

MEMORANDUM OF UNDERSTANDING
BETWEEN
SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS
AND
NEVADA DEPARTMENT OF WILDLIFE

**For Preparation of an Environmental Impact Statement in Docket No. FD 36889, Nevada
Gold Rail LLC – Construction Exemption – Line of Railroad in
Eureka and Lander Counties, Nev.**

I. Background and Purpose

On May 7, 2006, Nevada Gold Rail LLC (NG Rail) petitioned the Surface Transportation Board (Board) for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct approximately 55.7 miles of new rail line (proposed rail line) in Eureka and Lander Counties, Nevada. The case is docketed as Docket Number FD 36889.

The proposed action involves construction of approximately 55.7 miles of new rail line. 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), both connecting to an existing Union Pacific Railroad Company (UP) mainline. The purpose of the proposed project is to construct a new common carrier rail line to connect the Cortez Mine and the roasting facilities located at the Goldstrike Mine to the UP mainline. NG Rail identified a preferred alignment and several other feasible alternative alignments. The Board may advance alignments provided by NG Rail for further review as alternatives in the EIS, or, if presented with compelling reasons throughout the scoping process, create new alternatives for consideration in the Environmental Impact Statement (EIS).

According to NG Rail, in addition to the proposed rail line, the project would include rail sidings at certain locations, a right-of-way ranging in width from 50 to 100 feet, and ancillary railroad support facilities. Ancillary railroad support facilities – including stockpiles, rail loops, conveyor systems, and access roads – would be necessary to support loading, unloading, and maintenance activities. The project would also involve approximately 23 new at-grade crossings.

II. Authorities

- A. To construct a new interstate rail line, a rail carrier must first apply to the Board for authority under the Interstate Commerce Commission Termination Act (49 U.S.C. § 10901). Pursuant to 49 U.S.C. § 10901(c), the Board shall authorize an application for construction authority filed under 49 U.S.C. § 10901(b) unless the Board finds that the proposed activities would be inconsistent with the public convenience and necessity. In lieu of a full application, a carrier may seek construction authorization pursuant to a Petition for Exemption under 49 U.S.C. § 10502. A petition for exemption is appropriate when a full proceeding under § 10901 “is not necessary to carry out the [rail] transportation policy” in 49 U.S.C. § 10101, and the transaction is limited in scope or if regulation “is not needed to protect shippers from the

abuse of market power.” 49 U.S.C. § 10502. A Board decision whether to authorize construction under either § 10901 or § 10502 is a “major Federal action” subject to the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4370m-11). The Board has determined that it will prepare an EIS in this proceeding. Pursuant to the Board’s environmental regulations, the Board’s Office of Environmental Analysis (OEA) is the office within the Board responsible for preparing an EIS or Environmental Assessment, as appropriate, to fulfill the Board’s responsibilities under NEPA and related laws and regulations.

B. Nevada Revised Statutes (NRS) 501.105 and 501.331 whereby NDOW is responsible for administering the policies and regulations necessary for the preservation, protection, management, and restoration of Nevada’s resident wildlife species. Details of authorities may be found in NRS Chapters 501 - 506 and Nevada Administrative Codes (NAC) Chapters 501 – 505:

- i. NRS 501.331 authorizes NDOW to administer the wildlife laws of the State of Nevada.
- ii. NRS 501.337 authorizes the Director of NDOW to carry out the policies and regulations of the Nevada Wildlife Commission.
- iii. NRS 501.351 enables NDOW “to enter into cooperative or reciprocal agreements with the Federal Government or any agency thereof...”
- iv. NRS 503.584 - 503.589 directs NDOW to cooperate with other states and legal entities to the maximum extent practicable for the conservation, protection, restoration and propagation of species of native fish, wildlife and other fauna that are threatened with extinction.

C. **Lead Agency**

Pursuant to Section 107(a) of NEPA, 42 U.S.C. § 4336a(a), the Board shall be the lead agency and shall lead the preparation of the EIS. The environmental review process shall be consistent with NEPA and the Board’s environmental rules, 49 C.F.R. Part 1105.

