Board of Directors Meeting: May 20, 2020 – Public Comments

Date	Name	5. Public Comment on Non-Agenda Items
		None
Date	**Name**	**6. Consent** a. Approval of Monthly Financial Reports b. Accept Monthly Ridership Report- April 2020 c. Accept Clipper START Program Report
		None
Date	**Name**	**7. Expansion of SMART Right-of-Way and Scope of Operations by adding Freight Service Responsibility and Executing Related Agreements**
5/16/2020	Bob Williamson	SMART Directors, Item 7 of your May 20 meeting agenda (as best I understand it) involves SMART taking over freight responsibility and some existing right of way North of Healdsburg from NWP Co. Of the eight page document describing the takeover, there is one short paragraph on page seven about "funding". It talks about $2 million provided by the State for specific deferred maintenance and repairs. It also mentions $8 million of unfunded needs, without differentiating how much is for one time needs and how much for ongoing needs which could likely make it more than that over time. Additionally, without mentioning costs, it calls for hiring a "freight consultant" to perform needed studies. Should not this have been done before presenting the May 20 proposals? It seems illogical that SMART would sign a number of commitments for future financial responsibilities if they have not yet hired knowledgeable help to develop some numbers to see if the deal makes economic sense. A missing piece of the analysis is the profitability or cash drain of this new freight business. McGuire's May 15 letter says that "according to NWPCo financials" the operations are profitable, but has anyone done any due diligence on that?

		A history of financial failure even after subsidies casts suspicion about that profitability assertion, and certainly suggests that forecast numbers for the freight business be developed for independent evaluation and public disclosure. Most importantly, how can SMART, facing current and future financial deterioration, even consider taking on significant new responsibilities and financial obligations? Especially when there is no organized data about their future financial impact! Is this a good example of transparency and seeking public input? The agenda document mentions additional State funding might come through. With the recent announcements on State finances in trouble without a federal bail-out, this source is quite risky. To have an advertised "good business proposal" be based on "political maneuvering" for future subsidy dollars is a weak proposition. Like any responsible acquisition, this one should have an independently reviewed forecast of financial results and input from the prime stakeholder – the public and taxpayers. Is it responsible to sign on to unknown obligations now, before detailed financial information on near term and ongoing costs have been determined and disclosed?
5/18/2020	Bernie Meyers	<u>Part 1 of 2</u> Reasons to extend the time in which comments can be submitted and the SMART Board and public can fully consider Agenda item 7 now set for the May 20, 2020 meeting: 1. This is a very important decision. Giving the public only 5 days, two of them over a weekend, to review, absorb, and comment on 67 pages of complicated material is neither fair nor logical. The Item should be heard on the 20th and then continued for further public input and discussion until at least your next Board meeting in early June (or later). As shown below, there is no reason to rush this through. 2. The current shelter-in-place situation makes conferring with and among others in the public difficult, thus slowing down any cogent review. 3. At least some of the material was available on or about April 7 (see footer on Baseline draft) and May 11 (see "Draft 5/11/20 on Asset Transfer Agreement) and yet not provided to the public until Friday, May 16. 4. The closing date of the transaction is on or before December 31, 2020, or such LATER date as the parties may agree to, so there is ample time for public review and input (see, page 82 in packet, the Asset Transfer Agreement (page 7 of 20), Part III, CLOSING) 5. SB 356, which is relied upon by the material before you, has not

		been passed by the Legislature, nor signed by the Governor. What if it is not passed? What happens if it is modified before it is passed? How will this affect the mater you are voting upon? Why vote now, before passage of SB 356? <u>Part 2 of 2</u> 6. If there is any reason to proceed soon, it is, according to your cover Memo (May 20 Memo, page 4 (at page 42 of your packet), last full paragraph) that the $4 mil appropriated in SB 1029 will expire on June 30. But the legislation (SB 1029, Sect. 17) only requires a signed Baseline Agreement between the State Transportation Agency and SMART - nothing more. You can do that very soon. No agreement with NWPCO is required to transfer the funds to SMART. If an agreement is not reached with NPWCO, then the funds can be returned to the State. In fact, if additional funds are not provided by the State before closing, closing will not take place and there is no indication that the additional funds will be provided – especially in the current severe economic crunch the State is experiencing. Also, June 30 is not mentioned in SB 1029 – only two years from the “chaptering of [SB 1029]”. SB 1029 was not signed by the then-Governor until Sept. 29, 2018 (per page 41). Does that mean 9/28/20 is the last date? According to the Baseline Agreement the last date it is Sept. 28, 2020 (see page 52 Recitals, par. 3). Finally, should extra time be needed for a proper public review, seek additional time in the Legislature to do so. 7. If there is a delay in reaching an agreement with NWPCO there will be no repercussions to freight shipments or passenger traffic. NWPCO will simply continue to serve its customers as it has. SMART will continue to serve passengers as it has. 8. If, despite the above, the Board does not start the proceeding as scheduled on Wednesday, May 20, and continue the hearing until your next meeting in early June, but instead votes to go through with the matter, including providing a $4,000,000 payment to NWPCO, I believe you will be making a major mistake. As you will see from my questions, which I will be providing separately, there are many unanswered questions about the proposed transaction and substantial reasons for holding it off until further information is received. In sporting terms, you will have made an unforced error of great consequence. Thank you – Bernie Meyers, Novato
5/18/2020	David Schonbrunn	Letter Attached.
5/19/2020	Bernie Meyers	Letter Attached.
5/19/2020	William A. Mullins	Letter Attached.

