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Surface Transportation Board (Docket No. FD 36889)
395 E Street SW
Washington, DC 20423

Submitted electronically on <https://www.stb.gov/> and through email to adam.assenza@stb.gov

RE: Eureka County preliminary comments on proposed Nevada Gold Mines Rail Line, Docket No. FD 36889

To Whom it May Concern:

The Eureka County Board of Commissioners is grateful for the opportunity to provide preliminary comments for the Surface Transportation Board's (STB) Office of Environmental Analysis (OEA) consideration in preparation of environmental analysis and review of the proposed Nevada Gold Mine's (NGM) Nevada Gold Rail LLC rail line (NGM Rail), Docket No. FD 36889.

All but a very small portion of the proposed NGM Rail would be located within Eureka County. The NGM Rail is proposed to support NGM's current and future mining operations primarily through transportation of ore. Eureka County supports the benefits that return to Eureka County through mining when done right. We seek to be forward-looking and conscientious in balancing economic benefits with environmental and social soundness. At first blush, it appears the NGM Rail would provide many public safety improvements compared to the current semi-truck transportation of the ore. Based on the various potential routes presented, our preliminary belief is the NGM proposed and preferred alignment would be our preference as well. There are, however, specific issues which could impact County resources and our residents. We ask the STB, Bureau of Land Management (BLM), and NGM to work diligently with us to permit and develop the rail line in a way that maximizes positive benefits to our community while ameliorating all negative impacts. This would include mitigating all NGM Rail activities and components that may impair or affect County resources or any County citizen including ranching, wildlife, public health and safety, and public access. We will not support any project that does not fully mitigate negative impacts to Eureka County resources or citizens—even if impacts come to only a few individuals.

Please consider the following as STB OEA moves forward with the NGM Rail review and permitting.

Eureka County as a Cooperating Agency

Eureka County requests to be actively coordinated with and we request cooperating agency status to remain an active participant through the National Environmental Policy Act (NEPA) process. Eureka County is currently participating in many and has participated in dozens of NEPA processes as a

cooperating agency. Our participation is afforded through the “special expertise” provision of section 107(a)(3) of NEPA.

Eureka County has special expertise, through agency mission and related program experience, within the various departments of the County including Eureka County Natural Resources Department, Public Works, Eureka County Planning Commission, and through various established advisory committees such as Eureka County Natural Resource Advisory Commission. The specific areas of expertise that Eureka County advises on include, but is not limited to, water resources, socioeconomics, rangeland resources, noise, visual resources, archaeological resources, recreation, air resources, transportation, and public health and safety. Each area of special expertise listed is not claimed but has been demonstrated by Eureka County. Eureka County considers participation as a cooperating agency as a serious matter and we have and continue to commit ourselves to fully demonstrating our special expertise.

Also, the State of Nevada, through Nevada Revised Statute (NRS) chapters 278 and 321, has enacted statutory responsibility upon Eureka County (and other Nevada counties) to develop and implement processes for determining land use, resource and water management, and environmental planning as necessary to serve the public health, safety, convenience, and welfare. Eureka County has exercised its local government authority and has developed a Master Plan. Both the Eureka County Code and the Eureka County Master Plan mandate “the involvement of Eureka County in the management of federal lands and in the development of criteria that are meaningful in any decision-making process...” and “Failure of federal entities to afford Eureka County complete notice and opportunity for involvement beyond that afforded individuals, or to limit State or County government involvement...is presumed to be prejudicial to the government of Eureka County and its residents, and that the Board of Eureka County Commissioners is authorized and empowered...to seek redress for such prejudice.”

The Eureka County Code clearly defines Eureka County’s program mission related to natural resources and federal land use management. The County Code calls for County participation through the Natural Resources Advisory Commission and ultimately, the Board of County Commissioners, “in all actions that are being taken or are being proposed to be taken regarding federal lands located within Eureka County” (Title 9 Chapter 40.030). The County Code goes on to specifically define each area that the County shall participate in.

In order to follow its own County Code and County plans, Eureka County has a Natural Resources Department with staff including a full-time Natural Resources Manager tasked with the mission “to inventory, make plans for and manage the County’s natural resources under the direction of the Board of Eureka County Commissioners, and to advise the Board about matters involving the County’s natural resources” (Eureka County Code, Title 9, Chapter 20.020).

