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**Office of Proceedings**  
**September 12, 2016**  
**Part of**  
**Public Record**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 36040

NEWVISTA PROPERTY HOLDINGS, LLC  
--PETITION FOR DECLARATORY ORDER--

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**UNION PACIFIC RAILROAD COMPANY'S REPLY**  
**TO NEWVISTA'S OPENING STATEMENT**

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September 12, 2016

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TO NEWVISTA'S OPENING STATEMENT**

Union Pacific Railroad Company ("Union Pacific") submits this reply to the opening statement filed by NewVista Property Holdings, LLC ("NewVista") in this proceeding on August 23, 2016. As stated in the Board's decision in this proceeding served on June 24, 2016 (the "Decision"), the only issue for the Board to address is "whether the yard track has been or can be removed from the Board's jurisdiction." Decision at 2. NewVista requests a decision from the Board removing the yard track, also known as the Ironton Branch, from the Board's jurisdiction. Opening Statement at 10. Union Pacific does not object to the Board issuing such a decision only with respect to the portion of the Ironton Branch from milepost 0.71 to 1.87, as depicted on Exhibit 1 as a blue-dotted line. The portion of the Ironton Branch from milepost 0.0 to near the west side of milepost 0.71, shown in red on Exhibit 1, is still an active part of Union Pacific's rail network and may not be removed from the Board's jurisdiction.<sup>1</sup>

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<sup>1</sup> Original milepost 0.0 on the former Ironton Branch is near Sharp Subdivision milepost 751.0. UP currently uses the Sharp Subdivision mileposts to define the area in the timetable and other documents. Exhibit 1 shows the original mileposts for continuity and simplicity.

***The Ironton Branch has been abandoned***

As the Board has confirmed twice, Union Pacific received abandonment authority over the Ironton Branch and consummated that authority. See *Joseph R. Fox—Pet. for Declaratory Order*, FD 35161 (STB served May 18, 2009) (“*Fox*”) and *NewVista Property Holdings, LLC—Pet. for Declaratory Order*, FD 36040 (STB served June 24, 2016). Following consummation, Union Pacific continued using portions of the Ironton Branch as yard track. *Id.* By virtue of this continued use as yard track, the remaining portions of the Ironton Branch currently fall within the Board’s jurisdiction under 49 U.S.C. § 10501(b) but fall outside the Board’s licensing pursuant to 49 U.S.C. § 10906. *Fox*, slip op. at 3. Because the Ironton Branch is yard track under § 10906, it can be removed from the Board’s jurisdiction upon a showing it is no longer needed for the interstate rail system. *Pinelawn Cemetery—Pet. for Declaratory Order*, FD 35468, slip op. at 9 (STB served Apr. 21, 2015).

***Milepost 0.71 to 1.87 of the Ironton Branch may be removed from Board jurisdiction***

The facts on the ground have changed since the Board’s decision in *Fox*, and Union Pacific now agrees that the portion of the Ironton Branch from milepost 0.71 to 1.87 is no longer needed for the interstate rail system. At the time of the *Fox* decision, this portion of the Ironton Branch had recently been used for rail purposes and Union Pacific was actively seeking opportunities for rail customers to use the track. *Fox*, slip op. at 4. Unfortunately, the new opportunities never came to fruition, and Union Pacific is not currently marketing this portion of the Ironton Branch to customers. Union Pacific does not currently believe there is a reasonable expectation that customers will return to this portion of the Ironton Branch and does not view milepost 0.71 to 1.87 of the Ironton Branch as necessary or useful to Union Pacific’s interstate rail network. This conclusion is reinforced by the fact that Union Pacific is currently in

negotiations to transfer its property interests in this portion of Ironton Branch to NewVista for non-rail redevelopment.<sup>2</sup>

