

Off The Tracks

by **Mark Scaramella**, May 14, 2013

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Even Wikipedia has an entry for the Northwestern Pacific Railroad Co.

“The Northwestern Pacific Railroad is a regional railroad that serves the North Coast of California. Its main line is 271 miles long and runs between Schellville [southern Sonoma County] and Eureka. There are portions of the line still intact south of Schellville from the Ignacio Wye to the edge of San Rafael. Currently only the 62-mile stretch between Schellville and Windsor is in operation. The portion of the NWP main line between the Ignacio Wye in Marin County and the depot in Healdsburg is owned by Sonoma-Marín Area Rail Transit (SMART), a proposed commuter railroad. The Schellville–Ignacio and Healdsburg–Eureka portions are owned by the North Coast Railroad Authority. ... Beginning in 1990, public interests began snatching up bits and pieces of the "Southern End," or from Willits to Schellville. The North Coast Railroad Authority was born by government action in the late 1980s to save the NWP from abandonment. The Southern Pacific Railroad officially sold the last of the entire line in 1995, the same year all operations ended north of Willits. In 1996 the "reborn" NWP began operations, but poor management, lack of sufficient motive power and high costs led the line to fall apart. In 1999, the Federal Railroad Administration gave an emergency order that closed the line. In July 2011, the Federal Railroad Administration emergency order was lifted, allowing freight trains to resume service. ... In June 2011, the Northwestern Pacific reopened the line and began operations over the section of track between Napa and Windsor. Service consists of about three trips weekly over the line” (hauling some grain for small dairy herds in Marin and a few loads of retail lumber).

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Bernard H. ‘Bernie’ Meyers is not a guy you’d normally cast in the role of maverick. Meyers has been a button-down lawyer for 36 years. He’s the former mayor of Novato who got his law degree from Boalt Hall/UC Berkeley and has a master’s degree in physics from the University of Michigan. From 1970 to 1985 he was an attorney in the Department of Justice’s Antitrust Division where he received a Meritorious Service Award from Attorney General Griffin Bell.

Today, Meyers is one of Marin County's two representatives on the NCRA Board of Directors along with Tom MacDonald.

Back in 2010 Meyers was the only director to publicly say that taxpayers are being ripped off by a sweetheart deal benefiting a private company that includes former congressman Doug Bosco — who happens to be the NCRA's attorney.

As the AVA's Will Parrish [reported back in 2011](#):

According to a former representative to the North Coast Rail Authority from Marin County, Bernie Meyers, the contract between NWP Co. and the NCRA was negotiated, respectively, by Bosco and a fellow named Mitch Stogner, who served as Bosco's aide de camp during his congressional tenure and who is now the NCRA's Executive Director. The two men have maintained close political ties ever since. The initial term of the contract was for five years, but NWP Co. has a unilateral option to extend the lease for up to 99 years, with virtually no input into the matter from the NCRA — that is, the taxpayers' ostensible representatives in the matter — itself.

“The lease requires the NCRA to obtain and expend public funds without limitation,” Meyers noted in an op-ed in the Marin Voice (in March of 2010). “Yet NWP could conceivably pay NCRA almost nothing under the lease. Payments begin the year after NWP has a net annual profit of \$5 million. If NWP makes payments, they will not be to NCRA, but into a ‘kitty’ that NWP jointly controls.” In other words, taxpayers are on the hook for hundreds of millions of dollars, strongly to the benefit of the NWP and its owners, but with only an incidental amount of public benefit.

The NWP business plan makes note of Bosco's function in this matter: “As General Counsel, Doug Bosco will focus on building trusted relationships with the public agencies.” I.e., Bosco will use his considerable connections within the state Democratic Party apparatus, forged across his many years as a public officeholder and his more lucrative recent service as a lobbyist on behalf of large corporations, to win sweetheart deals on his and the company's behalf.

