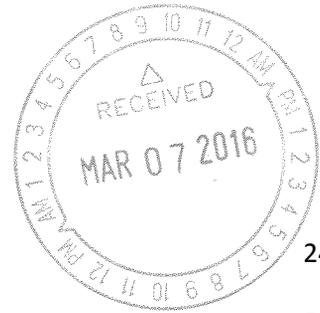


BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423



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STB Docket No. AB 1241

ENTERED  
Office of Proceedings  
March 7, 2016  
Part of  
Public Record

NEWVISTA PROPERTY HOLDINGS, LLC  
ADVERSE ABANDONMENT OF THE IRONTON BRANCH  
IN UTAH COUNTY, UTAH

PETITION FOR WAIVER  
(EXPEDITED CONSIDERATION REQUESTED)

Respectfully Submitted,

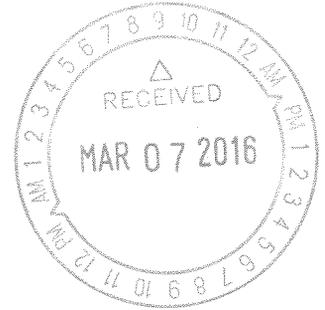
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BEFORE THE  
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NEWVISTA PROPERTY HOLDINGS, LLC  
ADVERSE ABANDONMENT OF THE IRONTON BRANCH  
IN UTAH COUTY, UTAH

PETITON FOR WAIVER  
(EXPEDITED CONSIDERATION REQUESTED)

**A. Background Facts**

Pursuant to 49 C.F.R. §1152.24(e)(5), NewVista Property Holdings, LLC, a Utah limited liability company (“Petitioner”) seeks waiver of certain requirements of the Surface Transportation Board (“STB”) abandonment regulations for an adverse abandonment application that Petitioner intends to file in this proceeding. Petitioner also seeks certain related exemptions as described below. These requirements are inapplicable or unnecessary in the context of Petitioner’s application for adverse abandonment, and the STB has a well-documented history of granting such waivers and exemptions.

Petitioner intends to file its adverse abandonment application with the STB within the 45-day period following the filing of this petition, or within such other time period as permitted by law, pursuant to 49 U.S.C. 10903 and 49 C.F.R. Part 1152 for an order permitting adverse abandonment of an inactive line of railroad believed to be owned by the Union Pacific Railroad (“UPR”), running approximately 1.8 miles in Provo City, Utah County, State of Utah, commencing at UPR’s Sharp Subdivision (milepost 0.0), crossing UPR’s Provo Subdivision between mileposts 0.64 and 0.71, and stub-ending at milepost 1.87 (referred to herein as the “Ironton Branch”). Petitioner owns, or controls, nearly all of the industrial property that abuts

the line. There are no stations on the Ironton Branch, and, to the best knowledge, information, and belief of Petitioner, the Ironton Branch does not include any federally granted rights-of-way. Petitioner believes that there are no existing or potential customers located anywhere along the line. (See STB Decision in the case of Joseph R. Fox—Petition for Declaratory Order, STB Docket No. FD-35161, (served May 18, 2009), which is a case involving the Ironton Branch.)

The Ironton Branch has not been used for railroad purposes since before the Board's decision in the Fox matter. The line continues in disrepair and is unusable; the line continues to be disconnected from the main line at the UPR's Sharp Subdivision; the crossing signal at about milepost 0.64 has been removed; the tracks at about milepost 1.25, where the line crosses Ironton Blvd., have been removed, and to Petitioner's best knowledge, information, and belief, the UPR has not obtained any customers for the line for more than a decade. Petitioner desires abandonment of the line so that it may pursue environmental cleanup of the affected property pursuant to a Voluntary Cleanup Agreement with the Utah Department of Environmental Quality, if appropriate, and develop the property for commercial purposes. Currently, the Ironton Branch presents a substantial environmental hazard and impediment to commercial development appropriate to the area, and serves no national or local useful public service as a railroad line, warranting circumstances appropriate for Petitioner's future application for adverse abandonment.

