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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
March 28, 2016
Part of
Public Record

STB Docket No. AB-1241

NEWVISTA PROPERTY HOLDINGS, LLC
– ADVERSE ABANDONMENT –
UNION PACIFIC RAILROAD COMPANY’S
IRONTON BRANCH IN UTAH COUNTY, UTAH

REPLY TO PETITION FOR WAIVER

JEREMY M. BERMAN
Union Pacific Railroad Company
1400 Dodge Street, Stop 1580
Omaha, NE 68179
Phone: (402) 544-4735

Attorney for Union Pacific Railroad Company

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REPLY TO PETITION FOR WAIVER

Union Pacific Railroad Company (“Union Pacific”) submits this reply to the petition for waiver (“Petition”) filed by NewVista Property Holdings, LLC (“NewVista”) in this proceeding on March 7, 2016. Union Pacific requests that the petition be rejected or denied in its entirety because the Board does not have authority to authorize abandonment of the rail line at issue.

NewVista’s Petition requests waivers and exemptions of certain Board regulations related to abandonment of rail lines. Petition at 1. NewVista seeks these waivers and exemptions so that it may file an adverse abandonment application on Union Pacific’s Ironton Branch, between milepost 0.0 and 1.87.¹ *Id.* The Petition should be rejected or denied because the Ironton Branch is excepted track under 49 U.S.C. § 10906 and thus outside of the Board’s abandonment authority.

In August, 1977, Union Pacific and its predecessors requested authority from the Interstate Commerce Commission (“ICC”) to physically abandon the portion of the Ironton Branch extending from Milepost 0.64 to Milepost 0.71 and to reclassify the remainder of the

¹ A map of the Ironton Branch is attached hereto as Exhibit 1.

Ironton Branch as yard track. *See* Exhibit 2. The ICC authorized the requested abandonment authority in a decision served on October 6, 1977. *Id.* Following this decision, Union Pacific filed a notice with the ICC dated December 30, 1977 stating, “Track from M.P. 0.64 to M.P. 0.71 will be retired and removed with the portions from M.P. 0.00 to M.P. 0.64 and from M.P. 0.71 to M.P. 1.87 to be retained and reclassified as yard trackage.” *See* Exhibit 3. Union Pacific removed the track from Milepost 0.64 to Milepost 0.71 and continued to use the remaining track on the Ironton Branch as yard track.

The Board recounted this history in another proceeding related to the Ironton Branch. *Joseph R. Fox—Petition for Declaratory Order*, FD 35161 (STB served May 18, 2009). In the *Fox* decision, the Board also confirmed that the track left in place on the Ironton Branch is excepted track under 49 U.S.C. § 10906. *Id.* at *3 (“The line segment at issue here, however, after being authorized for abandonment in 1977, was promptly reclassified as yard track. Industrial yard track, while excepted under 49 U.S.C. 10906 from the need to obtain Board authority for ... abandonment ...”).

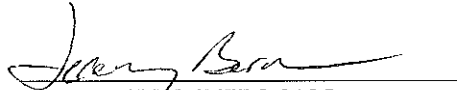
Under §10906, the Board does not have authority over abandonment of yard tracks.² Adverse abandonments of yard tracks are likewise outside of the Board’s authority.³ NewVista’s proposed adverse abandonment application cannot proceed because the Board does not have authority over abandonment of the Ironton Branch. The Petition should therefore be rejected or denied because the regulations from which NewVista seeks waivers and exemptions do not apply to the Ironton Branch.

² *Allied Indus. Dev. Corporation—Petition for Declaratory Order*, FD 35477, slip op. at *6, n.6 (STB served Sept. 17, 2015).

³ *Pinelawn Cemetery—Petition for Declaratory Order*, FD 35468, slip. op at *10, n.31 (STB served Apr. 21, 2015).

For the foregoing reasons, the Board should reject or deny NewVista's Petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeremy Berman", is written over a horizontal line.

JEREMY M. BERMAN
Union Pacific Railroad Company
1400 Dodge Street, Stop 1580
Omaha, NE 68179
Phone: (402) 544-4735

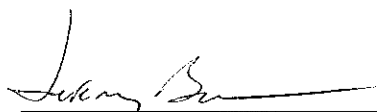
Attorney for Union Pacific Railroad Company