5/19/2020	Norman Gilroy	Mr. Mansourian, With regard to Item 7 on the agenda for tomorrow's SMART Board meeting, would you please advise your Board that Mobilize Sonoma is: a. strongly in support of your proposed action to proceed with taking over responsibility for freight service south of the Mendocino County line. b. also in support of Item 9 in the list of proposed actions under item 7 that calls for "assigning 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". As you know, this is an issue of great importance to the people of the Sonoma Valley (who we represent on land use issues), and we stand ready to assist the proposed SMART committee in its work and its outreach in the community. Thank you for your efforts in this regard, Norman Gilroy, on behalf of Mobilize Sonoma.
5/19/2020	Bill Denker	Our company Viper Rail Car Storage Inc supports the NWP as the operator of the freight operations over the lines it currently has freight service on. Bill Denkers - President Viper Rail Car Storage Inc. 794 Emerald Oaks Dr Farmington, UT 84025 801-390-1126
5/19/2020	Peter Hively	In 2008 the voters approved a 20 year sales tax for a passenger rail system and adjacent pathway. We did not approve a public bailout of a failed freight operation. Please keep your eyes on the ball. The stated goal of SMART was to reduce freeway traffic and greenhouse gases. You have failed to achieve these objectives, and run your finances into the ground. Halfway through the 20 year life of the tax you've already come back to us for a 30 year tax extension, which failed badly. In my opinion, the failure of Measure I was a vote of no confidence. The message was, you need to make substantial changes to have any chance of success and future support. You

		need to listen to us, and show us that you can do what you promised before you ask for another extension. With a few exceptions, your public comments since the election indicate that you have failed to understand the message. Now you want to try your hand at running freight? NO! That is not what we voted for.
5/19/2020	Jeffrey Rhoads, Executive Director Resilient SHore	Considering the operating costs incurred by a public agency VS those incurred by a lean shoreline operator, it's reasonable to conclude current service by NWP to freight customers can continue to be provided at lowest cost and without public obligation. Will SMART's assuming freight operations result in increased cost, loss of operational flexibility and ultimate abandonment of freight service? Having a private operator providing freight service from the northern terminus of SMART's operations eventually to Willits may well be the only game in town for a while. This may also be an opportunity to provide modest excursion passenger service to the north at no cost to the public (other than capital improvement subsidy to rehabilitate the tracks and associated facilities). This is deja vu all over again when one considers NWP's pioneering rehabilitation of the tracks and initiation operations from Napa Junction to Windsor. Many rail corridors support high density passenger service and freight service. Local examples include Caltrain on the peninsula, the UP Capital corridor from the Bay Area to Sacramento and UP ACE to Stockton. I suspect Marin and Sonoma agriculture and the Lagunitas Brewery rely on inexpensive delivery of feed grains by rail. Considering the light traffic volumes coordination of freight and passenger services on SMART is not likely a significant burden. While operating freight on SMART may be an operational inconvenience, having SMART "go into the freight business" to have better control of train operations may not offset the financial obligations and flexibility advantages of having a private operator provide the service.
5/19/2020	John Martin, Hunt & Behrens, Inc.	As freight customers of the NWP, we have been happy with the service provided by NWP over the years. SMART should keep NWPCo as the operating contractor indefinitely in order to

		keep any transition seamless, and to keep all communications and interactions the same . A representative should be appointed or voted onto the SMART board in an effort to represent every freight party in the North Bay. Let's not reinvent the wheel with a relationship that has been working all these years.
5/19/2020	David Schonbrunn, President, TRAC	The Train Riders Association of California, TRAC, offered evidence in its 5/18/20 letter to your Board that staff is being less than candid in its assertion that it intends to operate freight service. A long series of decisions by SMART support the presumption that the agency has always wanted to eliminate freight service on the NWP. * The standard for light rail, 115-lb rail, was specified for SMART, instead of the typical freight rail standard of 136-lb rail. * Stations south of Ignacio were intentionally designed with clearances that prevent freight rail vehicles from entering them. No gauntlet tracks were provided. *All switches to industrial spurs not in operation at the time of SMART's construction were removed. Replacing a large number (> 14) of these switches with signalling and motorization would be exceedingly costly, endangering the ability of a freight carrier to grow its service. The claim that "complete control over its right-of-way" is operationally beneficial is way overblown. Far more important is the agency's inability to cover its budgeted expenses. Another inaccurate statement by staff is that the funding will expire by the end of June 2020. (p. 42 of 111.) The actual date is here: "the $4,000,000.00 will revert to the Public Transportation Account if CalSTA has not transferred the funds to SMART by September 28, 2020." (p. 52 of 111.) TRAC strongly urges the Board to accept the ROW from Willets to Napa, along with grants to rehabilitate the rail to a modest Class 2 standard, and reject the proposed agreements to take over freight service. David Schonbrunn, President, TRAC
5/19/2020	Hal Wagenet	Legal considerations: 1) Since NCRA is responsible for preservation and freight service for the entire corridor, what happens to the common carrier obligation north of Milepost 89 in your concept? That obligation cannot be left to NCRA, which has no means to satisfy it, but should properly

		devolve to SMART, since it controls the line and access to the northern segment AND has substantial funds to fulfill the obligation. 2) The Operator contract with NWPCo also includes the option/responsibility to serve customers in Mendocino County. California Northern and Mendocino Redwood Company are both major potential shippers and have formally requested service. In these two cases, SMART seeks to cherrypick NCRA and NWPCo assets, leaving the undesirable obligation twisting in the wind. Contract law precludes this. 3) The STB must approve a de facto denial of common carrier obligation as SMART obviously intends. On what basis does SMART rest its intentions to cutoff potential revenue, diminish public access, and shrink the transportation network by taking the assets of NCRA and NWPCo and leaving the liabilities on the table?
Date	**Name**	**8. SMART Budget Survey and Service Reduction Options**
5/19/2020	Peter Hively	At this point you're wasting millions of taxpayer dollars while filling the air with diesel exhaust to run mostly empty trains up and down the tracks. I'm afraid this pandemic may be the final nail in the coffin. Ridership is down from already insignificant numbers and it's not coming back anytime soon. I'm afraid it is time to face the facts, pull the plug and shut this down permanently. If you're not ready to accept that conclusion, the next best thing is to make drastic cuts, run a few trains at commute hours only and keep limping along.
5/19/2020	Jeffrey Rhoads, Executive Director Resilient SHore	Do what you must to preserve SMART as an operation and respond to the needs of the greatest number of passengers. While I personally benefit from weekend service, and believe this may well be the only use of SMART service by a cohort of Marin residents who don't rely on it for commuting, let ridership and operating costs drive your decision.