## **B. Waiver Requests**

Historically, the STB has granted waiver requests when the STB's regulations concerning adverse abandonment are largely inapplicable or irrelevant to the circumstances, as is the case with the anticipated adverse abandonment related to the Ironton Branch. Waivers are appropriate when a particular requirement is not relevant to the merits of a petitioner's adverse abandonment

application. See, e.g., Riverview Trenton Railroad Company – Adverse Abandonment – In Wayne County Mich, STB Docket No. AB 1230 (served April 10, 2105); Lackawaxen-Honesdale Shippers Association, Stourbridge Railroad Company, and Delaware Lackawaxen and Stourbridge Railroad Company – Adverse Discontinuance of Operating Authority – In Wayne and Pike Counties, PA, STB Docket No. AB 1110 (served January 23, 2014); Paulsboro Refining Company LLC – Adverse Abandonment – In Gloucester County, NJ, STB Docket No. AB 1095 (Sub-No. 1) (served July 26, 2012); Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IN, STB Docket No AB-290 (Sub-No. 286) (served October 26, 2006); Napa Valley Wine Train, Inc. – Adverse Abandonment – In Napa Valley, CA, STB Docket No. AB-582 (served March 30, 2001); City of Rochelle, Illinois – Adverse Discontinuance – Rochelle Railroad Company, STB Docket No. AB-549 (SIB served June 5, 1998); Grand Trunk Western Railroad Incorporated – Adverse Discontinuance of Trackage Rights Application – A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH. STB Docket No. AB-31 (Sub No. 30) (served Feb. 13, 1998).

The waivers requested herein are justified because the contemplated abandonment application is a “third party” adverse abandonment application in which Petitioner will not have access to system maps and certain other information. Moreover, many of the concerns sought to be addressed by the regulations are not relevant to the Ironton Branch, which is severed from any main or connecting line, is only approximately 1.8 miles long, and neither serves nor will serve any existing or potential customers. There are no existing or potential stations and no existing or potential transload sites serviced by the line.

Accordingly, Petitioner requests waiver of the following informational requirements of 49 C.F.R. Part 1152:

1. 49 C.F.R. §§1152.10 - 1152.14, 1152.22(a)(5) – System Diagram Map

Petitioner respectfully requests waiver of the system diagram map requirements of 49 C.F.R. Part 1152, Subpart B and the requirement of 49 C.F.R. §1152.22(a)(5) requiring submission of a system diagram map with the abandonment application. There is no need for a system map. That requirement is designed to permit a change of operations, not adverse abandonment of the line. Moreover, a simple map showing the location of the Ironton Branch in relation to UPR's main line will adequately show all potential impacts to remaining rail service in the area, because the Ironton Branch is a very short and isolated spur off the main line.

The Board has granted waivers of these requirements on similar facts. See Riverview Trenton Railroad, supra at 3 (“Applicants in these types of cases generally do not have access to the SDM, as is the case here.”); Paulsboro Refining Company, supra at 3 (“Exemption and waiver of the system diagram map requirements are customary in adverse proceedings . . .”).

2. 49 C.F.R. §1152.20 – Notice and Publication Requirements

Petitioner respectfully requests a waiver of the requirements to serve its Notice of Intent on the persons and entities listed in 49 C.F.R. §1152.20(a)(2)(i), (vii), (viii), (ix), (x), (xi), and (xii), as well as the posting requirements in 49 C.F.R. §1152.20(a)(3) and the publication requirements in 49 C.F.R. §1152.20(a)(4).

Petitioner requests waiver of the requirement in 49 C.F.R. §1152.20(a)(2)(i) to serve the notice on significant users of the track, because there have been no operations on the Ironton Branch for more than 8 years and there are no shippers or users of rail service on it.

Petitioner requests waiver of the requirement in 49 C.F.R. §1152.20(a)(2)(vii) to serve notice on the Department of Defense, because the short spur constituting the Ironton Branch has no conceivable military significance.