March 28, 2016

CERTIFICATE OF SERVICE

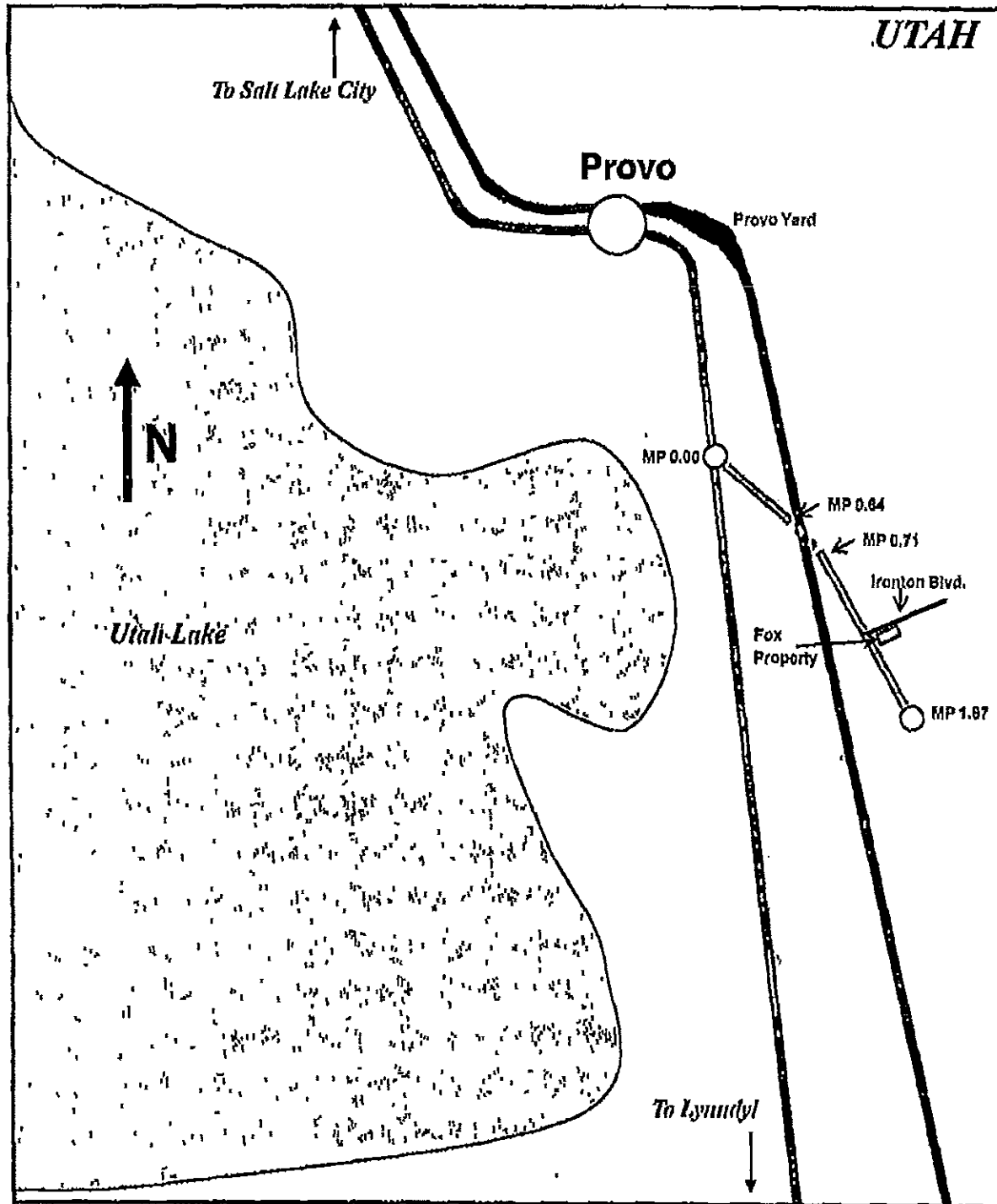
I hereby certify that on this 28th day of March, 2016, I caused a copy of the foregoing reply to be served by e-mail and first-class mail, postage prepaid on the parties listed below.

Carl J. Belliston
Attorney for NewVista Property Holdings, LLC
2365 Mountain Vista Lane
Provo, Utah 84606
cbelliston@newvistas.com



Jeremy M. Berman

Irononton Branch



- Union Pacific—Provo Subdivision**
- Union Pacific—Sharp Subdivision**
- Irononton Branch (yard track)**
- Irononton Branch (abandoned)**

Map not to scale.

Exhibit 2

CERTIFICATE AND ORDER
INTERSTATE COMMERCE COMMISSION

No. AB-85 (Sub-No. 3)

SERVICE DATE

OCT 6 1977

LOS ANGELES & SALT LAKE RAILROAD COMPANY, UNION PACIFIC RAILROAD COMPANY
AND THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY--ABANDONMENT PORTION
OF THE "FRONTON BRANCH" IN UTAH COUNTY, UTAH

PRESENT: VIRGINIA MAE BROWN, Commissioner, to whom the matter which is the subject
of this certificate and order has been referred for action.

