

# Railroad Proposals Under Scrutiny

*By Mike Arnold*

Two different and very controversial rail proposals in northern California are receiving significant public scrutiny: the Sonoma-Marin Area Rail Transit (SMART) passenger rail service proposed for Marin and Sonoma counties, and the North Coast Railway Authority (NCRA) proposal to restart freight service between Napa County and Eureka in Humboldt County.

The proposals are linked by law, geography, operations, politics, economics, and environmental impacts. The links are complicated and in some cases denied by rail proponents seeking political advantage. Coalitions supporting or opposing the proposals are from different regions and have diverse interests and concerns.

For years, the proposals to restart freight service and begin commuter rail service were treated separately. Typically, supporters of freight service advocated restarting passenger rail service and vice versa. It was thought that each would help the other build political support. Freight and passenger rail also share the fixed costs of reconstructing and maintaining the track and right-of-way, so they each make the other more economically viable.

This alliance is now breaking down. The plan to restart freight service is interfering with SMART's ability to win voter approval for a November 2008 sales tax measure to fund the passenger rail. Meanwhile, if SMART's measure fails, passenger rail supporters could turn on the NCRA, interfering with the NCRA's ability to get the funding required to restart freight service. The story is complicated. We review it here.

## **NWPR Track Ownership**

Formerly the North Western Pacific Railroad, this entity is now the North Coast Railroad Authority. NCRA, a state agency, with responsibility for the railroad tracks. The NWP Co. has been hired by the NCRA to be the operator of the railroad.

A single track runs for 315 miles southeast from Eureka, through the Eel River Canyon, and then parallels Highway 101 through Mendocino, Sonoma, and northern Marin counties. At the intersection of Highway 101 and Highway 37 in Novato, the rail line splits. One line turns east, crosses the Petaluma River, then turns back north and east until it joins the national rail network in southern Napa County. The other line runs south through central Marin County, where it dead-ends on the south side of Calpark Tunnel (that connects southern San Rafael to the north end of Larkspur Landing, which is near but not at the Larkspur Ferry Terminal).

NCRA owns the rail line north of Healdsburg in Sonoma County. SMART owns the rest. The NCRA has pledged to restart freight service from Eureka to Napa. SMART has pledged to start passenger service from Cloverdale, north of Healdsburg, to Larkspur.

Each operates on the other's track for part of their proposed service. And that's where it gets complicated, because there is only one track they both can operate on. Much of the track in Sonoma

and Marin counties that the NCRA must operate on borders the backyards of affluent suburbanites and crosses many busy at-grade crossings, where long, slow-moving freight trains can cause significant traffic delays. The NCRA has no other way to get freight trains operating north of Sonoma connected to the national rail network in Napa County.

Meanwhile, SMART cannot divorce itself from the NCRA. It is legally required to allow freight trains to operate on its tracks. However, since freight trains could interfere with SMART's proposed commuter service, SMART can keep the freight trains from operating during the commute periods, when passenger rail service is proposed to operate. And therein lies the rub. SMART trains operating during the day mean more freight trains rumbling down the center of Sonoma County and Novato during the night.

And this is where the denial of the linkages between the two proposals may entrap both.

### **Link #1: Legal and Political**

The right to operate on each other's track is spelled out in state law. The legislation that defined and enabled SMART also defined the rights of the NCRA on SMART-owned track, and SMART on NCRA-owned track. The state legislature declared that the NCRA had a perpetual easement over SMART-owned track. As long as it didn't interfere with passenger rail operations, the NCRA shall be free to operate freight trains at will.

The legal connections don't stop at easements. The California Environmental Quality Act (CEQA) is a very powerful law, impacting the two agencies in different ways.

SMART is required to complete an EIR prior to restarting passenger rail service. Politically, this meant that SMART had to complete and certify its EIR prior to placing a tax measure on the ballot in November 2006, which it did.