TRAC
Train Riders Association of California

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May 18, 2020
Submitted to:
www.surveymonkey.com/r/
SMARTBoardComments

Eric Lucan, Chair
SMART District Board of Directors
5401 Old Redwood Highway
Petaluma, CA 94954

Re: Agenda Item # 7, May 20 Meeting

Dear Chair Lucan:

The Train Riders Association of California ("TRAC") is a statewide rail advocacy organization that has worked since 1984 to improve passenger rail service in California. As environmentalists, we are actively interested in seeing a substantial shift from freight trucking to freight rail. We write to offer our opinion that the staff proposal to expand SMART's Scope of Operations by adding Freight Service Responsibility is seriously ill advised.

It is important to note that, while we strongly recommend not proceeding to become a freight carrier, our organization believes it to be in the best interests of the State and the respective counties for SMART to accept the full ROW transfer as initially contemplated by SB 1029, i.e., Healdsburg to Willits. We recommend the Board reject elements 1, 3, 5, 6, 7, & 8 of the staff proposal. Our opinions are based on the following considerations:

1. SMART is in no financial position to undertake new responsibilities.
2. SMART's long-standing hostility towards NCRA made us concerned that staff's proposal to undertake freight service might be part of an elaborate plan to abandon freight service in the NWP corridor. That concern was validated today by the attached email from an Assembly Transportation Committee staffer, stating that "freight operations will cease upon the elimination of NCRA."
3. That quote suggests bad faith in SMART's proposal to "transfer[] common freight carrier rail operations authority to SMART for all freight services south of MP 89."
4. Having participated in blocking the Southern Pacific's attempt to abandon the corridor a generation ago, we caution SMART that

abandonment would be controversial, very costly and unlikely to succeed.

5. If SMART is actually intending to shut down freight service, that would explain the proposal to truncate the NWP line at the Sonoma-Mendocino County Line, rather than at MP 142.5 in the City of Willits, as was set forth in earlier versions of SB 1029. Please note that no findings of fact or an engineering rationale were presented in support of the decision to not serve Mendocino.
6. The proposal as it now stands would deprive freight service (and passenger excursion service) to a route 53 miles into the heart of Mendocino County. We know from the work of the North Coast Rails and Trails Coalition that there are at least 21 Mendocino shippers that oppose the truncation of the ROW at Cloverdale.
7. If SMART is actually intending to operate freight, it would run the risk of the public coming to believe--rightly or wrongly--that it was "wasting" tax revenues on freight, which had not been authorized by either Measure Q or Measure I. That would threaten prospects for eventually passing a sales tax extension.
8. NWP Co is a privately owned company motivated by profit. Government agencies neither have profit motives nor do they incentivize (or appreciate) employee risk taking. SMART has neither the entrepreneurial culture nor the requisite expertise to become a freight operator, making it a bad fit for such a mission.
9. We see the following claims, which form the foundation for SMART staff's recommendation to assume freight rail service, to be unsupported by either logic or real-world operational considerations.
    a. "Having the freight contract in SMART's hands will make the potential for an East-West train from Novato to Suisun City substantially easier."
    b. "In acquiring the freight operation responsibilities SMART will gain complete control over its right-of-way, allowing for much closer coordination of use of the rail line, improving dispatching and scheduling options and allowing SMART to have the ability to provide increased freight services to local freight customers in a more efficient and environmentally friendly way."
10. It is unheard of that a supposedly competent government agency would propose to take over a business without any formal due diligence or a business plan--unless, of course, it didn't intend to operate that business. A business plan would need to identify potential risks and obstacles, as well as evaluate revenues and costs.
11. SB 1029 was chaptered by the Secretary of State on 9/29/18. That means June 2020 is <u>not</u> the deadline for qualifying for funding.

Finally, we note that the acronym LPG stands for Liquified Petroleum Gas.

Thank you for considering these comments.

Sincerely yours,

David Schonbrunn, President, TRAC

CC: Senator McGuire
Assemblymember Levine
Kevin Fixler, Press Democrat
Will Houston, Independent Journal
Surface Transportation Board

Attachment: Email from Eric Thronson to Mike Arnold, 7/17/18

From: Thronson, Eric <Eric.Thronson@asm.ca.gov>
Sent: Tuesday, July 17, 2018 11:13 AM
To: Mike Arnold
Subject: RE: Comments on SMART Taking over Freight

Professor Arnold,

Thank you for taking an interest, we rarely get enough of the public interested in the policy we work on to provide alternative perspectives, so I appreciate your call and email!

Generally, your point is well taken. One fundamental misunderstanding, though, is that freight operations are going to cease upon the elimination of NCRA, so the operating costs are not going to be much. Sure, there may be some general oversight, and future maintenance of the ROW is a concern, but my understanding is that there is either going to be a deal made identifying more funding for work like that or the bill won't get signed into law. So you are correct to worry about this is, but I think that it will be resolved before any action is taken. SMART isn't going to absorb costs without additional revenue, and the state isn't going to either without identifying a source to pay for it.

Hope that helps, I can discuss this further with you if you would like, though I am going to be out of the office until next week so hopefully it can wait until then. Thanks again, have a nice week-

Eric

From: Mike Arnold [mailto:arnold@alcopartners.com]
Sent: Monday, July 16, 2018 2:45 PM
To: Thronson, Eric
Subject: Comments on SMART Taking over Freight

Hi Eric,

I read your summary of SB 1029 (posted on SMART's website attached to their Board packet) and had a comment regarding the financial impacts of SMART taking over the NCRA's responsibilities south of Willits.

As someone who has been involved on various issues related to this line, I am concerned that the bill and various summaries do not mention the ongoing operating deficits that SMART will inherit once it takes over NCRA's responsibilities. Unless I missed it, I could find no explicit reference to a source of annual revenues to cover these costs.

The summaries I've read do mention the existing liabilities and various debts incurred by the NCRA and how they'll likely be funded. But there is no mention of the annual operating costs SMART will incur from overseeing and maintaining the additional row as well as the operating costs associated with overseeing freight operations in the region.

The economic logic and history on this line is pretty clear: NWP Co did not pay sufficient revenues through its lease agreements to fully fund the NCRA's operations. And as a consequence, the NCRA borrowed operating funds from NWP Co, posting various assets as collateral. (This is one of the sources of liabilities that the bill addresses.)

