

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36889

NEVADA GOLD RAIL LLC—CONSTRUCTION EXEMPTION—
IN EUREKA AND LANDER COUNTIES, NEV.

Digest:¹ This decision institutes a proceeding and, based on recent changes regarding the interpretation and application of the National Environmental Policy Act (NEPA), waives certain requirements in the Board’s environmental regulations.

Decided: May 21, 2026

On May 7, 2026, Nevada Gold Rail LLC (NG Rail), an affiliate of Nevada Gold Mines LLC (NGM), filed a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct approximately 55.7 miles of common carrier rail line in Eureka and Lander Counties, Nev. (Line).² (Pet. 1.) NG Rail states it would construct two separate rail segments, the Crescent Segment (approximately 35.6 miles long), and the Boulder Segment (approximately 20.1 miles long), that would both connect to an existing Union Pacific Railroad Company (UP) mainline. (Id. at 4.)

According to the petition, NGM’s mining operation consists of eight mines in Nevada, along with associated infrastructure and processing facilities. (Id. at 2.) The Line would connect the Cortez Mine to processing facilities at the Goldstrike Mine and allow NGM to transport gold ore by rail instead of truck. (Id. at 2–3.) It would also potentially enable NGM to partner with UP to transport gold ore between mines, and to transport other commodities and consumables, such as diesel fuel, lime, and mill balls, directly to NGM’s mine sites. (Id. at 3.) NG Rail states the Line’s construction “is necessary to provide a safer, more cost-effective, and more

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² NG Rail is not seeking operating authority and states that it intends to enter into a contract with an existing, experienced third-party operator to provide common carrier service over the Line to all present and future customers. (Pet. 1.) However, approval of the exemption and construction of the Line would confer on NG Rail a residual common carrier obligation to provide service over the Line. See, e.g., Port of Moses Lake—Constr. Exemption—Moses Lake, Wash., FD 34936, slip op. at 2 n.1 (STB served Aug. 27, 2009).

environmentally friendly means of transporting gold ore from the Cortez Mine to NGM’s other facilities,” and that it is expected to reduce road congestion and air pollutants. (Id.)

The National Environmental Policy Act (NEPA) requires that the Board examine the potential environmental impacts of Board actions that fall within the statutory definition of “major federal action.” See 42 U.S.C. § 4336e(10); 49 C.F.R. § 1105.5.³ Under NEPA and the Board’s environmental regulations, actions subject to NEPA are separated into three classes that prescribe the level of environmental review required. See 42 U.S.C. § 4336(b); 49 C.F.R. § 1105.6. The Board must prepare an Environmental Impact Statement (EIS) for proposed actions that have a reasonably foreseeable significant effect on the quality of the human environment. See 42 U.S.C. § 4336(b)(1). The Board must prepare a more limited Environmental Assessment (EA) with respect to proposed actions that do not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown, unless the Board determines that the proposed action is categorically excluded from the requirement to prepare an EA or EIS. See 42 U.S.C. § 4336(b)(2).

As pertinent here, a rail construction proposal normally requires the preparation of an EIS. 49 C.F.R. § 1105.6(a). Based on the information provided by NG Rail to date and in consultation with the Board’s Office of Environmental Analysis (OEA), the Board has determined that construction of the Line has the potential to result in significant environmental impacts and therefore, the preparation of an EIS is appropriate.

The Board will follow the EIS process described below in this proceeding. This process is based on recent changes regarding the interpretation and application of NEPA. NEPA’s statutory and regulatory framework has changed significantly since the Board last revised its environmental regulations in 1991. In 2023, Congress amended NEPA to clarify and streamline the environmental review process. Pub. L. No. 118-5, § 321. Among other things, the revised statute addresses the requirements for providing notice of the intent to prepare an EIS and for soliciting comments. See 42 U.S.C. § 4336a(c).

In 2025, the Council on Environmental Quality (CEQ) published an Interim Final Rule, effective April 11, 2025, rescinding “all iterations” of its NEPA implementing regulations. 90 Fed. Reg. 10,610 (Feb. 25, 2025).⁴ The rescinded regulations included procedures for scoping, preparing, and seeking comment on an EIS. See 40 C.F.R. § 1501.9 and part 1502 (2020). Following the rescission, CEQ published NEPA implementation guidance envisioning a

³ The Board’s current regulation references the definition of “major Federal action” contained in the Council on Environmental Quality’s (CEQ’s) former NEPA implementing regulations at 40 C.F.R. parts 1500-1508. As explained below, CEQ has recently rescinded these regulations. 91 Fed. Reg. 618 (Jan. 1, 2026). Therefore, the operative definition is the statutory definition at 42 U.S.C. § 4336e(10).