The EIR that SMART certified turned out to be incomplete, because two days after the 2006 election (which SMART narrowly lost), the NCRA received \$43 million in state funds to repair the track from Willits to Schellville in southern Sonoma County. Soon after receiving these funds, the NCRA announced operational plans that were inconsistent with the assumptions SMART had used in its EIR, triggering the legal requirement that SMART prepare a "supplemental" EIR to evaluate the combined impacts of the new freight plans and passenger rail operating on the same track. This was something SMART did not want to do. Having lost the ballot measure, they were sensitive to generating any information that might raise concerns among Sonoma and Marin voters. Nevertheless, CEQA requires such a document, which SMART has now drafted and released for public review. Whereas their 2006 EIR pretty much glossed over freight impacts because there were "only a few trains a week," the supplemental EIR clearly states that there could be far more freight trains and that the impacts associated with the freight—noise, vibration, traffic congestion, diesel fumes, etc.—are significant. Even worse, the draft supplemental admits that the freight trains would likely be operating at night, which will be of great concern to Marin and Sonoma residents

living near rail right-of-way. None of these disclosures help SMART win the hearts and minds of voters.

After losing the November 2006 ballot measure, SMART quickly announced that it would place another tax measure on the 2008 ballot. In response, activists who opposed SMART's passenger rail proposal reached out to Friends of the Eel River. A campaign started to educate politicians and environmentalists in Marin and Sonoma counties about the NCRA history, its strategic plans, and the links between the private freight operator—the NWP Co.—and the Island Mountain Quarry in Trinity County, adjacent to the Eel River.

The campaign, led by FOER Executive Director Nandananda, generated two unexpected benefits in the fight to stop the NCRA. First, Marin County filled two long-unfilled seats on the NCRA Board of Directors. Second, after reviewing the documents that the NCRA and NWP Co. filed with the state of California, the City of Novato sued the NCRA for violations of CEQA, the Brown Act, and other state laws. This suit was eventually joined by the County of Marin, Friends of the Eel River, Marin Conservation League, Californians for Alternatives to Toxics, the Environmental Protection Information Center, and the Watershed Protection Network. While we await the final ruling (hearing now scheduled for August 26th), Marin Superior Court Judge Ritchie issued a temporary restraining order that halted the NCRA from completing future repairs of track. He also indicated that the NCRA will have to go back to the CEQA drawing board and complete an EIR of the "whole of the project," which means evaluating the environmental impacts associated with track reconstruction and freight operations through the unstable Eel River Canyon.

The lawsuit against the NCRA, in turn, has generated many press stories linking SMART to the NCRA, something SMART has been trying to avoid. Supporters of the passenger rail proposal have now begun to ask for information on the linkages and wonder whether SMART has been misleading them all along.

### **Link #2: Economic and Political**

All bus and rail transit agencies are subsidized. The only issue is how and by how much. Golden Gate Bridge tolls subsidize the Golden Gate bus and ferry operations. BART and MUNI are subsidized with tax dollars. In SMART's case, more than \$40 million in planning money has come from the state. However, neither the state nor federal government will fund the deficits associated with running SMART's passenger trains nor finance the construction of the passenger rail line. Consequently, SMART must pass a local tax measure if it is to ever get passenger rail service started.

Under the state constitution, a special sales tax measure requires a two-thirds supermajority to pass, which is difficult to do under the best of circumstances. Any negative news can contribute to a tax measure's failure. And this is where the economic links between SMART and the NCRA are coming back to haunt the passenger rail proposal, which in turn could reduce support for the freight rail proposal.

The NCRA has also received funding from the state to repair and upgrade the track. However, while passenger rail service is assumed to require ongoing public subsidies, freight rail is supposed to eventually pay for itself, once the track has been repaired.