Petitioner requests waiver of the requirement in 49 C.F.R. §1152.20(a)(2)(viii) and (xi) to serve notice on the U.S. Department of Interior and Chief of the Forest Service, because the Ironton Branch runs through industrial land within the incorporated city limits of Provo, Utah and has no potential for public recreational use. The deed granting the right-of-way provides that the land will revert to private use when it no longer is used for railroad purposes, and Provo City has quit-claimed to Petitioner all of its rights in the affected land.

Petitioner requests waiver of the requirement in 49 C.F.R. §1152.20(a)(2)(ix) and (xii) to serve notice on the Railroad Retirement Board and labor organizations affecting employees on the affected rail line, because there are no known employees who have ever worked on the Ironton Branch.

Petitioner requests waiver of the requirement in 49 C.F.R. §1152.20(a)(2)(x) to serve notice on Amtrak, because Amtrak has never operated on the Ironton Branch.

This Petition for Waiver will be served on UPR, Provo City, the Governor of the State of Utah (by certified mail), the Utah Department of Transportation, the Utah Department of Environmental Quality, the Utah Public Service Commission and any other entity as deemed required by the Board. This Petition for Waiver includes substantially all of the relevant information required by the regulations. By leave of the Board, it shall serve as the notice of intent to adversely abandon rail the Ironton Branch as required by under 49 C.F.R. §1152.20.

In other cases with similar facts, the Board has granted waivers of these requirements. See Riverview Trenton Railroad, supra at 4 (permitting the petition to serve as notice of intent to abandon and requiring that the petitioner serve notice of intent only on the railroad, the city, the Michigan Department of Transportation, and the Michigan Public Service Commission); Lackawaxen-Honesdale Shippers Association, supra at 4 (permitting the petition to serve as

notice of intent to abandon and requiring that the petitioner serve notice of intent only on the railroad, connecting rail carriers, the Pennsylvania Department of Transportation, the Pennsylvania Public Utility Commission, duly certified labor organizations, and the Railroad Retirement Board); Napa Valley Wine Train, *supra* at 4 (compliance with publishing and posting notice requirements “is not feasible by a third party applicant.”); Norfolk Southern Railway, *supra* at 3.

3. 49 C.F.R. §1152.22(d) – Revenue and Cost Data

Petitioner seeks a waiver from the requirements of 49 C.F.R. §1152.22(d) relating to revenues and avoidable costs. This kind of information would be in the exclusive possession of UPR if it exists. However, the Ironton Branch has not been used for years. There are no shippers along the line and presumably no revenues or costs associated therewith. Nothing in the present case is predicated on a cost/revenues analysis.

The Board has granted waivers of this requirement on similar facts. See Riverview Trenton Railroad, *supra* at 3.

4. 49 C.F.R. §1152.24(f) and 49 C.F.R. §1152.29(e)(2) – Waiver of Abandonment Consummation Notice and One Year Authorization

Petitioner requests waiver of the requirements of 49 C.F.R. §1152.24(f) and 49 C.F.R. §1152.29(e)(2), because Petitioner may not be able to control when the abandonment by the UPR is consummated. Petitioner may need to resort to state or federal law to require that the UPR vacate the Ironton Branch. In Riverview Trenton Railroad, *supra* at 5, the Board granted a waiver of the one-year time limit for consummation, based on the fact that the petitioner had no control over the timing of consummation once the Board issues a final decision authorizing abandonment.

5. 49 C.F.R. §1152.29 – Interim Trail Use

Petitioner requests waiver of the interim trail use provisions of 49 C.F.R. §1152.29.

Petitioner believes that its petition presents an appropriate case for waiver since nearly all of the land affected by the Ironton Branch from about milepost 0.67 is owned by Petitioner. Moreover, the deed granting the right-of-way provides that the land will revert to private use when it no longer is used for railroad purposes, and Provo City has quit-claimed to Petitioner all of its rights in the affected land.