At the same time, it's a fair bet that had the NCRA actually charged NWP Co sufficiently there probably wouldn't have been any freight service. Doug Bosco and John Williams negotiated a pretty sweet deal, but it is also pretty clear that there wasn't sufficient demand for freight services in the corridor to generate sufficient revenues to cover the costs of NCRAs operations.

Now consider the cost factors associated with SMART. These are far higher than those associated with the NCRA. For example, SMART actually pays their employees consistently and in many cases, very well. They use high priced consultants and when confronting the NCRA, SMART employed high priced legal talent specializing in elements of the federal freight regulations.

As a consequence, SMART's operating costs are going to be far higher than NCRA's to produce the required oversight and maintenance services.

But what will be the ongoing annual revenue source for these operating costs?

And, if these revenues aren't provided, SMART won't have a choice other than to allocate some of its sales tax revenues to execute its new responsibilities.

It doesn't stop there. SMART is a highly levered agency, where nearly 40% of its sales tax revenues are pledged to pay off the construction bonds issued several years ago to finance construction of the passenger rail line. In addition, these bond payments are scheduled to rise. Based on SMART's strategic plan, they are assumed to rise faster than sales tax revenues.

The financial impact of allocating some of SMART's revenues to freight will therefore have a levered impact on revenues available for passenger operations.

In light of the popularity of passenger rail with the public, I am hoping your committee has taken this issue into account.

If you are interested in discussing this any further, don't hesitate to contact me.

Prof. Mike Arnold
Lecturer, OLLI Program
Dominican University
San Rafael, CA
415-382-1264

Submitted by Bernie Meyers

Questions/Comments Regarding the SMART/NWPCO
Proposed Agreement – SMART Board Meeting of May 20, 2020

Note: "P" refers to your packet page.

P 39 5/20 Memo

Par. 1. Before moving ahead with these agreements and filings with the STB, shouldn't you decide, after fully considering all sides, whether SMART should become a common carrier and freight service provider? Once you accept that obligation, you cannot simply shed it by a simple filing with the STB. If, for example, it turns out that providing freight service is a money-losing proposition (as every carrier in the last 40 to 50 years has discovered), unless the STB agrees to relieve you of your burden, you will be asking the taxpayers to subsidize that service as well as your passenger service.

P 39, Par 5. What will happen if the funding for ongoing maintenance and the "capital project" of the freight area is either not secured or is inadequate?

P 39, Par. 5. How can you determine if it is fiscally prudent to spend funds on maintenance and new capital projects without an adequate study – and, what happens if it is **not** fiscally prudent to spend the necessary funds?

P. 39, Par 7. **This puts the cart before the horse. SMART should "seek a knowledgeable freight consultant to perform an Economic Feasibility Study of the entire SMART-owned area and analysis for options to provide freight services in the future" BEFORE the purchase!**
You have known for nearly two years that this was on the horizon. Why has this not already been done?

P 40, Par. 8. **Present the proposed agreement with NWPCO NOW.** What happens if:

A. SMART cannot agree to terms with NWPCO?
B. The terms are onerous (Please observe the NCRA/NWPCO 2006 Lease, negotiated after NCRA chose NWPCO as the winner of its RFP is the most lopsided railroad lease I have examined.)
C. SMART loses money on this venture and it appears that it will continue to do so indefinitely?

P 40, Par 9. **This deals with your investigation of storing LPG cars in Sonoma County. What happens if:**

A. As a freight common carrier, you must provide this storage service under federal law?
B. This is the only way your freight service is profitable, or as profitable as it can be?

P 40, Summary. A. **What if the $2 mil to address deferred maintenance and needed repairs is WAY insufficient?**

B. What is the benefit of spending any money now for any deferred maintenance and repairs for freight service?

P 42, Section 17. **Please observe that SB 1029 appropriates $4 mil, but there is NO requirement that all $4 mil need be spent!**

P 42, 5 lines from the bottom. What happens if the STB does not approve the transfer or does so with conditions SMART does not want?

P 43, First par. Where is the east-west passenger rail feasibility study?
Why is it important that SMART have "complete control over t he rail line"?
What are the "expensive responsibilities" at line 6 and are they fiscally prudent?

P 43, Par 2. What are the "necessary infrastructure and safety fixes" referenced at Memo, p.5, Par 2? Is the cost of these the $10 mil mentioned in the next paragraph and by the time the $10 mil is expended in "the next few years" what are the estimated ongoing upgrades and maintenance costs? Are they a fiscally prudent expense?

P. 43, 3rd full Par. I applaud Sen. McGuire's efforts set out in this part. But times have radically changed since this portion was written. Any funding requests will need to show that they are fiscally prudent and can hold their own against the myriad of competing interests for California and federal tax dollars that will be required to be spent in the next several years – and very possibly in the next decade or generation. As such, **how can you be certain that the funding staff says is needed will be of sufficient priority? What will happen absent the appropriations you envision?**

p. 43, 3rd full Par. For exactly what was the $8.8 mil mentioned used for?

P 43, Current Actions. **SB 356 has not been enacted. What if it is not passed, or not passed in its current form?**

P 43, NCRA. **Transfer of the lopsided NCRA/NWPCO lease to SMART would be shear folly. The 104-year lease was in my opinion negotiated in a back room deal and entered into in violation of the Brown Act. It is extremely favorable to NWPCO (for example, no trackage fees will be paid to NCRA under it) and toxic to NCRA or to anyone who succeeds to NCRA's position.**

PP 43 – 44 NCRA & NWPCO.
A. Before transferring **anything** to SMART, look at exactly what is being transferred and what are SMART's rights and obligations there under. What are the costs/benefits to SMART for each transfer?

B. **Does anything (such as right-of-way and old depots) being transferred to SMART by (1) NCRA and (2) NWPCO involve hazardous substances? If so, how are they to be dealt with?**

C. What, if any, assets, including any rights, title or interests NWPCO currently has are to be retained by NWPCO? If there are any, why are they to be retained?

