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244711

November 15, 2017

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

ENTERED
Office of Proceedings
November 15, 2017
Part of
Public Record

Re: City of Glenwood Springs, CO -
Petition for Declaratory Order
Docket No. FD 36150

Dear Ms. Brown:

Enclosed for filing is a Petition for Declaratory Order being filed on behalf of the City of Glenwood Springs, Co. (the "City")

The City is a local government entity that is not a railroad and that does not seek to become a railroad. It is filing solely in its capacity as a governmental entity. Accordingly, the City requests that the Board waive the otherwise applicable filing fee as provided in 49 CFR 1002.2(e)(1).

FILED
November 15, 2017
SURFACE
TRANSPORTATION BOARD

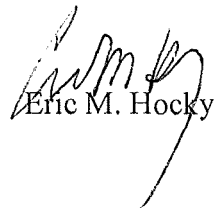
FEE RECEIVED
November 15, 2017
SURFACE
TRANSPORTATION BOARD

Cynthia T. Brown
November 15, 2017
Page 2

Please contact me if there are any questions regarding this filing or the fee waiver request.

Respectfully,

CLARK HILL PLC



Eric M. Hocky

EMH/e

cc: All parties shown on the service list

Before the
SURFACE TRANSPORTATION BOARD

Docket No. FD 36150

**CITY OF GLENWOOD SPRINGS, CO –
PETITION FOR DECLARATORY ORDER**

PETITION

(color copies included)

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Attorneys for
City of Glenwood Springs, CO

Dated: November 15, 2017

Before the
SURFACE TRANSPORTATION BOARD

Docket No. FD 36150

**CITY OF GLENWOOD SPRINGS, CO –
PETITION FOR DECLARATORY ORDER**

PETITION

Union Pacific Railroad Company (“UP”) owns an easement over certain “Wye Property” and “Wye Trackage” in the City of Glenwood Springs, CO (the “City”). Because UP sold its common carrier rights over the Wye Trackage to the predecessor of the Roaring Fork Transportation Authority (“RFTA”) while retaining an easement to use the Wye Trackage for non-common carrier purposes,¹ UP’s current permitted use of the Wye Trackage is as ancillary or excepted track under 49 U.S.C. §10906. The City has plans for an improvement project (the “8th Street Project”) that requires use of a portion of the Wye Property. Discussions between the City and UP for voluntary relinquishment of UP’s easement over those portions that are needed to undertake the 8th Street Project have not been successful. Accordingly, the City seeks a declaration from the Board that a portion of the Wye Trackage does not need to be part of UP’s interstate rail system, and that the Board removes its jurisdiction over those portions of the Wye Trackage because they are not necessary to UP’s Section 10906 operations. Such a decision would allow the City to pursue its condemnation rights in State Court to acquire UP’s easement rights over those portions needed by the City for the 8th Street Project. The City is not seeking to

¹ *Roaring Fork Railroad Holding Authority – Acquisition and Operation Exemption – Southern Pacific Transportation Company*, FD 33390 (STB served July 21, 1997) (“*RFRHA Acquisition*”).

remove the STB's jurisdiction over the Wye Trackage as it relates to RFTA or the rail banked status of the Wye Trackage.

In recent decisions, the Board has explained that the proper vehicle for removing the Board's jurisdiction over yard or other Section 10906 excepted tracks is through a declaratory order proceeding. *See NewVista Property Holdings, LLC – Petition for Declaratory Order*, STB Docket No. 36040, slip op. at 2 (served June 24, 2016); *Pinelawn Cemetery – Petition for Declaratory Order*, ICC FD 35468, slip op. at 11 n.31 (served April 21, 2015) and not through the adverse abandonment process. Therefore, the City has filed this Petition.

The Board has discretionary authority under 5. U.S.C. §554(e) and 49 U.S.C. §1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. The City hereby asks the Board to resolve the controversy regarding whether UP's interest in the track in question has been or can be removed from the Board's jurisdiction.

BACKGROUND

In July 1997, RFTA's predecessor, Roaring Fork Railroad Holding Authority ("RFRHA"), was authorized to acquire from Southern Pacific Transportation Company ("SP"), and operate as a common carrier, a 33.44-mile line of railroad known as the Aspen Branch, described as extending from milepost 360.22 near Glenwood Springs to the end of the line at milepost 393.66 near Woody Creek, in Garfield, Eagle, and Pitkin Counties, Colo. (the "Line"). *Roaring Fork Railroad Holding Authority – Acquisition and Operation Exemption – Southern Pacific Transportation Company*, FD 33390 (STB served July 21, 1997) ("*RFRHA Acquisition*"). The Line included Wye Trackage (consisting of the eastern wye track, the western wye track, and the "wye tail track") located in the City that connected with SP's Denver, CO to Salt Lake City, UT main line. The Wye Trackage is shown on Exhibit A. As relevant

herein, the sale of the Line by SP to RFRHA² was made pursuant to a Purchase and Sale Agreement, a Shared Use and Pedestrian Walkway Agreement (the “Shared Use Agreement”), and a Bargain and Sale Deed (the “Deed”). Copies are attached hereto as Exhibits B, C and D³, respectively.

