

## Questions & Answers About the North Coast Railroad Authority (NCRA)

What is the NCRA?

It is an Executive Director and a Legal Counsel who direct activities in connection with a freight rail right-of-way.

What do they do?

They mainly oversee a lease with a freight line operator, "NWP". NWP is headed by a former NCRA Executive Director and a General Counsel who was a member of the California Legislature and the US House of Representatives.

Are there others at the NCRA?

Yes. There is an Executive Assistant and an on-call engineer. Of late, there is also a part-time real estate assistant.

What is the term of the lease?

With potential extensions, about a century.

How much money does the Lease require NWP pay to the NCRA.

Nothing, until NWP has a year in which it makes \$5 million in net profits.

When might that happen?

It depends, but it is very possible to not occur this century.

Well, once the \$5 million threshold has been achieved, will NWP be required to pay lots of money to NCRA?

No. Any money NWP pays is placed in a fund, and there is a cap on the fund. Once the cap is reached, no further fees need be paid, except that if the fund balance falls below the cap, fees to bring the fund back up to the cap are to be paid. Also, NWP has to OK all the fund's expenditures. And when the lease expires, all of the money then in the fund is given to NWP.

How can that be?

Ask who negotiated the Lease.

Who negotiated the Lease?

For the NCRA, the Executive Director and the Legal Counsel. For NWP, the former Executive Director and the General Counsel.

Was there a connection between NCRA's Executive Director and the NWP? No, except that the NCRA Executive Director was the Chief-of-Staff for the NWP General Counsel while the General Counsel was in the Legislature and in Congress.

How do the lease terms compare with similar leases between state railroad entities and private operators?

Not favorably. Generally, others are for terms of between 5 and 20 years, with possible renewals if conditions are met. For example, a 2007 Ohio lease provides for 5-year renewals if various conditions are met, including a review of shipper satisfaction, safety, car loadings, track maintenance and financials. Then there are best practice provisions, energy efficiency provisions, and conflict-of-interest provisions.

Did the NCRA staff publically compare the NCRA-NWP lease terms with the terms of similar leases from other state owned rail lines and explain why it chose the differences?

No.

Might there be other reasons why the lease has these terms?

Yes. The line was not functioning for five years before the lease was negotiated. The northern part of the line runs through a very active geological area and is very expensive to maintain. Some of the line's old customers were no longer in business and the others had switched to other means of shipment. Timber production had fallen from its heyday and was unlikely to reach its prior levels. There were public funds available for repairs, but were only sufficient to repair part of the line. The major potential source of freight revenue was from aggregate in the Eel River Canyon (Island Mountain) where the repairs would far exceed available public funds.

So NWP was the only operator willing to give operations a try?

No.

Was there a request for rail operators sent out for public bidding?

Yes.

Was NWP the only responder?

No. There were five responders. Three were apparently viable contenders. Two of the others promised to pay NCRA a portion of their revenues and a monthly stipend. But NWP was deemed the winner. The lease negotiations then commenced and ended three months later.

Did NWP make some payments to NCRA besides those required by the lease?

Yes. In a side agreement to the lease, NWP agreed to pay \$20,000/month until such time as it would have to pay trackage fees under the lease, and NWP would get credit for these side agreement payments when it later was to make trackage payments. But NWP changed the agreement to end the monthly payments earlier. Later it turned the side agreement payments it had previously made into a receivable owed to it by NCRA. So over the last six years, NWP has paid about \$30,000 in trackage fees to NCRA and is not paying anything now.

When the lease was signed in September 2006 did NWP think that there was enough public funds to rehabilitate the line to Willits?

No. Prior cost estimates were known to no longer be applicable. The funding was thought sufficient to get the line repaired to Windsor and perhaps a bit further.

Does NCRA have a mandate requiring it to get the line up and running over its entire right-of-way, no matter what?

No. The NCRA is based on the California Government Code (Section 93000 et seq). It was to prepare a plan for the acquisition and operation of the railroad line at no expense to the state. In evaluating the plan NCRA is not required to forgo common sense. It is not required to expend public funds to no avail. It should determine whether its operations are fiscally prudent.

Tell me about the right-of-way.