Bosco is joined as an owner and director of the NWP Co. by a small handful of regional business empires. One is Sausalito-based developer Skip Berg, best known for such audacious schemes as a proposal to develop over 2,500 homes and almost three million square feet of commercial space on Hamilton Air Force Base, south of Novato, during the 1980s. Berg's most successful business venture to date was his ownership of the Infineon Raceway in Sonoma during the '80s and early-'90s, which became one of NASCAR's most lucrative tracks. More recently, in 2005, he scored a highly suspicious \$20 million federal contract to develop ferry service out of Port Sonoma, located on the Petaluma River at the Sonoma and Napa county lines.

Another is Evergreen Natural Resources of Oroville, California, which has long set its sights on reopening the hard rock mine at Island Mountain, in the heart of the main stem Eel River canyon. That particular quarry being located in the remote reaches of Trinity County, however, and utterly inaccessible by truck, has no viable means of bringing the rock to market absent the restart of Northwestern Pacific freight service. The old rail line runs right through the heart of the mine. The Island Mountain Mine report, obtained by Friends of the Eel River, and the 2006 NCRA Strategic Plan propose that the company mine six million tons of rock from the quarry every year.

To make any sort of economic sense, of course, a freight line needs actual freight: that is, merchantable bulk commodities. The Northwestern Pacific once ran almost entirely on the strength of the timber trade. Most of the marketable forest stands in the North Coast have long since been cut, however, and even those that remain tend to be either off limits from logging due to protected status or else are being immediately exported overseas. As a substitute for the trees, NWP Co. originally proposed to fill the freight cars chiefly with the Island Mountain gravel, at an estimated value of \$50 million per year.

But absent the highly unlikely aforementioned \$643 million to repair the Eel River Canyon track, the Island Mountain mining proposal is essentially dead in the water. As a result, the NWP Co. and the NCRA have focused primarily in the last few years on restoring a far more modest section of the track, from Sausalito to Willits. The Authority had announced plans to begin running trains from the California Northern interchange at Schellville, north to Windsor, beginning July of 2010. It has recently stated that it will have freight cars rumbling into Willits again by 2014, perhaps in time to contribute something to the Willits bypass. But NCRA projections are worthless.

Most counties in California feature gravel mining of one sort or another. And, while modern construction methods depend on the practice, it has also caused more than its fair share of the catastrophic damage to most waterways throughout the state. Many gravel mines have radically altered flows in streambeds, greatly eroding river banks, and clogging up spawning habitat for fish.

Another trump card Bosco and his NWP Co. associates have pulled in an effort to make the freight proposal viable is hauling all of the North Coast's trash outthere to a dump site in Nevada. "NWP Co. is believed to have a strategic advantage because of its exclusive right to negotiate to use a solid waste site in Nevada owned by Nevada Resource Recovery Group, LLC that has a capacity of about 200 million tons," the 2006 business plan brags. "NWP Co.'s longer term objective would be to meld solid waste haulage from Mendocino County, and eventually from Marin County and Humboldt County, with that of Sonoma County to the Nevada disposal site which could accommodate all of those counties' solid waste for more than 200 years." Another NCRA fantasy.

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Soon after Meyers made his allegations in 2011, Bosco and Stogner appeared before the Marin County Board of Supervisors to answer some of the questions Meyers raised.

Stogner dismissed Meyers' carefully laid out accusations as "patently false," without elaboration.

Allan Hemphill of Cloverdale, chairman of the NCRA board, told the Marin Independent Journal in 2011, "I'm disappointed Bernie has chosen to grandstand this," dismissing Meyers as a negative rail critic who has "misrepresented the situation" and is "technically incorrect on all his allegations about the (lease) process."

Bosco casually dismissed Meyers claims saying that Meyers is nothing more than a railroad hater who "for years has worked to impede progress on the railroad program involving a public-private partnership between the authority and NWP." Bosco, offering no evidence, simply denied Meyers' allegations of impropriety saying, without specifics, that Meyers' letter was "riddled with so many errors that it does not deserve public attention." Bosco huffily pointed out that he (Bosco) has an option to become an owner of the firm but he has "not received a penny" from the NCRA-NWP deal.