In the Purchase and Sale Agreement and the Deed⁴, SP reserved

a perpetual exclusive freight rail easement, on, under, over and through the [Wye Property] for the purpose of maintaining, repairing, installing, operating, storing and using in connection with Grantor’s [SP’s] rail operations existing and/or future railroad, rail and railroad-related equipment, railroad facilities, transportation systems, and railroad communications systems, including but not limited to, all existing facilities and related equipment and appurtenances (collectively the “Rail Facilities”) and a perpetual non-exclusive easement on, under, over and through the Wye Property for the purpose of using the Rail Facilities for passenger rail operations.

Notwithstanding the apparently broad exclusive freight rail easement, SP did not retain any of the common carrier obligations with the respect to the Wye Property or the Line, all such common carrier obligations being transferred to RFRHA. *See* Exhibit B, PSA, §10.9. As such, RFRHA inherently acquired certain rights to use the Wye Property to fulfill its common carrier obligations. These rights were confirmed by the parties in the Shared Use Agreement which covered certain shared uses of the Wye Trackage and Wye Property. The Shared Use Agreement, Section 3, provides:

The parties [SP and RFRHA] acknowledge that Grantee [RFRHA] has assumed the common carrier obligations with respect to the property acquired by Grantee pursuant to the Purchase and Sale Agreement, and Grantee has the right to conduct freight rail operations on the Wye

² RFRHA was created, in part, for the purpose of preserving the rail corridor for future rail use.

³ The City is only attaching the Deed for Garfield County that includes the Wye Property.

⁴ A Corrective Deed was executed and recorded in 2008; however, the Corrective Deed did not change the terms of the easement. *See* Reception No. 755399 of Garfield County Records.

Trackage in accordance with Section 10.9 of the Purchase and Sale Agreement, and the Joint Operating Agreement shall allow for such freight operations.

The Board's decision in *RFRHA Acquisition* authorized RFRHA to acquire the Line and the associated common carrier obligations. The decision does not contain any indication that SP had reserved any of the common carrier obligations with respect to any portion of the Line, including the Wye Trackage.⁵

By decision and notice of interim trail use or abandonment ("NITU") served on October 16, 1998, RFRHA was granted an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon the Line. *Roaring Fork Railroad Holding Authority – Abandonment Exemption – In Garfield, Eagle, and Pitkin Counties, Colo.*, Docket No. AB 547X (STB served October 16, 1998). Instead of abandoning the Line, RFRHA decided to rail bank the Line in its own name. *Id.* Accordingly, RFRHA became the trail user, the owner of the underlying fee ownership in the property, and the holder of the underlying residual common carrier obligation and reactivation rights. Again, in the decision and notice, there is no mention of any common carrier obligations having been reserved by SP/UP.

At the request of RFRHA and RFTA, the Board issued a replacement NITU on November 30, 2001, substituting RFTA for RFRHA as the interim trail user. *Roaring Fork Railroad Holding Authority – Abandonment Exemption – In Garfield, Eagle, and Pitkin Counties, Colo.*, Docket No. AB 547X (STB served November 30, 2001). On August 23, 2004, RFTA acquired RFRHA's remaining interests (the right to reactivate rail service) in the Line. *Roaring Fork Transportation Authority - Acquisition & Operation Exemption - Roaring Fork Railroad Holding Authority*, FD 34532 (STB served Aug. 23, 2004). Once again, there was no

⁵ SP has since been merged into Union Pacific Railroad Company ("UP").

indication that UP held any common carrier rights with respect to the Line. Since that time, RFTA has stepped into the shoes of RFRHA and is the trail sponsor, the underlying fee owner of the real property (subject to UP's retained easement), and the owner of the underlying residual common carrier obligation for the Line. This Petition does not seek to modify the NITU or impact the Board's jurisdiction over the Line and Wye Trackage with respect to RFTA's ownership, rights, and responsibilities.