Therefore, Eureka County has demonstrated special expertise by following “statutory responsibility” and pursuing County “agency mission” and has demonstrated appropriate “program experience” in all the areas highlighted in the County Code and Master Plan.

Consideration Of and Consistency with Eureka County’s Plans, Policies, and Controls

Please consider the Eureka County Master Plan, specifically the Natural Resources and State and Federal Land Use Element of the Plan, and Title 9 of the Eureka County Code as Eureka County’s primary input in the Project. These outline policies, plans, guidance and controls for the use of land and resources in or affecting Eureka County. Eureka County will not, and cannot, support any management option that is inconsistent with these. We anticipate close coordination with Eureka County incorporating the land

use plans, policies and controls of the County into the process and resolving any inconsistencies that arise to the maximum extent possible.

Effects Analyses Compared to No Action

It will be very important for us to understand how the NGM Rail effects would compare to the current effects from transportation of ore by semi-truck, not just as a standalone project. This would include air quality (including emissions and fugitive dust), wildlife and livestock impacts including collision risk, noise, light pollution, public safety, tax revenues, etc. We understand there will likely be tradeoffs to consider across the spectrum of these areas of concern.

Water Resources

Eureka County considers sustainable water use as a highest priority as memorialized in our County Master Plan and County Code. Water resources tend to be the topic of much interest and conflict in Eureka County. Water usage for any project often raises questions and concerns for Eureka County and our citizens. STB OEA should adequately analyze the water needs to construct the NGM Rail, where the water will be sourced from (including water rights), and any measures to avoid or remove conflicts with other water rights and water resources. Please coordinate with Eureka County in water resources use and analysis to help reduce conflict.

Wildlife

Sustaining our wildlife is important to the County and our residents. We believe there are wildlife mitigation measures that should be built into the design and construction of the NGM Rail to lessen adverse impact to wildlife. This would include habitat improvement offsets (including water developments) near the rail line to bolster other habitats and to draw wildlife away from the rail. We welcome the opportunity to work with NGM and STB OEA in establishing these reasonable mitigation measures.

We ask that all sage grouse, mule deer, or other wildlife projects determined to be needed to offset impacts be coordinated with the County, the County Advisory Board to Manage Wildlife, and the Eureka Conservation District. We have been implementing many wildlife habitat enhancement projects, primarily for sage grouse, and we wish to leverage our resources and projects with project proponents.

For both direct and indirect impacts to sage grouse habitat, there must be compliance with the Nevada Conservation Credit System (see NRS 232 and Nevada Administrative Code (NAC) 232). We ask for analysis of the NGM Rail under the entire Nevada Sage Grouse Conservation Plan with the Nevada Conservation Credit System (CCS) regulations as a sub-element of the overall State Plan. The State Plan is much more than just the CCS and the state mitigation regulations requiring mitigation through the CCS. There are many other policies, actions, and components of the State Plan not included in the CCS. The State Plan is built on the mantra of “avoid, minimize, mitigate.” The CCS kicks in only when the actions of “avoid” and “minimize” have not ameliorated all impacts to sage grouse and mitigation is then required. Compliance with the sage grouse mitigation regulations does not necessarily equal consistency with the State Plan. Analysis regarding consistency with the State Plan is separate from use of the CCS.

Noxious Weeds

Please ensure that weed analysis, project treatments and/or weed management planning are coordinated with the County and the Diamond Valley Weed Control District that has a shared statutory and regulatory responsibility for weed control under state and local law (see NRS 555 and NAC 555).

Vegetation Resources

Please frame vegetation impacts based on Ecological Site Descriptions (ESD) (i.e., what is expected to be there) and their associated State and Transition Models (STM) (i.e., what is there, why, and how movement between states is achieved)¹.

Socioeconomics

Please analyze potential socioeconomic impacts to all existing land uses especially on the affected public lands including ranching, hunting, and recreation.

Please work closely with our emergency and fire service providers and responders (County Fire District, EMS and Sheriff) to ensure any safety and emergency response impacts are fully included and addressed. We often see Eureka County excluded which breeds unnecessary conflict.