### C. Exemption Requests

Petitioner requests exemption from the following statutory requirements pursuant to the authority granted in 49 U.S.C. §10502:

#### 1. 49 U.S.C. §10903(c)(2) – System Diagram Map

Petitioner requests an exemption from the system diagram map requirements of 49 U.S.C. §10903(c)(2) to the extent deemed necessary for the adverse abandonment application, for the same reasons that it seeks a waiver of the related requirement in 49 C.F.R. §1152.22(a)(5) pertaining to identification of the track that is the subject of the application. Petitioner does not have access to such a map.

#### 2. 49 U.S.C. §10903(c)(2) – Notice to Significant Users

Petitioner requests an exemption from the requirement in 49 U.S.C. §10903(a)(3)(D) to serve notice on significant users of the track, for the same reasons that it seeks a waiver of the related requirement in 49 C.F.R. §1152.20(a)(2)(i). There have been no operations on the Ironton Branch for more than 8 years and there are no shippers or users of rail service on it.

#### 3. 49 U.S.C. §10903(a)(3)(B) – Posting Requirements

Petitioner requests an exemption from the requirement in 49 U.S.C. §10903(a)(3)(B), and the related requirement in 49 C.F.R. §1152.20(a)(3), to post a copy of the notice of intent in

terminals and stations on each portion of the line proposed to be abandoned, because Petitioner is not legally in possession of the line. Petitioner does not have the ability to comply with those requirements. Moreover, the referenced provisions are designed for carriers proposing to voluntarily discontinue their own service over a line. In the case of the Ironton Branch, there are no terminals or stations on the line and no users who will be affected.

The Board has granted exemptions from this requirement on similar facts. See Riverview Trenton Railroad, supra at 4; Lackawaxen-Honesdale Shippers Association, supra at 5.

#### 4. 49 U.S.C. §10904 – Financial Assistance Requirements

Petitioner requests an exemption from the financial assistance requirements of 49 U.S.C. §10904, and waiver of related regulations, 49 C.F.R. §1152.27, because Petitioner will seek to have the line declared as abandoned for public convenience and necessity by putting it and the subject property to viable alternative non-rail use. Application of the above provisions is not necessary to carry out the national rail transportation policy of 49 U.S.C. §10101. Rather, abandonment of the Ironton Branch will promote that policy by fostering sound economic conditions in transportation, 49 U.S.C. §10101(5). Other aspects of rail transportation policy will not be adversely affected.

The Board has granted exemptions from this requirement on similar facts. See Riverview Trenton Railroad, supra at 6 (“It would be fundamentally inconsistent with such a finding [that public convenience and necessity no longer require or permit a line’s operation] to allow parties to seek to restart rail service by pursuing an OFA . . . .”)

### **REQUEST FOR EXPEDITED CONSIDERATION**

Petitioner respectfully requests expedited consideration of this waiver request so that Petitioner may pursue its abandonment application of the Ironton Branch. Petitioner and its

predecessors in interest have incurred expenses in excess of \$50,000 in characterizing the environmental hazards along the Ironton Branch. Petitioner has entered into a Voluntary Clean Up Agreement with the State of Utah with respect to remediation of the affected property once the site is finally characterized, but cleanup cannot advance without the cooperation of the UPR, which has not been forthcoming, and abandonment of Ironton Branch by UPR. Provo City and surrounding communities and businesses will all benefit from the UPR's abandonment of the Ironton Branch and remediation of the site.

For the reasons stated herein, Petitioner requests that the Board expeditiously consider these requests and grant Petitioner's waivers and exemptions as stated herein.

Dated: March 1, 2016.

Respectfully Submitted,



Carl J. Belliston  
Attorney for NewVista Property Holdings, LLC  
2365 Mountain Vista Lane, Provo, UT 84606  
801-376-2210

I certify that I have this day served copies of this document on all parties of record in this proceeding by United States mail.

 3/1/16  
(Signature) (Date)