On August 4, 1977, the Los Angeles & Salt Lake Railroad Company (LA&SL), the Union Pacific Railroad (UP), and The Denver & Rio Grande Western Railroad Company (Rio Grande), referred to jointly as "applicants," jointly filed an application under section 1a of the Interstate Commerce Act, for a certificate of public convenience and necessity authorizing the LA&SL and Rio Grande to physically abandon and the UP and Rio Grande to abandon operations over a branch line of railroad known as the Fronton Branch, which extends from milepost 0.00 to milepost 1.87 near Fronton in Utah County, Utah.

Since no petition to investigate has been filed as provided in section 1a(3) of the Act and pursuant 49 C.F.R. section 1121.36(a)(1), this proceeding may be disposed of on the record as submitted. Although the line is shown as a category 1 line on the LA&SL System Diagram filed with the Commission on April 29, 1977, since there has been no objection to the proposed abandonment by any affected user, state or political subdivision, the proceeding need not be delayed for the 4 month period following the date upon which the system diagram was filed. Section 1a(5)(b) of the Act.

If the abandonment is authorized, applicants intend to remove and retire portions of the line between milepost 0.64 and 0.71. The remainder of the track will remain in place and be reclassified as yardtrack. There are no remaining shippers located on the Fronton Branch. Therefore, abandonment of this portion will have no effect on the movement of products to and from the area by rail.

I, therefore, find, that the present and future public convenience and necessity permit the physical abandonment of the Fronton Branch by the Los Angeles & Salt Lake Railroad Company and The Denver Rio Grande Western Railroad Company, and the abandonment of operations by the Union Pacific Railroad Company and The Denver & Rio Grande Railroad Company over the Fronton Branch Line of railroad. This finding is subject to the condition that employees shall be entitled to the protection enacted in and developed pursuant to section 405 of the Rail Passengers Service Act (45 USC 565) as stated in Oregon Short Line R. Co.--Abandonment-- Goshen 354 I.C.C. 76 (1977). I further find that abandonment by the applicants of the Fronton Branch line will not result in a serious adverse impact on rural and community development and that this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

I, therefore, order that, in the absence of any petitions to investigate the requirement of section 1121.36(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final, is waived. Notice of findings previously made shall be submitted for publication in the Federal Register on the date the certificate and order is served. Within 10 days after receiving notice that an offer of financial assistance is being considered, applicants shall comply with the information

requirements of section 1121, 1122 of the Regulation.

All correspondence to the Commission regarding orders of financial application for the continued operation or regulation of the Fronton Branch Line shall refer to this proceeding, "AT-11867" shall be typed on the lower left-hand corner of envelopes containing such correspondence.

I further order that actual abandonment may be effected by the applicant after the effective date of this certificate and order provided no order for continued rail operations is received. This authority to abandon is subject to the employee conditions set forth above.

If the abandonment is effected, tariffs applicable to the Fronton Branch Line may be repealed if, pursuant to section 6 of the Interstate Commerce Act, the Commission is given not less than 10 days notice. Applicants shall refer to this certificate and order by date and docket number when filing schedules which cancel tariffs applicable to the Fronton Branch Line.

If the authority granted in this certificate and order is not exercised within one year from its effective date, it shall be of no further force and effect.

This certificate and order shall be effective 15 days from the date of publication of notice in the Federal Register unless otherwise ordered by this Commission.

Dated at Washington, D.C., on the 27th day of September, 1977.

By the Commission, Commissioners: Madson,

K.C. HODMAN, JR.
Acting Secretary

(SHAL)

Exhibit 3

December 30, 1977

1806.1

Mr. B. J. Thomas, Jr., Director
Bureau of Accounts
Interstate Commerce Commission
Washington, D. C. 20423

Dear Mr. Thomas:

This refers to certificate and order covering Finance Docket No. AB-35 (Sub-No. 3), service date October 6, 1977, authorizing the Los Angeles & Salt Lake Railroad Company to abandon the Ironton Branch from H.P. 0.00 to H.P. 1.87 at Ironton, Utah.

Transportation operations were discontinued on this line and track physically severed at 9:00 A.M., December 5, 1977. Track from H.P. 0.64 to H.P. 0.71 will be retired and removed with the portions from H.P. 0.00 to H.P. 0.64 and from H.P. 0.71 to H.P. 1.87 to be retained and reclassified as yard trackage.

Accordingly, attached are two copies of proposed journal entry for retirement of the proportions prepared in accordance with Sections 2-3, 2-7, and 2-8 of the instructions for property accounts in the Uniform System of Accounts for Railroad Companies.

Will appreciate advice of your approval.

Yours truly,

Original Signed
J. P. DEASEY

Attach.

BCC: Mr. T. H. Graves, Jr.
Mr. G. B. Schaefer
Mr. J. H. Rebersdorf