That's probably because the NCRA has no pennies, much less dollars. The NCRA is not just broke, but in debt to its own contractor and lease holder, the NWP, bringing a whole new dimension to the phrase "public-private partnership."

But since 2011, Commissioner Meyers has not gone away. He continues to probe into the finances and business relationships of the NCRA and NWP.

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Late last month the NCRA Board voted to rescind their certification of their own Environmental Impact Report. This non-news was reported in the Santa Rosa Press Democrat and at the Mendocino County Board of Supervisors meeting late last month.

Supervisor McCowen told his Mendo Board colleagues at the April 23 Board meeting: “Some of you may have heard we did revisit a resolution that was passed by the NCRA in June of 2011 that certified an EIR and approved the project for the resumption of railroad operations from the southern end of the line north to Willits. ... The approval for railroad operations was already accomplished by the lease that NCRA had with NWP Company and also with approvals that were given by other federal agencies.”

Meyers was the only NCRA director to vote no on the motion to rescind the EIR certification, saying, “Promises do count for something. The NCRA has known since at least February 2007 of the possibility of being exempt from the need to do an EIR, and we filed a motion in the Marin Court to that effect. We lost. We went to the Court of Appeal with that argument. We lost. We then spent over \$3 million and took over 3 years to do our EIR. We were sued over it. We then made a motion in the US District Court in San Francisco arguing that we were exempt. We lost. We then made a motion to a different judge in the Marin Courts that we were exempt. We lost. We lost these motions because, among other things, the courts found that we had made certain promises to obtain tens of millions of dollars to repair the line – and to do an EIR.

We are now about to try and side-step the lawsuit by undoing the EIR. We do so by making, at best, questionable factual assertions in our findings and by making incorrect statements as to running over the entire 300 miles of the line and of promising to do an EIR in the papers we have submitted to the Court. It is as though we can – by fiat – change history. If staff is correct that we are exempt, we can assert that at trial. If staff is incorrect, and the Court finds that our promises do count, the Court will then turn to our EIR to determine whether it is legally sufficient. But voting for this action today, there will be no EIR and thus we sink ourselves. I urge my colleagues to decline staff’s proposal.”

All eight of Meyers’ colleagues ignored him and voted to approve the motion to rescind the EIR certification at the NCRA Board meeting in Eureka last month.

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What’s going on here? Why is the NCRA so intent on proceeding without a certified EIR?

It probably has something to do with what Meyers points out in his last lengthy critique of the NCRA in November of 2012 in which he calls for a comprehensive audit of the organization to determine if the NCRA is providing what it should provide to the state and taxpayers and if it should continue to exist.

Meyers pointed out that “Since 2000, when Caltrans determined that NCRA had misused public funds, NCRA has been listed by Caltrans as a ‘high risk’ agency. Thus, when NCRA used public funds to rehabilitate its line in 2007-2010, it had to go through costly procedural hurdles. Instead of getting funds to pay invoices as agencies normally would, NCRA had to present Caltrans with valid contractor invoices and a canceled check showing the contractor was paid. Only then would Caltrans reimburse NCRA with the requisite funds. NCRA did not have sufficient funds to pay its contractors absent the Caltrans funding. The result was that NCRA had to obtain short-term loans to cover its invoices and then repay the loans with the funds Caltrans eventually provided. NCRA incurred hundreds of thousands of dollars in interest by borrowing millions of dollars from NCRA’s freight operator, North Western Pacific Railroad Co. (NWP) in order to pay the contractor. NWP charged interest. In October 2011, the amount owed to NWP was \$514,127, and interest continues to accumulate — all because NCRA is a high-risk agency.”