IV. **Parties To and Purpose**

Pursuant to Section 107(a) of NEPA, 42 U.S.C. § 4336a(a), this Memorandum of Understanding (MOU) identifies Nevada Department of Wildlife (NDOW) as a cooperating agency on the EIS to coordinate with and cooperate in conducting the environmental analysis for the EIS. NDOW possesses valuable skills, resources, knowledge, and special expertise that will assist the Board in the NEPA process. This MOU establishes NDOW as a cooperating agency in the EIS and establishes procedures through which the Board and NDOW will cooperate.

V. **Term of MOU**

This MOU shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOU and shall remain in full force and effect until terminated. This MOU may be terminated, without cause, by either party upon thirty (30) days written notice to the other party. During the intervening 30 days, the agencies agree to actively attempt to resolve any outstanding disputes or disagreements that are the basis for the termination. At any time during the 30-day period, the agency initiating the request to terminate

may withdraw its request or postpone its request for an additional 30-day period. Termination of this MOU does not affect any remaining statutory obligations of the agencies.

VI. Agency Decisions and Responsibilities

- A. Pursuant to 49 U.S.C. § 10502, the Board shall decide whether to grant Board authority to construct the proposed rail line and, if so, which alternative NG Rail should construct. The Board will also decide what, if any, environmental conditions to impose on any authority granted.
- B. NDOW has special expertise in wildlife species and associated habitats, including upland, aquatic/in-stream/springs and riparian, groundwater-dependent ecosystems, occurring in Nevada across all land ownerships, and on environmental impacts, including, biological resources, vegetation resources, hydrologic resources, and soil resources. Additional expertise includes: specialized local data (biologic) and site conditions and information, and in State resource plans and policies in Nevada, including the State of Nevada Wildlife Action Plan, Greater Sage-Grouse Conservation Plan, State Wildlife Action Plan, and State of Nevada Strategic Action Plan.
- C. As the lead agency and pursuant to 49 CFR Part 1105, the Board shall prepare the EIS with the assistance of a third-party contractor. The third-party contractor shall work under the direction, supervision, and control of the Board. The contractor shall be paid for by NG Rail, as the applicant; however, NG Rail shall not have any direction, supervision, or control responsibilities over the contractor regarding the EIS. The contractor selected to work with OEA to prepare the EIS is Vanasse Hangen Brustlin, Inc. (VHB). In order to maximize efficiency, the Board and its third-party contractor shall utilize, to the extent possible, appropriate and validated baseline environmental data provided by the applicant and from other available existing studies and reports.

In addition to the roles listed in Section 107(a)(2) of NEPA, 42 U.S.C. § 4336a(a)(2) for the Board, the agencies' roles and responsibilities are as follows:

- A. The EIS shall disclose and analyze the potential environmental impacts related to resource areas that would be impacted by the proposed construction, potentially including land use, energy, biological resources, water resources, geology and soils, air quality, noise and vibration, safety, transportation systems, cultural and historic resources, and visual resources.
- B. The Board agrees to coordinate and communicate with NDOW during preparation of the EIS. The Board and NDOW will cooperate in apprising each other, as far in advance as possible, of any related actions or problems that might affect the EIS and documentation process or that might affect either party. The Board and NDOW agree to meet on issues concerning the EIS at the request of either party.
- C. NDOW agrees to provide the Board with information as available. Each agency may develop interdisciplinary teams or designate specialists to review the analysis, provide direction, or comment when necessary to meet applicable laws, regulations, and policies without undue delay. At a minimum, NDOW shall have the opportunity to review and provide comments on the following documents during the NEPA review process:

- Annotated outline for the EIS;
- Analytical methodologies to be used;
- Notice of Intent to Prepare an EIS (NOI);
- Any field survey work required for any resource areas studied for the EIS, which NDOW has special expertise in;
- An administrative draft of the completed EIS.

NDOW shall also have the opportunity to participate in meetings related to the preparation of the EIS on topics where NDOW has special expertise.

If the analysis indicates that mitigation would be appropriate, NDOW shall assist in developing mitigation measures that are applicable to resource areas, which NDOW has special expertise in. NDOW shall also assist in formulating responses to public comments on the NOI for inclusion in the EIS that pertain to NDOW.