It is about 310 miles long, running from near Lombard (near Napa), west to Novato, in Marin County, and then northward through Sonoma County, Mendocino County, a small bit of Trinity County and then up around Humboldt Bay (Samoa) in Humboldt County. It started operations a century ago when SP and Santa Fe ran timber and passengers along the line. In 1929, SP took it over. Over time, the amount of freight diminished and some of the operations were sold to an entity that soon went bankrupt. In 1989 the California Legislature formed the NCRA, which then bought part of the line. The southern end of the line (from Healdsburg south) is owned by what is

now known as SMART and NCRA has a freight (and excursion) easement over SMART's line, while SMART has a passenger easement over a portion of NCRA's line. The line was SP's most expensive line to maintain. It suffered devastating flooding in 1964. SP rebuilt it. Again in the 90's it suffered flooding and eventually, in 1998, the feds shut the line down (EO-21) until repairs could be affected.

Was the line recently repaired?

Partially. It was rehabilitated from Lombard to Windsor, just north of Santa Rosa, about 62 miles. The work started in 2007 and was completed in 2010 (per NCRA) or 2011 (per NWP).

How much was paid for the rehab?

NCRA says it cost \$68 million taxpayer dollars. Another \$3 million was spent by NWP but most of that has been reimbursed with taxpayer funds.

Was the NWP money spent to cover work done after a public bidding process?

No. NWP was given a no-bid contract.

Was the NWP work completed in accordance with the initial contract price and timeframe?

No. The final cost was about 3 times the initial amount and instead of three months it took over a year.

Did the Board audit the billing?

No. It is a sorry story. Don't get me started.

Was that the last no-bid contract awarded to NWP?

No. NWP has been awarded a no-bid contract for the cleanup of toxics at the Ukiah Depot.

Does NWP have experience in cleaning up toxics?

No. It has hired a contractor to do so. NWP adds 7% to the contractor's bills for itself.

Who directs NCRA's Executive Director and Legal Counsel?

Under California law, the NCRA has a nine member Board of Directors.

Two each are appointed for two-year terms by the Boards of Supervisors of

each of the four counties, and one is chosen from among the cities along the right-of-way.

Who oversees the Board?

Nobody.

Does the Board give periodic reports to anyone?

Not really. It does have an outside auditor review its books from time-to-time. Its most recent audit covers the fiscal year ending on June 30, 2011.

2011? This is 2013!

2011.

How about reports to the California Transportation Commission, or the Cal Legislature, or Caltrans, or the feds, or any of the Boards of Supervisors?

For the most part, no. Generally there are no reporting requirements.

Because the NCRA misspent some taxpayer funds over a decade ago, Caltrans listed the NCRA as a High Risk Agency. This meant that if NCRA spent taxpayer grant funds administered by Caltrans, before Caltrans reimbursed NCRA, Caltrans required that the contract be bid out and that NCRA pay the contractor bills. If NCRA did not have sufficient funds to pay the contractor, NCRA had to borrow funds and then pay off the loan when Caltrans reimbursed NCRA. NCRA had over a decade to remove itself from the High Risk designation, but it chose not to. This cost NCRA over half-a-million extra taxpayer dollars – so far. So there have been reports of a sort to Caltrans.

There were other reports to the CTC on those occasions when NCRA sought to obtain state funds to do the rehabilitation work and as the funds were spent down.

The Marin County Board of Supervisors twice invited NCRA to appear (2010, 2013). The first time, the NCRA Chairman said NCRA would do so, but then it did not. The second time it declined to appear. While there might have been NCRA reports to other Boards, none are known. The Marin representatives have periodically made individual agendaized public reports to the Marin Board. Other representatives may have acted similarly, but none are known.

NCRA also reports yearly to the California Comptroller. But the numbers shown in the Comptroller's reports are clearly erroneous. The erroneous numbers were repeatedly brought to the Executive Director's attention. Apparently, NCRA has not taken any action to correct the numbers.

Is NCRA financially stable?

Looking at its finances, it appears to be near bankruptcy. The current budget can only be balanced by assuming that significant obligations will not be paid. Prior years' budgets showed expenses well in excess of revenues. It has a long list of creditors with claims well in excess of NCRA's yearly revenues.

How will NCRA repay its creditors and continue to exist?