While the facts now surrounding this portion of the Ironton Branch in this case allow for it to be removed from the Board's jurisdiction, the decision to remove track or property from the Board's jurisdiction should not be taken lightly. Rail property should not be removed from the Board's jurisdiction merely because it is not currently being used or has not been used in many years. For example, if Union Pacific had a legitimate reason to believe rail traffic could return to the Ironton Branch, as it did prior to the *Fox* decision, then the track should properly remain under the Board's jurisdiction. Similarly, if Union Pacific sees a potential future need for track, whether for car storage or any other activity that supports the interstate rail network, then such track should remain within the Board's jurisdiction. As stated above, these facts are not present in the current proceeding and therefore Union Pacific does not object to the Board issuing a decision removing the portion of the Ironton Branch from milepost 0.71 to 1.87 from the Board's jurisdiction.

***Former milepost 0.0 to 0.71 of the Ironton Branch is still an active part of Union Pacific's interstate rail network and cannot be removed from the Board's jurisdiction***

The track from former milepost 0.0 to near the west side of milepost 0.71 currently provides a connection between Union Pacific's Provo Subdivision and Sharp Subdivision. The Provo Subdivision runs from Salt Lake City through Provo then south to Helper, Utah and is part of Union Pacific's line that runs from Denver to Salt Lake City and into Nevada. The Sharp Subdivision provides a connection from Provo to the Union Pacific line between Salt Lake City and Los Angeles.

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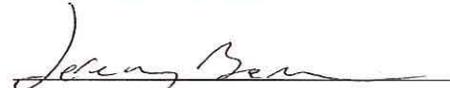
<sup>2</sup> Union Pacific's property interests are comprised of different easements of varying terms.

The connecting track between the Provo and Sharp Subdivisions is used on a daily basis for an average of 4.9 trains per day, which includes through trains and switching movements. The majority of through trains that use this connection are coal trains moving to or from coal mines located in Colorado and Utah. Because of this use, the connecting track is clearly an active part of Union Pacific's interstate rail network and cannot be removed from Board jurisdiction.

Union Pacific does not believe that NewVista intended to remove the active connecting track from Board's jurisdiction. NewVista's opening statement focused on the portion of the Ironton Branch east of the Provo Subdivision, from milepost 0.71 to 1.87. This is the same portion of the Ironton Branch that was at issue in *Fox. Fox*, slip op. n.4. NewVista also presented no evidence with respect to Union Pacific's operations on the connecting track, from milepost 0.0 to 0.71. However, NewVista's opening statement defines the Ironton Branch as beginning at the connection with Union Pacific's Sharp Subdivision, at milepost 0.0, and continuing to milepost 1.87. This definition includes the connecting track. To avoid any doubt, Union Pacific requests that the Board include in its decision a finding that the connecting track, shown in red on Exhibit 1, is an active part of Union Pacific's interstate rail network.

For the foregoing reasons, Union Pacific does not object to the Board issuing a decision that the portion of the Ironton Branch from milepost 0.71 to 1.87 may be removed from the Board's jurisdiction and requests that the Board find that former milepost 0.0 to near the west side of milepost 0.71 the Ironton Branch remains part of the interstate rail network.

