on the former Northwestern Pacific Railroad line from the national interchange south of Napa to the Port of Humboldt Bay.
- In 1992, the California Transportation Commission (CTC) authorized the NCRA to utilize \$6.1 million in Proposition 116 Bond funds to purchase the northern end of the rail line from Willits to Samoa and branch lines in Carlotta, and Arcata to Blue Lake.
- In 1996, the CTC authorized NCRA and SMART's predecessor, The Northwestern Pacific Railroad Authority (NWPRRA), to utilize \$42 mil. in state and federal funds to acquire the rail line south of Willits in 3 segments:
 - The Willits segment from Willits to Healdsburg was acquired by NCRA;
 - The Healdsburg segment from Healdsburg to Novato/Hwy 37 was acquired by NWPRRA (SMART);
 - The Lombard segment from Novato/Hwy 37 to the national rail interchange south of Napa was acquired by NWPRRA (SMART).

NCRA became the fee owner of the Willits segment and granted NWPRA (SMART) an exclusive passenger rail easement to operate commuter trains from Healdsburg to Willits. Conversely, NWPRA (SMART) became the fee owner of the Healdsburg and Lombard segments and granted NCRA an exclusive freight rail easement to operate freight trains from Healdsburg to Novato/Hwy 37 and east to the national rail interchange Lombard/Napa Junction.

- In 1998, following devastating floods, the Federal Railroad Administration (FRA) issued Emergency Order 21 which shut down the entire railroad from Humboldt County to the Napa Junction until the line could be repaired to meet FRA safety standards.
- In 2002, the California legislature enacted AB 2224 (Nation) which, among other things, created the Sonoma Marin Area Rail Transit District (SMART) to replace the NWPRA and set the ground rules for SMART and NCRA in terms of the shared use of a single track in Marin and Sonoma Counties.
- In 2006, the NCRA selected the NWP Co. to be its freight operator for the Russian River Division from Napa Junction to Willits.
- In 2008, SMART's measure Q, imposing a ¼ cent sales tax in Sonoma and Marin Counties for SMART commuter service from San Rafael to Cloverdale was adopted.
- 2006-2011, NCRA used \$60 mil. in state and federal capital grants, and a federal RRIF loan to repair the track way, bridges and crossing signals from the national railroad interchange (Napa Junction) to Novato/Hwy 37, and north to Windsor. The FRA inspected this 62-mile section of track and subsequently lifted Emergency Order 21, thereby authorizing 25-40 mph freight rail service on this section of track.
- In 2011, the NWP Co. began operating freight service under its 2006 contact with NCRA to run freight trains on the Russian River Division from Napa Junction to Willits. NWP Co. has continued its freight operations between Napa Junction and Windsor, under a 2011 Operating and Coordination Agreement (Amended in Dec. 2017) between SMART and NCRA. In the meantime, SMART upgrades to the shared track were completed in 2017 to accommodate 79 mph commuter trains, and SMART revenue service from San Rafael to Airport Blvd. in Sonoma County began in August 2017.

Senator McGuire's SB 1029

In 2018, the California legislature enacted SB1029 (McGuire) which requires the California State Transportation Agency (CalSTA) and the State Resources Agency to conduct an assessment to determine the most appropriate way to dissolve the NCRA and to dispense with its assets and liabilities. The bill requires

these state cabinet level agencies to complete their findings and report back to the legislature no later than July 1, 2020. The NCRA is required to cooperate with the assessment and to provide access to all NCRA records requested by the state agencies conducting the assessment. SB 1029 (McGuire) also includes Section 17 which reads:

“ The sum of \$4 mil. is hereby appropriated to the State Transportation Agency from the Public Transportation Account for rail improvements on the corridor owned by SMART and NCRA. These moneys shall be allocated to SMART for the acquisition of freight rights and equipment from NWP Co. to ensure efficient provision of goods movement requirements in the corridor in the context of growing passenger service. Following a signed baseline agreement between the State Transportation Agency and SMART that articulates deliverables, the anticipated expenditure schedule, and reporting requirements, the Secretary of Transportation may transfer these monies to SMART pursuant to the provisions of the baseline agreement. These monies shall not be transferred to SMART for the acquisition of freight rights and equipment from NWP Co. unless the terms and conditions of the baseline agreement have been approved by both the Secretary of Transportation and the Director of Finance. If these moneys are not transferred to SMART within two-years of the chaptering of this act, these moneys shall be returned to the Public Transportation Account.”