Also, related to socioeconomic impacts, we often see permitted grazing forage loss (otherwise described as Animal Unit Month or AUM loss) by projects diminished with the analysis speaking of impacts of lost AUMs as a percentage of total permitted AUMs and no cross-cutting analysis of the lost AUMs under socioeconomic impacts. There should be cross-cutting analyses where the reduction in AUMs, even if temporary, is quantified and disclosed in the socioeconomic section too. Our county plans and policies require mitigation of lost AUMs regardless of how many. Please frame mitigation in the socioeconomic section to counteract the loss of AUMs, regardless of the number. A few AUMs lost temporarily or forever results in major economic losses over time in addition to reduction of long-term socioeconomic stability and custom and culture tied to ranching.

Ranching/Grazing

In addition to including impacts to livestock grazing under socioeconomic impacts as noted in the socioeconomic section above, grazing forage impacts must be quantified based on the actual forage loss, not by a simple math exercise of average AUMs per acre. Please ensure that any disclosure of grazing/AUM reductions would be based on and account for actual forage unavailable for grazing reflecting physical factors and distance to water that limit grazing of certain areas to reflect limitations imposed by landscape features. Reductions are not justified in areas where livestock grazing is already limited due to minimal forage, inaccessibility, or cheatgrass dominance. This is extremely important to get this right. As has been recently seen with the Phoenix Mine, BLM used the EIS as notice to ranchers and then worked to cancel AUMs based on the analysis in the EIS, irrespective of actual conditions on the ground.

¹ BLM Policy Handbook H-1734 requires BLM and other federal, state, and local agencies to use ESDs and STMs as “a standardized system to define and describe rangeland ecological sites” and “[i]mplementation of this policy...will facilitate the stratification of rangeland landscapes according to their ability to respond similarly to ecological stressors” and to use ESDs to “provide land managers the information needed for evaluating suitability of the land for various land-use activities, the capability to respond to various management activities or disturbance processes, and the ability to sustain productivity over the long term.”

Further, there would be potential noise and movement impacts to permitted livestock grazing that must be disclosed and mitigated. We are also concerned about livestock deaths caused by train collisions, and we request establishing a clear process to compensate ranchers for any rail line related losses that may occur.

Roads and Access

The NGM Rail would cross both county and other public roads. **All** these roads fall under NRS chapters 403 and 405, respectively. The design and traffic controls at each of these intersections must be done with Eureka County's express approval. Please ensure no restrictions or stipulations on these roads and any use and upgrades needed are coordinated with Eureka County. For roads that may require additional maintenance and upgrade, including access roads during rail line construction, Eureka County requires a written agreement for this work. This is relevant even for application of water to these roads to control fugitive dust emissions which would likely be the case during at least construction of the rail line. It is the project operator's responsibility through an Applicant Committed Measure or some other mechanism to ensure that roads are not degraded due to project traffic and fugitive dust is controlled; again, requiring a road maintenance agreement to get all parties, including BLM, on the same page. Please also include statements in the respective section of the NEPA analysis disclosing the County requirement for road maintenance agreements with all project proponents that will increase travel and road-wear above customary use.

Waste, Hazardous and Solid

In our experience, many incidents related to hazardous materials are on the shipment routes where the materials are being transported to or from project sites. We are keenly interested in the transportation routes to be used to ship rail construction materials to and from the sites. We request close coordination on identification of routes to be used. Also, it is important to note that Eureka County emergency services and law enforcement do respond to events, as needed, outside of the County boundaries in the project vicinity and along the nearby transportation routes. Eureka County would likely be the first responders for any incident even in neighboring county portions of the routes. We request more than just notification of an incident or accident but pre-incident prep work to include Eureka County in event planning and response preparation in the case of an accident/release. We request STB and BLM and the proponents work with us in development of any incident response plans.

Bonding for Long-Term Disposal and Reclamation

Eureka County requests a process be developed to require bonding or some other type of long-term funding mechanism to ensure that if the rail line goes defunct, meets end of life, or becomes otherwise obsolete or inoperable that it would be fully disassembled, removed, and lands reclaimed.

Thank you for considering our input. We look forward to actively working with STB OEA, NGM, and BLM on this project.

Sincerely,



Rich McKay, Chairman
Eureka County Board of Commissioners