NCRA has assets. Perhaps its most easily liquidated asset is the 10 or so acres it owns in Ukiah (the Ukiah Depot property). The property needs to be cleansed of toxics, but after that, 3 to 4 acres are to be sold to the California Courts for a new courthouse. The remaining acreage can then be sold to one or more developers. The millions of dollars expected from these sales should pay off most, if not all, of the creditors.

NCRA also owns property in the Eel River Canyon. The value of these properties is unknown, but substantial enough that NWP insisted that NCRA not grant any security interest in them or sell them without NWP's OK.

Is there a list of creditors, showing who is owed what and the order of repayment, and is it regularly updated?

No. No list and no updates.

Are staff members creditors?

Yes. Legal Counsel is owed several hundred thousand dollars. The on-call engineer is also owed a substantial amount.

Who audits the amounts due staff members?

No one has audited Counsel's billings.

NCRA covers a large area – four California Counties. Does it hold public meetings?

Yes. It generally meets monthly, on the second Wednesday of the month, rotating through each of the four counties. It has a small office in Ukiah.

How does NCRA keep the public informed about its activities?

On Friday it posts in its Ukiah office the agenda for the succeeding Wednesday. Generally it also has a packet of material available there which covers the agenda items.

But the line stretches 150 miles north and 150 miles south of Ukiah. How does the public get the information about the upcoming meetings?

The agenda is posted on the NCRA website. Sometimes it is posted on Friday. Often it is not posted until later, including Monday and even Tuesday. Likewise, the packet is generally posted on Monday or even Tuesday. Copies of the agenda and packet are also mailed to interested parties, on the preceding Friday or the next day or so.

Are the meetings broadcast in real time?

No.

Are all of the proceedings available on the website soon after the meetings are concluded, including final versions of the action items and all of the public's submissions?

No. Minutes are approved at a succeeding meeting, but they are action item minutes, not verbatim minutes. There is a recording made of each regular Board meeting and often posted on the website, but the quality lacks something. Public submissions at meetings are not put on the website.

What independent study is there of the line's future prospects for hauling freight and carrying excursion and commute passengers?

In 2002 a study was done for the Humboldt Bay Harbor District.

What did it conclude?

That the line would be very expensive to maintain, and under all but exceptional circumstances the line would not be able to make money for the 25 years of the study.

Has there been a more recent study?

No. In about 2010 NWP supposedly did a market analysis of at least a part of the line, and used it to support a joint (with NCRA) loan application to the feds. But NWP did not allow the NCRA Board to see the analysis.

In its requests for grants does NCRA include any independent market analyses showing what benefits would inure from the grant funds?

No. The most recent application (TIGER V) only used NWP's estimate of new freight it would haul.

Can the Board members be replaced at the next election?

No. As noted above, Board members are appointed for two-year terms, and they may seek reappointment for additional terms. They are not elected by a vote of the people.

Are Directors free to voice their opinions about actions taken by NCRA?

Not according to the NCRA. In December 2012 the Board adopted a "Code of Ethics" which requires all Directors to uphold all Board decisions once the Board has voted. If followed, this would inhibit, if not prohibit, full, fair reports to the appointing Boards of Supervisors and others.

Isn't that a violation of each Director's rights under the First Amendment?

Apparently.

Can the NCRA be changed?

Yes. It could go to the California Legislature and explain what it has accomplished in its existence, what its problems are, how it got to where it is, what its potential for success is, and what the Legislature might do to authorize NCRA to operate differently. Then the public could weigh in as well. There would be a full and frank discussion about what is needed to revamp NCRA and the governing statute would be changed to encompass the conclusions.

Ha, ha, ha, ha, ha. No, really. How might the NCRA be changed?

A member of the Legislature could ask for the Joint Legislative Committee to review NCRA's operations, audit its finances, and then give a recommendation as to how NCRA could be changed so as to provide benefit to the State. Then the public could weigh in as well. There would be a full and frank discussion about what is needed to revamp NCRA and the governing statute would be changed to encompass the conclusions.

An alternative would be for NCRA to declare bankruptcy as soon as possible. That way it would still have some assets to cover its legitimate debts and put an end to its ongoing financial debacle. It would probably also prompt the Legislature to proceed as noted above.