

Analysis of and Rebuttal to the Competing Trails Plan

Background:

For the purpose of this analysis, it is assumed that the reader is familiar with the following:

- The general history of the former Southern Pacific Railroad Right-of-Way now known as the Sacramento Placerville Transportation Corridor (SPTC).
- The creation of the Sacramento Placerville Transportation Corridor - Joint Powers Authority (SPTC-JPA) and the role it plays in the ownership and management of the Corridor.
- The Purchase Agreement entered into by said Joint Powers Authority (JPA) for the purpose of acquiring the Corridor under Federal 'Railbanking' Regulations.

The reader should also have copies of the Reciprocal Use and Funding Agreement (RUFA) entered into by the Member Agencies of the JPA, as well as the El Dorado County SPTC Master Plan of 2003.

Introduction:

This report is in response to the most recent proposal to remove some or all of the rail assets in the Sacramento Placerville Transportation Corridor. The justification of the current proposal is to mitigate the costs of an improved trail system in the corridor, and accelerate the time frame for completion of a class one bike path running the length of the corridor.

This is not a legal document, and has not been prepared by an attorney. The following report is simply the opinion of the author based on research and resources available to the layperson, and makes no claim to fact beyond what can be clearly shown in public documents and by public statements of the parties referred to herein.

Overview of the Trails Plan:

The current Trails Plan being promoted to the public and presented to the El Dorado County Supervisors by Friends of El Dorado Trail (FOEDT) has four basic components:

- Continue to work within the established framework of the El Dorado Historical Railroad Park. This Park was unanimously approved by the Supervisors in November 2010, and includes a Demonstration Train to be operated by the El Dorado Western Railway Foundation.
- Accept that public sentiment demands that the Demonstration Train be allowed to run as far west as Shingle Springs. While FOEDT would ask you to believe that this component is an 'offer' on the part of the trails stakeholders, a review of recent events indicates that the public will insist that the rails remain intact within this segment.
- Remove all rails, ties and other track material from Shingle Springs to the western county line. This is presented by FOEDT as the fastest and cheapest way to create a trail in that segment.
- After the tracks are removed west of Shingle Springs and trail work is underway in that segment, time and resources will be redirected to the areas east of Shingle Springs to develop improved trails alongside the railroad.

Core Element of the Trails Plan:

At the center of the trails proposal is the premise that the railroad tracks can be removed at NO COST to the County, using the salvage value of the track materials to pay for their removal. At current market rates the full resale value, (not wholesale), of the track materials on the corridor is estimated by all parties to be less than \$50,000 per mile. Any legitimate analysis of the value of materials, site conditions, prevailing wage law, and California environmental regulations will show that the cost of removal for any commercial contractor would far exceed the value of the track materials, even if the material was sold directly to the end users rather than a wholesale broker. Conclusion: The rails cannot be removed as a Public Works Project.

The alternative presented by FOEDT is to partner with Iron Horse Preservation Society, Inc., a Nevada based non-profit corporation that specializes in converting unused rail lines into trails, using only the value of the track as payment. Research to date strongly suggests that Iron Horse is the ONLY rail salvage operation in the United States organized as a non-profit corporation. This allows Iron Horse to participate in projects that would not be feasible under a normal Public Agency / Private Contractor relationship.

For El Dorado County to use this option, however, it would require that the track and related materials be DONATED BY THE COUNTY, either directly to Iron Horse, or to FOEDT who would then 'trade' the materials to Iron Horse as payment for removing them. For the 17 mile segment in question, this 'donation' would have a value of approximately \$750,000 Dollars. In addition to questions raised simply by the raw value of the donated materials, the County would also have to make a determination that: a) the other stakeholders in the corridor, (hikers, equestrians, excursion trains, etc.), would NOT be entitled to 'donations' of similar value; b) the transaction would comply with ALL applicable State and Federal law; and c) this unconventional transaction would in no way expose the County to any future legal action or other liability.

Details concerning Iron Horse Preservation Society, Inc.:

On its website, Iron Horse Preservation Society, Inc. represents itself as a “not-for-profit educational and historical organization founded for the preservation and rehabilitation of our railroad heritage”. While research into Nevada law is ongoing, under California law this statement has specific and defined implications as to the purpose for which a non-profit, public benefit corporation is organized. Although the website later states that the primary objective of Iron Horse is “to convert abandoned railroad tracks into usable recreation trails for communities around the nation at no cost”, the first statement makes a clear claim as to the nature and purpose of their non-profit status.

Research has suggested that in reality, Iron Horse Preservation Society, Inc. is a family owned and operated salvage company that uses a tenuous grasp on Nevada Non-Profit status to skirt the legal requirements and restrictions of California non-profit law. A search of Nevada Secretary of State online records shows that all officers and directors of Iron Horse are members of the Hatrup family, including a spouse who kept her maiden name. Analysis of the group's website, along with various news articles available online, suggests that this operation is a full time job for most, if not all of the family members involved. Under California law, non-profits are forbidden to be organized “for the private gain of any person”. While it is certainly legal to compensate the directors, officers and employees of a non-profit, the law does protect the public from abuses of that right. The public is also protected under the California Non-Profit Integrity Act of 2004, including, but not limited to, sec.

12599.6 (f) which prohibits, among other things; "...committing unfair or deceptive acts, or engaging in fraudulent conduct".