Meyers also said that “NCRA appears unable to meet its financial obligations. NCRA has suffered through years of deficit budgets, the latest of which was presented at the October 10, 2012, board meeting. Since July 1, 2012, NWP has not paid any lease rental for its use of the line. That fee is

approximately 33% of NCRA's yearly revenues. Even with that revenue, the budget would show a deficit. It is probable that the 2011 audited financial statements will include a 'going concern' note. The continued financial instability alone warrants a top to bottom, unbiased review of NCRA's dealings and financial future. It does not help that NCRA has no current business plan."

Worse, Meyers added, "In March 2010, after the bulk of the rehab work had been completed using over \$60 million of public funds, this board was told that there were four items that needed to be completed before the line would pass a federal inspection — they were referred to as the 'punch list.' NWP initially estimated the cost at less than \$1 million. A 'no-bid' contract was given to NWP, supposedly for a five-month repair job. In the end, the work came in at 250% over budget and more than a year late.

"Normally in public contracts, bids are solicited and firm quotes are received before a contract is awarded. NCRA and NWP chose to discard competitive bidding and simply employ NWP to do the work. The work was to be overseen by the NCRA project manager who confirmed the cost estimate. None of the work was to be done by the project manager. NWP would use 'subcontractors it will use in conducting routine maintenance.' Importantly, NWP was to do the work 'at its cost -- not to exceed \$1.112 million with a completion date no later than September 1, 2010.' In August, 2010, four more items were added to the punch list and the cost rose 75% to \$1.940 million, but a revised completion date was in sight — 'no later than October 1, 2010.' The federal inspection was successfully completed in January 2011; the first train ran soon after on June 20, 2011. Then, in October, 2011, the board was informed that the punch list cost had increased to \$3.17 million and the completion date had become August 31, 2011."

Meyers' memo goes on to list a number of additional financial irregularities which clearly require an audit.

The NCRA Board ignored Meyers again.

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Mr. Meyers has been marginalized by his Board colleagues because if they went along with his call for an audit it would become clear that:

1. The NWP is using the NCRA and its Democratic Party powerbroker connections to make millions by doing overpriced repairs on segments of the line south of Willits, then charging high interest on the money they loan to themselves.

- And 2. The NCRA Board had to (semi) "decertify" (technically they passed a new resolution that rescinded "any word, phrase or section" of a resolution adopted in 2011 that "purported to approve a project for the resumption of rail operations" — which enviros interpreted as decertification of) the EIR because the EIR addressed the unmitigatable environmental impacts of resuming rail operations on the entire line, including in the Eel River Canyon where there's no way operations can be conducted, much less mitigate the damage of attempting to restore the track.

And as long as the (semi) "certified" EIR included the north of Willits segment of the line, the NCRA would never be allowed to resume operations south of Willits — which also include operation of the frequently delayed "SMART" (Sonoma-Marín Area Rapid Transit) commuter line on the rehabbed tracks. (When the SMART quarter cent sales tax passed after two failed attempts in 2010, the SMART line was supposed to run on NCRA tracks and connect Cloverdale to Larkspur by 2010.

That obviously didn't happen because the NCRA and its collaborators never come close to meeting their deadlines. They blamed the recession, cost increases, and permit problems, but nobody's ever held to any dates or budgets when it comes to NCRA-related claims. SMART's latest completely non-

credible projection is to have only the 38-mile segment running by 2016 and the rest to be opened at some unspecified later date “when funding becomes available.”

Thanks to the NCRA’s EIR decertification and the disconnecting of the EIR to track maintenance, NWP can continue billing, loaning and raking in millions for operations and maintenance of the line from non-existence “SMART” lease line, and from the State of California (via Caltrans).

Of course the NCRA has no “business plan” — they’re obviously not in business to run a railroad. There’s nowhere near enough “freight” to transport for profit. They’re in business to funnel public money to NWP owner John Williams and his well-connected Bosco pals at the NCRA which rakes off in the process to keep the NCRA’s bogus “railroad authority” afloat.