P 44, penultimate par. **Enter into the "interim" agreement with NWPCO to act as your freight operator BEFORE agreeing to the proposals before you and have it open for public review and comment before the SMART Board considers it. Otherwise NWPCO has the upper hand in the negotiations.**

P 44, last par. While this sounds nice, just how will SMART having "freight operation responsibilities" "allow SMART to have the ability to provide increased freight services to local freight customers in a more efficient and environmentally friendly way"? Also, how will this "benefit SMART's ability to grow service"?

P 47, McGuire letter of 5/15

He states at paragraph 3: "According to NWPCO financials the freight operations are currently profitable and will give SMART an alternative revenue source for operations and maintenance, even in this down economy."

Despite repeated request, NWPCO has not given to the NCRA Board its P&L statements, customer lists, freight traffic numbers, amount of freight carried, etc. etc. for its entire 9 years of operations. It even withheld such information from the NCRA Board when NWPCO and NCRA jointly submitted a RRIF loan application to the FRA. How can anyone now trust NWPCO when it says that its current financials are correct? Before accepting any financial or economic data from NWPCO, secure certified material done by credible outside entities and **review the entire history** - not a brief slice.

Is the current financial statement truthful? Is it in line with past financials? What assumptions were made in the current financials that were not in the past, and vice-versa? How much income/expense is attributable to the LPG storage SMART is considering eliminating – and will the STB allow it? Will the STB require SMART to store even more LPG once SMART owns the entire right-of-way? What are NWPCO's costs/expenses and will they remain the same under SMART ownership? Will the current economic malaise cut into freight revenues and, if so, for how long? Has it already? Are the fixed costs affected by the current economic problems?

NWPCO pays nothing to NCRA for its track and NCRA and SMART are charged with bringing the right-of-way up to snuff. How does that affect NWPCO's financials? What do the auditor's notes say? Can the financials be opened to the public?

P 47, letter, last Par. How does "extending SMART's right of way ownership" and getting freight make getting to Cloverdale and to Suisun easier to achieve?

P 48, middle Par. He states **that Auditors from the Dept of Finance and experts from the State Transportation Agency "say the deal is worth the investment". Please provide the audit and statements for public review.**

Cal State Transportation Agency Baseline Agreement (pp 49 – 72)
(Between SMART and State of Cal DOT)

Pp 50 – 72 are all dated April 7, 2020 in the footer. Why were they not provided for public inspection earlier?

P 52. Why does the Agreement terminate on April 30, 2025, or at all?

P 52 Recital 3 Note the Recital states that the $4 mil will revert to the Public Transportation Account if not transferred to SMART by **Sept. 28, 2020**. And, **there is no requirement that the Agreement with NWPCO be executed by Sept 28, or June 30, or any other date.**

P 54 Section 2 A. Why does this Agreement not have any force and effect until a separate Project specific program supplement has been fully executed?

P 63, Item 4. Labor Laws. This provision is fine, but it raises the question of whether NWPCO has been so bound? Did NWPCO comply with said requirements? Will SMART be paying its employees at the same rates NWPCO paid its equivalent employees? And will the benefits SMART provides be the same as those provided by NWPCO? If not, will there be additional costs incurred by SMART that NWPCO did not incur?

Pp 64 – 65. Could you please explain Section e. (ii) in terms a layperson could understand?

ASSET TRANSFER AGREEMENT (pp 76 – 95)
(Between SMART and NWPCO)

P 76, 1st WHEREAS SB 1029 was signed by the then-Governor on Sept. 29, 2019 (see page 41). Does this change the Aug 24, 2018 date at line 1?

P 76, 3rd WHEREAS The Baseline Agreement (at packet pp 49 – 72) does not involve NWPCO. It is between SMART and Cal DOT and is specifically mentioned in SB 1029. This Asset Transfer agreement (pp 76 – 95) only involves SMART and NWPCO and is not specifically referenced in SB 1029. Please change this Whereas clause accordingly.

P 76, 5th WHEREAS A. Where in SB 1029 is there a requirement for NWPCO to enter into an agreement with NCRA to discontinue operations South of milepost 89.0?

B. SB 1029, Sec. 2 adds Gov. Code Section 13978.9 which requires The Transportation Agency, in consultation with the Natural Resources Agency to conduct an assessment on NCRA to provide information necessary to determine the most appropriate way to dissolve NCRA and dispense with its assets and liabilities. The Transportation Agency shall report to the Legislature before July 1, 2020 on its findings and recommendations, including:

(1) An assessment of NCRA's debts, liabilities, contractual obligations, and litigation.

(2) An assessment of NCRA's assets, including property, rights-of-way, easements, and equipment.

(3) An assessment of NCRA's freight contractor lease, including the contractor's assets and liabilities to the extent that information is available.

(5) An assessment of the options for transferring the southern portion of the rail corridor to SMART and recommendations on the specific assets and liabilities that could be transferred, including rights or abilities to operate freight rail.

Has that report been completed? If so, please provide it to the public. If not, when will it be and in its absence why should SMART proceed with this purchase at this time?

C. Does the Resurrection of Operations and Lease between NCRA and NWPCO entered into Sept. 2006, as amended twice in 2011, retain any force and effect? If so, over which portion(s) of the right-of-way? If not, have NWPCO so state in writing. After the proposed agreements are executed, does NWPCO retain any rights to carry freight over any portion of the right-of way? Where?

P 76, 6th WHEREAS A. Where in SB 1029 does it require that the SMART- NCRA 2011 Operating and Coordination Agreement dated June 20, 2011 (as amended Dec. 13, 2017) continue to be in effect for operations north of milepost 89.0? What will be the effect of keeping this agreement in effect north of MP 89.0?

B. What, if any, rights does NWPCO retain north of milepost 89.0 if the agreements before the Board are entered into? If none, have NWPCO so state, in writing. If there are some, what are they and why does NWPCO retain them?

C. If NWPCO has rights north of milepost 89.0 should there be a valid EIR that governs any freight operations therein? If not, why not? If a valid EIR is needed, please identify the governing EIR.

P 78, Definitions - "Environmental Report"

A. Is there any valid environmental Report certified by NCRA? If so, please identify it.
B. Will SMART and/or NWPCO and any successor to NWPCO comply with the requirements of the NCRA EIR certified in

2011 and thereafter voided on April 10, 2013? If not, why not?