Each agency shall work toward completing appropriate NEPA compliance and reviews for the EIS in a timely manner. Pursuant to Section 107(a)(2)(D) of NEPA, the Board shall establish a schedule for completion of the EIS that will reflect and detail expectations regarding milestones, deadlines, information sharing, coordinating with NDOW and any other cooperating agencies, and deliverables to comply with Section 107(g) of NEPA. The Board will not delay the EIS process on account of a missed deadline on the part of NDOW. Pursuant to Section 107(g)(1) of NEPA, the Board shall publish the EIS within the 2-year statutory deadline, unless the statutory deadline is extended in accordance with Section 107(g)(2) of NEPA.

VII. Data Sharing and Confidentiality

The Board and NDOW shall share relevant data, studies, and analyses to support EIS preparation. Confidential or sensitive information shall be managed according to applicable laws and policies. All information shared between the agencies during preparation of the EIS is deliberative and pre-decisional.

If NDOW provides the Board with sensitive information necessary for the NEPA analysis or cultural and wildlife clearances, NDOW shall clearly identify the information as sensitive and inform the Board of what steps it must take to protect the information.

Except as required by law, all parties receiving proprietary and/or pre-decisional and deliberative information pursuant to this MOU agree not to disclose, transmit, or otherwise divulge this information.

If a law requires either party to disclose any proprietary and/or pre-decisional and deliberative document pursuant to this MOU to the public, the party releasing the document shall notify the other party. The Board and NDOW recognize that applicable public records and open meeting laws may require release of non-exempt documents.

NDOW acknowledges that its access to proprietary and/or pre-decisional and deliberative NEPA materials may be impacted by the Nevada open meeting and public records laws.¹ The Board

¹ Pursuant to NRS 241.028, state and local government bodies that enter into a memorandum of understanding with a federal agency for the purpose of engaging with the

acknowledges that its access to proprietary state, tribal, and local government data and documents may be impacted by FOIA and other federal statutes.

VIII. Dispute Resolution

The agencies agree that if a dispute regarding the provisions of this MOU arises, efforts will be made to settle them amicably at the lowest possible level. If efforts to settle at the lowest level are unsuccessful, then the dispute will be elevated to the next higher level of management within each agency. If the next higher level of management for each agency is unable to resolve the dispute, then the dispute will continue to be elevated within the agencies until the dispute is resolved.

Following the exhaustion of the dispute resolution process, the Board's Director of OEA has been delegated the authority to resolve any disputes on behalf of the Board.

IX. Amendment

Upon mutual consent of the agencies, this MOU may be modified, amended, or supplemented in writing.

X. Limitations

- A. In the event this MOU terminates, the agencies agree that neither agency will have any administrative, judicial, or equitable right to seek to enforce the MOU, to seek any remedy arising out of an agency's performance or failure to perform any term or condition of this MOU, or to bring any action for breach of the MOU.
- B. Nothing in this MOU will be construed as creating rights or responsibilities inconsistent with applicable law or regulation, or precluding in any way the Board's discretion to approve, modify, or disapprove the proposed rail line, or to take any action relevant to the project, consistent with applicable law.

XI. Non-Fund Obligating Document

This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of value between the parties of this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for government procurement and printing. Such endeavors shall be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not prove such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

XII. Signatures

- A. All signatories have the appropriate delegation of authority to sign this MOU.

federal agency on an action under NEPA are not bound by public meeting laws in Nevada prior to the release of the public EIS or EA (as applicable).

B. The agencies hereto have executed this MOU on the dates shown below.

DANIELLE
GOSSELIN

Digitally signed by
DANIELLE GOSSELIN
Date: 2026.07.14
09:54:07 -04'00'

Dated: _____

Danielle Gosselin, Director

SURFACE TRANSPORTATION BOARD, OFFICE OF ENVIRONMENTAL ANALYSIS



Alan Jenne, Director

Dated: 7/13/2026

NEVADA DEPARTMENT OF WILDLIFE