The economic realities of this rail line, however, are not those of your typical freight rail line. It is a single-track “stub” line that runs through the unstable soils of the Eel River Canyon, crossing the northern California storm track, where significant storms occur with some regularity, and is in an area of constant earthquakes. Consequently, the line is susceptible to frequent storm-related damage and slides, creating significant maintenance costs. Southern Pacific Railroad stated in the 1970s that it was costing the company at least \$1 million a month for maintenance of the line through the Eel River Canyon. Therefore the company was going to abandon the track, but the state legislature was convinced to purchase the line.

In Sonoma and Marin counties, the NCRA has been claiming that it could make a profit running trains south of Willits. Their claim is not supported by the findings of feasibility studies. The conclusion appears to be that there simply isn't enough demand for freight services in Sonoma County to pay for maintenance of the track for any period of time, which means this limited freight service can only succeed if the state is willing to continue to fix levees, bridges, and wash-outs in the future. This is something the state has indicated it is not willing to do.

The only freight plans that could potentially generate significant revenues are those that would be associated with hauling ore mined from Island Mountain or containers arriving at the proposed container port in Humboldt Bay. Either plan involves far more freight trains than the NCRA has yet announced, generating more political opposition in Sonoma and Marin counties.

In addition, if Judge Ritchie rules in May in favor of Novato and the ruling is upheld on appeal, the EIR that the NCRA will be required to do carries a substantial cost. No one has figured out how the NCRA would pay for such a study unless the state provides the funding, something that is becoming less likely.

Meanwhile, SMART is trying to distance itself politically from the NCRA. But this is a strategy that cannot succeed for a simple reason: if the SMART sales tax is approved by the voters, the local taxpayers will pay for much of the track maintenance, offsetting some of NCRA's costs, facilitating the very freight service that SMART is trying to claim it has no connection to.

In addition, up until the NCRA became politically unpopular in Marin County, SMART proponents had been promoting the shared fixed costs of the NCRA and SMART. After all, there's only one track. Freight fixes part of the track. SMART upgrades another section. Both gain from each other's investments. It's an accurate depiction that environmentalists supporting SMART are now trying to deny. SMART was supposed to be good for the environment, by removing cars from the freeway and reducing emissions. The economic linkage to the NCRA and its strategic plan to mine ore adjacent to the Wild and Scenic Eel River has now cast a cloud on this claim. In addition, SMART will have to address a key negative environmental impact: passenger trains operating during the day

will force more freight trains into nighttime operation, where their noises and vibrations will disturb sleeping residents.

### **What Is To Come?**

Whether one is a SMART supporter or opponent, the NCRA's survival is at risk. The freight agency faces significant legal costs and hurdles, which may succeed in delaying any progress toward completing track repair and being permitted by federal regulators to operate freight trains. Meanwhile, rails to trails organizations in Eureka have questioned publicly whether rail will ever get restarted to Eureka. Environmentalists in Marin are questioning whether the state should subsidize a freight operation whose economic viability is tied to major gravel mining operations in the Eel River Canyon.

At the same time, SMART can't divorce itself from the NCRA, because its enabling legislation ties it to freight. And because SMART has made so many commitments to its constituencies that it would place another sales tax measure on the November 2008 ballot, it has painted itself into a political corner. It may place the measure on the ballot despite knowing the chances of success are diminished.

The ultimate irony is that the NCRA's ties to SMART, once thought to be an advantage by supporters of both proposals, is now perceived as a disadvantage. If SMART fails to pass the sales tax measure for a second time, Sonoma environmentalists, who have remained supportive of the NCRA proposal, are likely to throw the NCRA overboard. Once they recognize that they cannot pass a tax increase requiring a two-thirds vote if freight rail is to operate on the same track, the NCRA is likely to lose the support of legislators and local politicians.

The key to saving the Eel River Canyon is clear: it is the legal easement that the NCRA has to operate freight trains on the right-of-way. Once that easement is removed—and the legislature can remove it—SMART can bring its measure before the voters. It may succeed, but only if the NCRA has packed its bags, leaving the Eel River Canyon for future generations to enjoy without interference from freight trains and gravel mining operations.