⁴ CEQ adopted the Interim Final Rule as final on January 8, 2026. 91 Fed. Reg. 618.

streamlined EIS process, focused on the statutory requirements.⁵ CEQ’s actions were directed by Executive Order (E.O.) 14154, Unleashing American Energy, 90 Fed. Reg. 8353 (Jan. 20, 2025), which also directed that revisions to individual agencies’ NEPA implementing regulations must be consistent with NEPA as amended.

Moreover, in Seven County Infrastructure Coalition v. Eagle County, Colorado—a case upholding a Board EIS—the Supreme Court called for adherence to the “statutory text” and “common sense” in NEPA reviews. 605 U.S. 168, 184 (2025). The Court stated that “NEPA is a purely procedural statute that, as relevant here, simply requires an agency to prepare an EIS—in essence, a report.” See also, id. at 173 (indicating that the NEPA process should be seen as a “modest procedural requirement”).

In light of these changes to NEPA’s legal framework and to promote a more efficient and streamlined process,⁶ the Board finds it appropriate to waive certain requirements contained in 49 C.F.R. § 1105.10(a)(2)–(4) in this proceeding.⁷ These waivers are consistent with the Board’s recent proposed changes to its environmental regulations. Permitting Reform—Env’t Rev. Process, EP 779 (STB served Mar. 25, 2026) (Permitting Reform). The Board will also provide for public engagement early in the environmental review process—with public meetings and opportunities for substantive public comment.

The EIS process in this proceeding will include robust public involvement and will ensure that the Board considers the potential environmental consequences of the Line’s construction as required under NEPA. OEA has already requested comments from appropriate federal, state, Tribal, and local agencies. (See Preliminary Consultation Letter, Mar. 12, 2026). A project webpage will also be made available to the public and will be updated throughout the EIS process. OEA will publish a Notice of Intent to Prepare an EIS (NOI) containing detailed information about the planned scope of analysis for the EIS including, among other things, the purpose and need for the Line; a preliminary description of the proposed action and alternatives; a summary of expected effects; a summary of anticipated reviews, consultations, permits and

⁵ Memorandum for Heads of Departments and Agencies: Implementation of the National Environmental Policy Act (Sept. 29, 2025) (CEQ Guidance), available at <https://ceq.doe.gov/guidance/guidance.html> (last visited Apr. 23, 2026).

⁶ As CEQ has noted, “NEPA implementation reform now has been called for, authorized, and directed by all three branches of government at the highest possible level: Congress, the President, and the Supreme Court.” CEQ Guidance 6.

⁷ The Board may waive its regulations and has done so on its own motion in various contexts and proceedings. See, e.g., Expanding Access to Rate Relief, EP 665 (Sub-No. 2), slip op. at 1-2 (STB served Mar. 28, 2018) (waiving the prohibition on ex parte communications based on regulatory revisions adopted by the Board during the pendency of the proceeding); Lake Providence Port Comm’n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Pars., La., FD 36447, slip op. at 5 & n.15 (STB served Dec. 11, 2020) (waiving timeframe for posting notice of feeder line application acceptance); Rio Grande Pac.—Continuance in Control—Colo., Midland & Pac. Ry., FD 37470 (STB served Jan. 29, 2021) (waiving regulatory deadline for Board decision on motion for access).

authorizations; and a description of the public scoping process. See Permitting Reform, EP 779, slip op. at 36 (proposed 49 C.F.R. § 1105.9(f)(1)).

The NOI in this proceeding will be more fulsome than under the Board’s prior EIS process and will serve as an opportunity for interested members of the public to provide substantive comments earlier in the environmental review process. The NOI will also include a request for public comment on potential effects and on relevant information, studies, or analyses with respect to the Line. Id. at 36-37 (proposed 49 C.F.R. § 1105.9(f)(2)).

Following the NOI and scoping process, OEA will prepare and publish an EIS that will analyze in detail the potential environmental impacts of the Line, respond to public comments on the NOI, and, if appropriate, make recommendations for environmental mitigation. In making its final decision in this proceeding, the Board will consider the entire record, including the record on the transportation merits, the NOI, the EIS, and all public and agency comments received. The Board will decide whether construction of the Line should be authorized, and if so, what environmental mitigation conditions to impose.