I will now relate my personal experience with Iron Horse Preservation Society, Inc. On March 2nd, 2011, I left a phone message for Joseph Hatrup, Chief Operating Officer of Iron Horse. In that message I truthfully represented myself as a member of the El Dorado Western Railway Foundation, in need of some more detailed information prior to a Supervisor's Subcommittee meeting to be held the next day, March 3rd. This was a meeting in which we would be discussing the trails 'compromise' plan. A few minutes later I called again and spoke directly to Susan Railton, office manager and Secretary of the Corporation. I again explained the purpose of my call, and reiterated the importance of knowing "what's in it for the railroad" before going into the meeting. Susan explained that Joe was on a jobsite in Massachusetts, but she understood and seemed to share my urgency, so she would have him call me back. Before we hung up I was able to ask if Iron Horse was a 501(c)3 non profit, to which she replied, "yes". I then asked if they were a registered California non-profit at which point she hesitated, but then replied, "yes". As Secretary of the Corporation, Susan would be the keeper of this information. As I was the only witness to those two statements, they are offered only as a foundation to public statements made later by Joseph and Susan in front of other witnesses, including two County Supervisors.

Late in the afternoon of the same day, March 2nd, Susan called to say that Joe was swamped with work, but was eager to speak with me. She then asked what was the earliest Joe could call in the morning, since he was on the east coast. I replied that 6:30am would be fine. I received that call at 6:34am the morning of March 3rd. After thanking him for taking the time, I asked a series of general questions such as how long the track removal might take, what he thought the overall salvage value might be, and what portion might be donated to the El Dorado Western and the Railroad Park. When I asked Joe how much of the \$50,000 salvage value per mile would have to be spent to remove the rails and leave the trails folks with an asphalt ready surface, Joe indicated it would be at least \$35,000 per mile. I then asked if that figure was based on prevailing wage, as the number seemed quite low. Joe was adamant that prevailing wage should not even be mentioned at the meeting, that it would be a "deal breaker". Joe then went into surprising detail as to what conditions needed to be met in order to allow Iron Horse, as a non-profit, to complete a project such as this. During this part of the conversation Joe confirmed Susan's statements as to the 501(c)3 and California non-profit status of their operation. In all, we were on the phone for nearly an hour. Based on my phone conversation with Joe Hatrup, I shared some, but not all, of my concerns with Supervisors Knight and Nutting at the subcommittee meeting later that day.

On Mach 10th I had the opportunity to attend another meeting with Supervisors Knight and Nutting, Joe Hatrup and Susan Railton of Iron Horse, and trails representatives Jackie Neau and Mike Kenison. Notes were taken by Loretta Featherston, Supervisor Knight's assistant. I reiterated many of the questions and concerns I have outlined above, and both Joe and Susan again made affirmative claims as to their Federal and California non-profit status. When I pointed out that the IRS had no record of their non-profit status, and that their records in California were similarly murky, they claimed to have run into paperwork snags that should be resolved soon. When I pointed out they have been incorporated for six years, they abruptly changed the subject.

Our recommendation is that the Supervisors, if they have not already done so, direct County Counsel to take a very critical look at the true legal status of Iron Horse Preservation Society, Inc.

Other False Assumptions in the Trails Argument:

The choice given the citizens of El Dorado County by the current trails leadership has been between a “nice trail” and an “abandoned railroad”. This is clearly a false choice given the actual progress made over the years, especially over the last 18 months.

Both the cost and time estimates that the trails leadership is using to discredit a Rails AND Trails solution are grossly exaggerated and deeply flawed. Extrapolating on a mile per mile basis the trail cost of Folsom City, which has nearly as many complicated road crossings in its meager five miles as El Dorado County has in its entire 28 mile section of the corridor, is intentionally misleading. The trails leadership has steadfastly refused to jointly analyze those numbers.

The trails leadership consistently points to the “poor condition of the track” as an argument against the viability of excursion service. This is in direct contradiction to the County's own experts and SPTC Master Plan of 2003 which clearly identifies the condition of the section between Shingle Springs and Latrobe as “surprisingly good”. The recent reassessment by the County of the washout repair, resulting in a “Notice to Proceed”, is further evidence of the integrity of the line.

Another claim by the trails leadership is that the length of the tracks far exceeds the “optimum” length for a successful excursion railroad. The primary source for that information seems to be the salvage company that has a vested interest in removal of the rails, and the owner of the Sierra Railroad Company, which owns the Skunk Train, Sacramento River Train, and Sierra Dinner Train. SRC's operations are the three COMMERCIAL TOURIST RAILROADS in our area that would be most negatively impacted by our success, and who, without our Non-Profit, Community Heritage Railroad, will CONTINUE to siphon rail tourist dollars AWAY from El Dorado County.

Summary:

Since the purchase of the Corridor in 1996, it has been the stated goal of many trails enthusiasts to remove the railroad track from the corridor, and create a continuous class one bike path for its entire length. At the same time, several railroad preservation groups have been working towards the goal of developing historical railroad operations along this iconic line, part of the “First Railroad in the West”. From the reconstruction of the Folsom Turntable in the mid 90's, to the progressive restoration of the Diamond and Caldor Shay #4, to more recent mileposts like the 2010 Folsom Railroad Festival, the approval of the El Dorado Historical Railroad Park, and the First Annual Shingle Springs-El Dorado Christmas Train, dozens of dedicated volunteers have invested tens of thousands of hours to preserve our local history and provide our citizens with an enjoyable, educational and affordable peek into a bygone era. Add to this our continued support of the development of a realistic Rails AND Trails Plan, as well as the three years of “Good Faith” negotiations nearing completion with the JPA for the implementation of Excursion Rail Service, and you have a compelling argument to allow the full ten year review period, as outlined in the County's own SPTC Master Plan, to unfold as planned.

Respectfully submitted,

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