Respectfully submitted,



Jeremy M. Berman

Union Pacific Railroad Company

1400 Dodge Street, Stop 1580

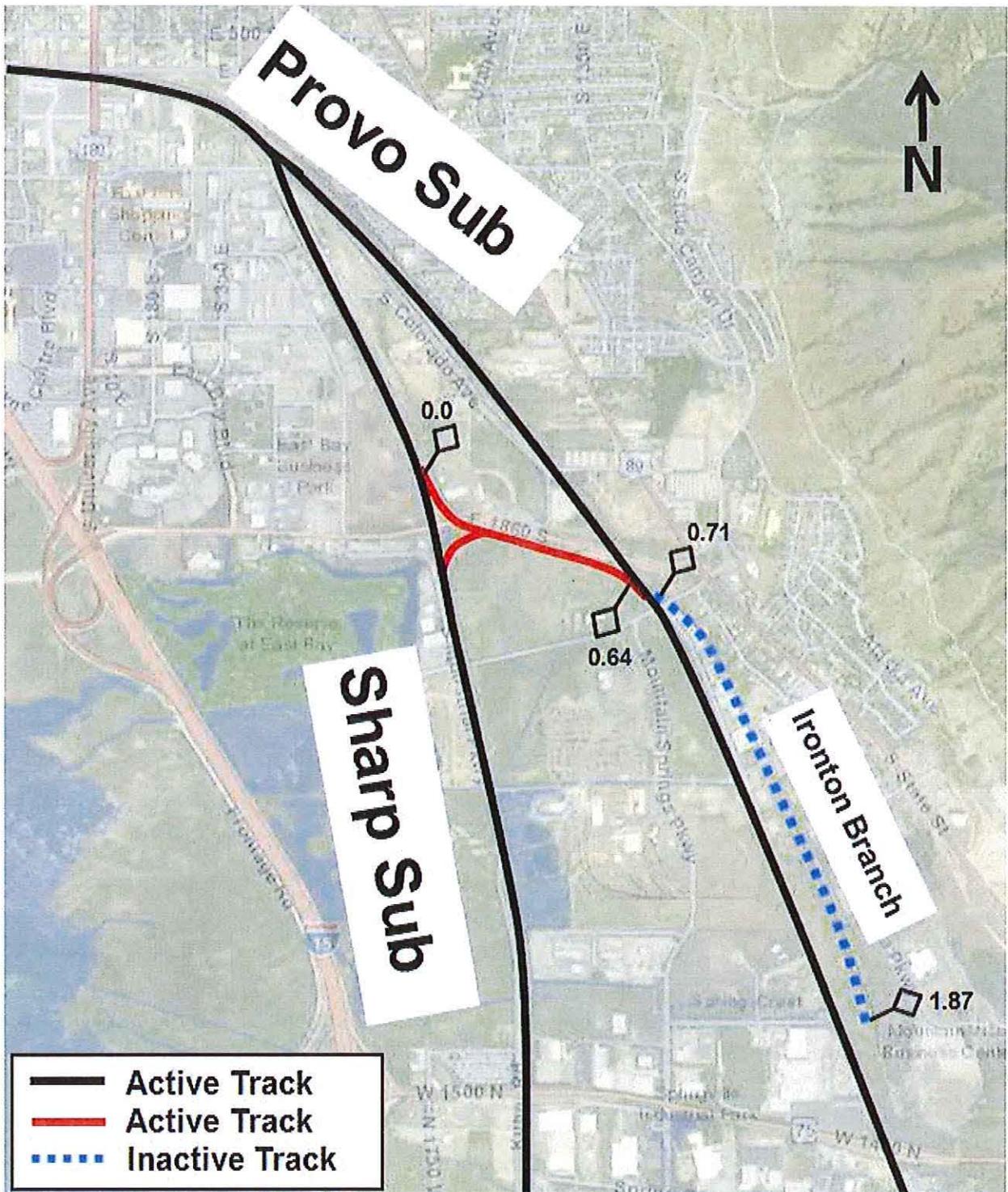
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September 12, 2016

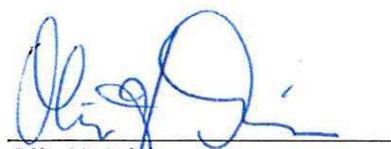
Exhibit 1 – Map



## VERIFICATION

I, Olin H. Dirks, Senior Manager Rail Line Planning for Union Pacific Railroad Company, declare under penalty of perjury that I have read the foregoing Reply of Union Pacific Railroad Company and that the facts and information set forth therein with respect to operations on the tracks in question are true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on September 9, 2016



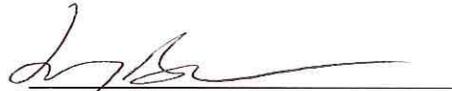
Olin H. Dirks

## CERTIFICATE OF SERVICE

I hereby certify that on this 12<sup>th</sup> day of September, 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.

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