SMART Board Implementation of Section 17 of SB 1029

- On May 20, 2020, the SMART Board of Directors took action to implement Section 17 of SB 1029 (McGuire) by adopting the following staff recommendations:
 1. Approve the concept of SMART becoming a Common Carrier and Freight service provider (directly or through a contract) with the understanding of all of its privileges, opportunities and obligations from Sonoma-Mendocino County line south and east to Napa River.
 2. Accept the additional right-of-way from Downtown Healdsburg to Sonoma-Mendocino County Line (20.8 miles).
 3. Authorize the General Manager to execute the “Asset Transfer Agreement” between SMART and NWP Co. in substantially the form attached hereto as (Attachment 2).
 4. Authorize the General Manager to execute the Baseline Agreement between State of California and SMART in substantially the form attached hereto as (Attachment 3).
 5. Direct the Chair of the Board and General Manager to work with Senator McGuire, other State Legislators, Governor, and his/her administration to

secure the funding needed for the ongoing maintenance and capital project of the freight area.

6. Authorize General Manager to file required documents with the Surface Transportation Board authorizing SMART to acquire railroad right-of-way and transferring common freight carrier rail operations authority to SMART for all freight services south of Mile Post 89.

7. Authorize General Manager to issue a Request for Proposal to seek a freight consultant who would perform Economic Feasibility Study of the entire SMART owned area and analysis for the options to provide freight services in the future.

8. Authorize General Manager to negotiate and execute an agreement with NWP Co. to provide interim service to the existing freight customers until the Board has made a permanent decision.

9. Request the Chair of the Board to assign a number of Board members and the General Manager to meet with officials from County of Sonoma, Town of Sonoma, First Responders and the affected Community regarding the future of the existing practice of storage of Liquidated Petroleum Gasoline (LPG) and report back to the Board in a future public meeting.

NCRA Staff Recommendation:

Several of the actions authorized by SMART's Board on May 20, 2020 will require cooperation by NCRA to be completed. Initially, staff recommends the Board support the proposed SMART/NWP Co. transaction, contemplated by S.B. 1029, by taking all steps necessary at this time to allow completion of that transaction by confirming its approval thereof in the manner required by the 2006 contract with NWP Co. Additional steps by NCRA will likely be needed to assist SMART in fulfilling the above-described goals, particularly in light of the information and recommendations expected to be communicated by the State of California upon the completion of its analysis of NCRA's present and future, currently under way. Accordingly, staff further recommends the Board direct staff to undertake discussion and negotiation with SMART regarding additional actions in furtherance of the goal of SMART becoming the Common Carrier and Freight service provider from Sonoma-Mendocino County line south and east to Napa River.

At this time, staff recommends that the board take the following actions:

- 1) Authorize the Executive Director, on behalf of the Board of Directors, to grant permission to NWP Co., pursuant to Section VII(B) of the 2006 Lease, to make such applications to the STB regarding modification or termination of service as necessary or prudent to complete the transfer of rights from NWP Co. to SMART with respect to all operations and rights south of Mile Post 89.

- 2) Authorize the Executive Director to approve and execute an agreement for partial termination, amendment and/or assignment of the 2006 contract with NWP Co, as amended in 2011, in a form approved by General Counsel, and as required to effectuate the terms of the transfer of rights under the lease from NWP Co. to SMART with respect to all operations and rights south of Mile Post 89.

- 3) Authorize and direct the Executive Director to engage in further discussion and negotiation with SMART regarding future actions of NCRA and SMART that may be necessary to effectuate the goal of SMART becoming a Common Carrier and Freight service provider from Sonoma-Mendocino County line south and east to Napa River, and return to the Board of Directors with appropriate further recommended action.