P 78 and Pages 80 – 81 (Sect. 2.2) "Excluded Assets"

A. Why are these assets excluded?
B. Identify each and every Excluded Asset and the estimated value thereof.
C. Why should NWPCO retain them?
D. What rights, if any, does NCRA have in each Excluded Asset?
E. What did NWPCO pay for each Excluded Asset?
F. What rights, if any, does the State have in each Excluded Asset?
G. What rights, if any, does the United States have in each Excluded Asset?

P 78, Defined Terms – "Environmental Report"

Is there an existing, valid environmental impact prepared by or on behalf of NCRA? If so, please identify it and will SMART comply with all of its terms and conditions for the right-of-way south of milepost 89.0?

P 78, Definitions – "NCRA"

What successor agency, if any, will there be after the proposed agreements before the Board is executed?

P 79 and Page 80 (Sect 2.1(a)(i)), Definitions – "Rail Line"

Is the Rail Line being conveyed to SMART in the right-of-way and associated property **south** of milepost 89.0? If so, what right, title or interest, if any does NWP have at any point **north** of milepost 89.0 and why is it not being transferred?

P 80 Sect. 2.1(i) Transfer of NWPCO Assets

A. Exactly what, if any, NWPCO assets are NOT being transferred to SMART?
B. To the extent there are any not being transferred, why are they not?
C. What is the value of each asset not being transferred, and for each, did NWPCO provide anything of value for it?
D. Is the line from milepost 14 and east already owned by SMART?

P 80, Sect 2.1(iii) Please provide the Bill of Sale.

P 80, Sect. 2.1(iv) Please provide Exhibit C (Assignment and Assumption Agreement) and Schedule 1 (list of contracts from NWPCO to SMART) thereto.

P 80, Sect. 2.1(v) Please provide each of the licenses, certificates, common carrier rights, etc.

P 80, Sect. 2.1(vi) What other other rights, privileges and assets relating to the Rail Line have been identified by (1) SMART and (2) by NWPCO?

P 80 - 81, Sect 2.2 “Excluded Assets”

A. 2.2(a). Why does NWPCO have ANY interest in any property (real or personal) or other assets north of milepost 89.0? Aren’t they all the property of NCRA? What value, if any, did NWPCO provide for any such assets? Has any such property been appraised and, if so, when, by whom, and for what amount?
B. 2.2(b). What contractual rights, privileges and authorizations does NWPCO have for anything north of MP 89.0?
C. 2.2(c). What, if any, contractual rights, privileges and authorizations will SMART instruct NWPCO “to terminate” prior to closing, and why so instruct NWPCO?
D. 2.2(d). What exactly are the rights, privileges and authorizations that entitle NWPCO to any repayment of amounts owed to it by NCRA?
E. 2.2(e). Exactly what is the value of the debt NCRA allegedly owes NWPCO as referred to in this paragraph dealing with the Ukiah Depot and Mason Street properties? Were any or all of these amounts linked to contracts not entered into by public bidding and instead were entered into with a company NWPCO supported? If so, might this be the State’s last opportunity to save itself from having NWPCO obtain what may be inflated or improper gains from these contracts and dealings?

P 82, Sect 2.4 “Limitation on Assumption of Liabilities”

Sect. (c) What, if any, obligations and liabilities are “expressly allocated to SMART under this Agreement”?

Sect. (d) What, if any, obligations and liabilities does NWPCO have under any contract that does not relate to Acquired Assets?

P 82, Sect. 2.5 “Purchase Price; Consideration”

A. **Exactly how did SMART arrive at the purchase price of $4,000,000? Note that it is no answer to say that the State arrived at the $4 mill figure. The State (via SB 1029) has provided SMART with $4 mill, but the State did not REQUIRE that SMART pay NWPCO all $4 mill. On what basis did SMART determine that $4 mill, no less, no more, was the correct amount?**

B. What, if any, indebtedness does NWPCO claim is owed to it by NCRA?

C. Does NWPCO agree that NCRA and/or the State can assert any right of offset against any claim(s) NWPCO might assert against NCRA and/or the State for claims NWPCO might make against either or both? Will NWPCO allow any statute of limitation it might otherwise assert against NCRA and/or the State to be tolled? As the funds SMART is utilizing under these agreements are from the State, isn't it appropriate to include such demands herein?

E. Does NWPCO give up entirely any right it may have or assert to run trains (freight, passenger, excursion, or otherwise) north of milepost 89.0? If not, what rights does it claim to have, and why will it not relinquish all such rights? Also, if not, what value does NWPCO attribute to all such rights?

F. Does NWPCO agree that if it has any rights to run any trains north of milepost 89.0, it will and does agree, nonetheless, for itself and for any others who might otherwise run trains to customers north of milepost 89.0, to NOT run any trains south of milepost 89.0 for any purposes whatsoever, on any part of SMART's right-of-way and will and does agree to forego any and all rights, whether arising under federal law, state law, or otherwise, to run trains on SMART's right-of-way?

G. Note that if NWPCO serves customers in Mendocino County, Trinity County, or Humboldt County it may be entitled to run its trains on the SMART right-of-way under federal law.

H. Note also the NWPCO said that it had no intention to run trains beyond the old NCRA "Russian River Division" and so NCRA was able to limit the EIR to this segment of the line. Yet NWPCO stated in its 2006 RFP response that it intended to run freight trains with gravel from Island Mountain (Trinity County) and that such trains would be very long and run frequently.

P 82, III **Closing Date Sect. 3.1 Note the closing date is "prior to Dec. 31, 2020 [or] such specific date mutually agreeable to the Parties". So there is ample time to have public review and input. If, for some reason, extra time is needed, allot it, or, if need be, seek it from the Legislature.**

Pp 82 – 83 Sect. 3.2 Deliveries by NWPCO

(e) Note that the discontinuance of NWPCO operations south of milepost 89.0 and even the termination of the 12/13/17 agreement for sections south of milepost 89.0 may mean that NWPCO can still run trains south of milepost 89.0 in conjunction with any common carrier rights it has north of milepost 89.0.

P 83, Sect. 3.2 (f). Exactly what certificates, etc does SMART want from NWPCO?