OEA will provide ample opportunities for timely public participation in this proceeding. Public participation is an integral part of the Board’s EIS process, and meetings will be planned as appropriate to facilitate public involvement.⁸ To appropriately consider the Line’s potential environmental effects and to provide meaningful opportunities for public participation early in the process, the Board will modify its procedures in two ways.

First, the Board is modifying the process set forth at 49 C.F.R. § 1105.10(a)(2) for publishing a NOI to prepare an EIS. Specifically, OEA will address any comments on the NOI in the EIS itself, rather than publishing a “Final Scope of Study” following publication of the NOI and request for comments. The Board’s NOI process in this proceeding will present more detailed information to the public at the NOI stage than under the Board’s previous process. The two-step NOI process, as reflected in § 1105.10(a)(2), is not required under NEPA’s current framework. Section 107(c) of NEPA, added as part of the 2023 amendments, provides that EIS NOIs must “include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action.” 42 U.S.C. § 4336a(c). The statute does not mandate a further scoping process, nor envision publication of a “Final Scope of Study” or similar document following the NOI comment period and before publishing the EIS. See id. The modified NOI process that the Board will use in this proceeding is consistent with CEQ’s current guidance. See CEQ Guidance, App. 1.

Second, the Board will waive the requirements for a Draft EIS and public comment period on the Draft EIS as reflected in 49 C.F.R. § 1105.10(a)(3)-(4).⁹ The historical

⁸ Additional details, such as the timing and location of public meetings, will be outlined in the NOI.

⁹ The Board’s regulations also allow for waiver of certain Draft EIS requirements. See 49 C.F.R. § 1105.10(c) (allowing for waiver of 49 C.F.R. § 1105.10(a)(4) in individual proceedings). The waiver provisions are not intended to “waive” the Board’s responsibilities

requirement that agencies publish a Draft EIS for public comment before issuing a Final EIS stemmed not from NEPA itself, but from CEQ’s now-rescinded NEPA implementing regulations. See 40 C.F.R. § 1502.9 (2020). The 2023 NEPA amendments, in laying out the requirements for an EIS, do not require publication of a Draft EIS. See 42 U.S.C. §§ 4336, 4336a; CEQ Guidance, App. 1. In this proceeding, applying the Board’s Draft EIS provisions is therefore unnecessary, and the Board will still be able to ensure adequate and meaningful public participation, as discussed above.¹⁰

The Board will also evaluate the potential impacts of the Line’s construction on historic properties during the EIS process, in accordance with the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108; the section 106 implementing regulations, 36 C.F.R. part 800; and the Board’s environmental regulations, 49 C.F.R. part 1105.¹¹

Finally, the petition for exemption raises issues that require consideration by the Board, and as discussed above, environmental and historic review is required, and an EIS will be prepared. By this decision, the Board is instituting a proceeding under 49 U.S.C. § 10502(b). The issues presented by the petition will be addressed in a subsequent decision.

It is ordered:

1. Under 49 U.S.C. § 10502(b), a proceeding is instituted.
2. The Board waives the requirements in 49 C.F.R. § 1105.10(a)(2)–(4) for publication of a Final Scope of Study and a Draft EIS in this proceeding.
3. This decision is effective on the date of service.

By the Board, Board Members Fuchs, Hedlund, and Schultz.

under any environmental laws, but rather to “enable tailoring the environmental analysis to the specific circumstances at hand, and to give [the Board] flexibility in applying [its] own internal procedures.” Implementation of Env’t L., 7 I.C.C. 2d 807, 815 (1991).

¹⁰ “When assessing significant environmental effects and feasible alternatives for purposes of NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry[.]” Seven Cnty., 605 U.S. at 183. Here, the Board has determined that its assessment of the Line’s environmental effects will be better informed through a broad public inquiry at the scoping stage rather than a formal comment period on a complete Draft EIS.

¹¹ Though the Board has proposed revisions to its environmental regulations, it is not proposing to modify its current regulation regarding the historic review and reporting process. Proposed 49 C.F.R. § 1105.14 retains all language that is in current 49 C.F.R. § 1105.8. See Permitting Reform, EP 779, slip op. at 16, n.26.