Will SMART also get such certificates, etc from NCRA?

P 83, Sect. 3.2(g) Does this mean to “terminate NCRA and NWPCO freight operations” in their entirety, or only south of milepost 89.0? And, if not entirely, what freight operations are envisioned north of milepost 89.0 and who will run them?

P 84, Sect. 5.3 Licenses and Permits

What consent decrees are applicable to the operations SMART will acquire herein and who is responsible for fulfilling them?

Note: There may be at least two: The Novato Consent Decree and the NCRA Environmental Consent Decree entered in a case brought by the State. Are there others?

P 84, Sect. 5.4 Litigation - Please set out Schedule 5.4.

P 84, Sect. 5.5 Title to Assets

Are NWPCO’s assets in good condition, wear and tear excepted? If not, what provision is there for NWPCO to cover the diminution?

Pp 84 – 85 Sect. 5.6 Status of Agreements

What happens if a NWPCO representation is incorrect? Should there be for such an occurrence – or for any other provision herein that NWPCO may violate – a “claw back” provision? If so, where will the clawed back funds come from?

P 85, Sect. 5.7 Environmental Matters

A. What happens if a NWPCO representation is incorrect? Should there be for such an occurrence a “claw back” provision? If so, where will the clawed back funds come from?
B. Should NWPCO be required to have insurance against any environmental violations? If so, how much and with what terms?

P 85, Sect. 5.8 Taxes

What happens if a NWPCO representation is incorrect? Should there be for such an occurrence a “claw back” provision? If so, where will the clawed back funds come from?

P 86, Sect. VII, 7.2(a) Negative Covenants

May SMART withhold its written approval of a request from NWPCO under this Section for any reason whatsoever?

P 88, Sect. 8.6 Future Funding and Assurances. **What if:**

A. Prior to closing, SMART does not receive satisfactory assurances that the State is committed to and will allocate additional funds to SMART for freight, operations,

maintenance and liability of the rail line and the Acquired Assets?

B. **The State commits, but cannot deliver in a timely fashion, in part or in total?**

C. **What, exactly, are "satisfactory assurances"?**

D. **Who makes the determination that an assurance is not "satisfactory"?**

E. **Are such "satisfactory assurances" to be a matter of public record?**

F. **Will the absence of such assurances allow SMART to refuse to close?** (See also, Section 10.2(d), at Page 89). **If so, does NWPCO agree? If so, include it herein.**

G. What are the Acquired Assets?

P 88, Sect. 9.6 **RRIF Loan.**

What does this Section mean?
Who is to place the loan balance due into an escrow account?
What are the instructions that are to accompany the deposit?
Who is the escrow entity?
What result will occur if this Section is breached?

P 89, Sect. 10.1 Risk of Loss.

Why should NWPCO receive any benefit from any loss that occurs while NWPCO is in charge of its own assets, whether $30,000 or less?

P 89, Sect. 10.2 Termination, (d).

A. **Who is to make the determination that there are – or are not - "satisfactory assurances for funding" as stated in Section 8.6? What criteria must be made to satisfy the determination?**

B. What happens if the Agreement is terminated?

C. If there is termination, where does the $4 mill go?

D. Does NWPCO still operate freight if there is a termination?

P 90, Sect. 12.1(a) Government Filings.

Add "NWPCO" in the last sentence, to read "SMART and NWPCO shall each use reasonable efforts to take all actions and do all things necessary …"

P 93, Sect. 12.16 Books and Records.

Who determines what documents or data bear no direct relationship to compliance with the terms and conditions of this Agreement? What criteria are used?

Why not do the study envisioned under paragraph 7 of the May 20 cover Memo to the Board before the purchase. Won't that study tell you

and the public something about the value of the "stuff" you are about to purchase and the wisdom *vel non* of the transaction?

Pp 97 – 98 SB 1029

A. **Where is the report required by Section 2, Section 13978.9 (a)? It is due by July 1, 2020.**
B. **Where is the assessment of the southern portion of the rail corridor and the report related to the potential transfer of the southern portion of the rail corridor to SMART? It is to "be provided as expeditiously as possible".**

How and when was the $4,000,000 purchase price arrived at?

If NWPCO has caused any environmental damage in the area south of milepost 89.0, how will SMART be able to have NWPCO clean it up or pay SMART to do so? Is there any claw back provision herein that covers this situation? Is there an adequate insurance policy that covers it?

Please make available for public inspection all NWPCO reports to SMART at any time since January 1, 2018.

Has SMART made any payments to NWPCO at any time since January 1, 2018? If so, what payments and why?

Has SMART made any payments to NCRA at any time since January 1, 2018? If so, what payments and why?

What is the status of the NCRA property in Cloverdale? Who will get the proceeds from the sale, lease or other disposition of any NCRA property in Sonoma County, including any land and any building(s) thereon?

What is the status of all NCRA property in Sonoma County? Who will get the proceeds from the sale, lease or other disposition of any NCRA property in Sonoma County, including any gravel rights, any land, and any building(s) thereon?

What is the status of all NCRA property in Napa County? Who will get the proceeds from the sale, lease or other disposition of any NCRA property in Napa County, including any gravel rights, any land, and any building(s) thereon?

What is the status of all NCRA property in Marin County? Who will get the proceeds from the sale, lease or other disposition of any NCRA property in Marin County, including any gravel rights, any land, and any building(s) thereon?

How, if at all, will SMART's acquisition of NWPCO's freight rights, including its common carrier status, effect SMART's ability to discontinue SMART passenger traffic?

What steps will SMART need to take should it decide to close down its freight traffic, and what costs will SMART incur in so proceeding?

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May 19, 2020

VIA E-MAIL
Mr. Eric Lucan
Chairman
The Sonoma-Marin Area Rail Transit District
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

Re: Item 7 – May 20, 2020 Board Meeting Agenda

Dear Mr. Lucan:

I am writing in my capacity as outside counsel for Mendocino Railway ("Mendocino"). You may recall that Mendocino is the successor to the California Western Railroad and is the operator of the "Skunk Train." Mendocino is a common carrier railroad authorized by the Surface Transportation Board ("STB") to provide freight rail service on Mendocino's rail line between Fort Bragg and Willits, California. Mendocino's line connects with the North Coast Railroad Authority's ("NCRA") rail line at Willits. Through that connection, Mendocino Railway connects to the national rail network.

It has come to Mendocino's attention that item 7 on the agenda for the May 20, 2020 meeting of the Board of Directors for Sonoma-Marin Area Rail Transit District ("SMART") reflects some discussion or action to be taken relating to the "Expansion of SMART Right-of-Way and Scope of Operations by adding Freight Service Responsibility and Executing Related Agreements." Having just learned of the agenda item and briefly reviewed the published documents, Mendocino is attempting to fully understand the scope of the previous discussions and of the proposed plan of action.

Mendocino has a strong interest in ensuring that common carrier operations will be maintained on the entire NCRA line. In fact, Mendocino is very interested in acquiring the freight rights currently held by Northwestern Pacific Company ("NWP") on the NCRA/NWP line or, at the very least, the rights to that portion of the line between Cloverdale and Willits, California which directly connect with its railroad. Working with SMART and local and statewide stakeholders, Mendocino believes that a comprehensive plan can be developed that would allow for SMART transit operations, freight operations, and trail use to coexist in the entire corridor up to Willits, not just portions of it. Indeed, Mendocino has previously notified the NCRA that there are shippers located on the Mendocino line that would like to connect with the interstate railroad network via a functional NCRA/NWP line but have been prevented from doing so. Mendocino's most recent notification was via a February 6, 2020 letter to Mitch Stogner, a copy of which is attached hereto.

Mendocino believes that it is uniquely positioned to restore freight traffic on the entire NCRA line, providing the people and businesses of the region – including freight customers in Fort Bragg, Willits, and the communities between Willits and Cloverdale – with a service that has too long been absent. It can do so while ensuring that SMART preserves its ability to perform its passenger operations and the state can develop a trail.

In order to provide an opportunity for discussion and for the SMART Board to hear Mendocino's plans, Mendocino would like to respectfully request that you defer any final votes relating to Item 7 on the agenda. Such a deferral would allow time to discuss this matter with SMART, NCRA, NWP/NWP, and Senator Mike McGuire. Absent a better understanding of how the common carrier rights of Mendocino's customers will be preserved under the proposed plan as outlined in Item 7, Mendocino intends to carefully monitor any proceedings at the STB and may be forced to oppose any regulatory approvals or take other actions at the STB to preserve the common carrier rights of its shippers.

Sincerely,

/s/ William A. Mullins

William A. Mullins
Attorney for Mendocino Railway

cc: Mike Hart, President, Mendocino Railway
Mitch Stogner, Executive Director, North Coast Railroad Authority
Doug Bosco, President & Legal Counsel, Northwestern Pacific Co.
Leticia Rosas-Mendoza, Clerk of the Board

MENDOCINO RAILWAY

Foot of Laurel Street
Fort Bragg, California 95437
707-964-6371 T
707-634-6428 F

February 6, 2020

Mitch Stogner
Executive Director
North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, California 95482

Dear Mitch,

I am, as you may recall, Vice President of Mendocino Railway. I am writing to formally request that the North Coast Railroad Authority ("NCRA") restore rail service on its rail line extending south from Willits, California so that we can provide freight service for our shippers who seek rail transportation services on the national rail network.

As you may also recall, Mendocino Railway is the successor to the California Western Railroad ("CWR"), operator of the "Skunk Train", and a common carrier railroad authorized by the Surface Transportation Board ("STB") to provide freight rail service on Mendocino Railway's rail line between Fort Bragg and Willits, California. *See Mendocino Railway—Acquisition Exemption—Assets of the California Western Railroad*, STB Finance Docket No. 34465 (STB served Apr. 9, 2004). Mendocino Railway's line connects with the NCRA's line at Willits. Through that connection, Mendocino Railway connects to the national rail network.

Since 1998, the NCRA's line has been embargoed as a result of unsafe operating conditions and noncompliance with federal railroad safety laws and regulations. This embargo ended, and has continued to prevent, Mendocino Railway's access to the national rail network beyond Willits. Shippers located on our line cannot access the national rail network until the NCRA restores service on its line.

In 2004, prior to our purchase of the CWR, the CWR's bankruptcy trustee filed a claim with the STB against the NCRA alleging that the NCRA had violated its common carrier obligation by failing to reopen the line from Willits south. This lawsuit is addressed in *Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc. v. North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad*, STB Finance Docket No. 34337 (STB served Jan. 31, 2007). The STB rejected the trustee's claim on the grounds that there was no evidence of a continuing demand for service on the line. In the absence of evidence that freight shippers were interested in service over the embargoed line, the STB appeared to conclude that the NCRA did not have a common carrier obligation to reopen its line.

Though the NCRA's line has been closed for over 20 years, stranding Mendocino Railway's line from the national rail network, there is now strong evidence of shipper interest in rail freight transportation using Mendocino Railway's line and the NCRA line. Mendocino Railway accordingly in 2019 applied for a federal grant under the U.S. Department of Transportation's Better Utilizing Investments to Leverage Development ("BUILD") program to improve its line for such service. In connection with its grant application, Mendocino Railway determined that there are several companies located on or near Mendocino Railway's line with a strong interest in freight service in conjunction with a connection to the national rail network at Willits. Many of these companies supported Mendocino Railway's grant application, with local manufacturers, lumber companies, an aggregate company, and a brewery expressing their desire for a rail freight alternative to trucks.

A market for rail freight service on Mendocino Railway's line clearly exists but we need a viable connection to the national rail network at Willits in order to serve that market. We have tried to work with the Northwestern Pacific Railroad Company ("NWPCO"), the current operator of the NCRA's line, to restore service on the NCRA's line, and we recently expressed our willingness to take over operation of the NCRA's line in order to ensure its reopening. But our efforts have not been successful. If the NCRA continues to maintain its embargo of its line from Willits south we believe that the NCRA will be in violation of its common carrier obligations. We therefore urge the NCRA to take immediate steps to restore service on its line so that we can restore interstate freight service to the customers who desire it.

Thank you for your attention.

Sincerely,

Robert Jason Pinoli
Vice President