During the course of RFTA's ownership of the Line (and RFRHA's before that), no common carrier service has been provided over the Line, including the Wye Trackage. UP has used a small portion of the western wye track at times for storing and staging maintenance equipment and work gangs, and to facilitate a turn around. UP has not used the eastern wye track, or the wye tail track, in many years. In 2012, UP removed the switch that connected the eastern wye track to UP's main line. UP has not done maintenance on the eastern wye track, the wye tail track, or the associated rights of way, allowing them to become overgrown with trees growing in the right of way. *See* photographs attached as Exhibit E. In or around early 2016, as part of the 8th Street Project, UP temporarily removed a portion of the tracks and ties comprising the western wye track (including a portion of the western wye track that UP had previously used for Section 10906 operations). UP also removed the switch connecting the western wye track with its mainline.

In September 2016, RFTA filed to correct the beginning milepost of the Line (changing the beginning point from milepost 360.22 to milepost 360.31), and additionally to terminate interim trail use on the Line from milepost 360.31 to milepost 360.51 (the eastern wye track) (the "Released Premises"). RFTA requested that a replacement NITU be issued covering the remainder of the Line beginning at RFTA's connection with UP at milepost 0.27 on the western

wye track, and continuing to milepost 393.66 near Woody Creek. In a decision and notice served May 12, 2017, the Board granted the requested relief. *Roaring Fork Railroad Holding Authority – Abandonment Exemption – In Garfield, Eagle, and Pitkin Counties, Colo.*, Docket No. AB 547X (STB served May 12, 2017). RFTA was given the authority to fully abandon the eastern wye track from milepost 360.31 to milepost 360.51 (*id.*), and on May 15, 2017, RFTA filed a notice of consummation with respect to the Released Premises. As such, with respect to the eastern wye track, the only remaining STB jurisdiction is with respect to UP’s property easement and its retained rights to conduct Section 10906 operations.

The City is preparing to undertake a significant road relocation and improvement project (the “8th Street Project”) that in part involves the relocation, widening and reconstruction of a portion of 8th Street that crosses the Wye Trackage. A drawing showing the proposed 8th Street Project is attached hereto as Exhibit G. The relocated 8th Street would occupy a portion of the eastern wye right of way and pass below a portion of the western wye track. As part of the project and a related road project by the Colorado Department of Transportation (“CDOT”), a temporary crossing was established at 8th Street. The temporary crossing required the removal of tracks and ballast at the crossing. As part of the CDOT project and the relocation and reconfiguration of the streets and crossings related to the 8th Street Project, the City entered into an agreement that allows the City to maintain the 8th Street temporary crossing as an interim crossing and cooperate in the planning and financing of a permanent crossing if and when required by RFTA for reactivation of freight rail service over the western wye track portion of the Line. The City would also like to redevelop the area occupied by the eastern wye track for economic development and redevelopment of its historic downtown. While UP has agreed to provide CDOT with a temporary easement over the Wye Trackage for the road project, UP has

not agreed to permanently give up its rights to use the eastern wye track between M.P. 360.31 and M.P. 360.51 (a/k/a M.P. 0.44), the wye tail track between M.P. 360.51 and the end of UP's easement at M.P. 360.91, or the western wye track between M.P. 0.39 and M.P. 0.44 (together the "Subject Wye Trackage") as marked on Exhibit A.⁶ In negotiations between the City and UP with respect to the 8th Street Project and the future use of its easement over the Subject Wye Trackage, UP has demanded sums far in excess of the value of its easement and has demanded over a million dollars of fencing improvements along its mainline, fencing that is not needed by the City or by RFTA and is unrelated to the Line. Because the City has not been able to reach a voluntary agreement with UP to vacate its easement rights, the City wants to proceed by condemning UP's easement interests with respect to the Subject Wye Trackage. The City cannot condemn UP's easement over the Subject Wye Trackage as long as the STB's jurisdiction with respect to UP's Section 10906 use of that track remains. Accordingly, the City is herein asking the Board to declare that UP's use of the Subject Wye Trackage is not necessary to support UP's interstate rail network, and requests the Board to remove its Section 10906 jurisdiction over the Subject Wye Trackage with respect to UP's operations. Removal of STB jurisdiction over UP's Section 10906 operations on the Subject Wye Trackage would allow the City to pursue its remedies in state court to condemn the related easements.

This proceeding does not seek to remove the STB's jurisdiction with respect to RFTA's interests in the western wye track or the wye tail track or as the NITU holder and holder of the residual common carrier authority over such track. It is the City's intent that, to the extent the Subject Wye Trackage is railbanked property subject to the STB's jurisdiction and subject to

⁶ Collectively, these portions of the Wye Trackage will be referred to as the "Subject Wye Trackage" and constitute all of the tracks that the City seeks to have removed from the STB's Section 10906 jurisdiction with respect to UP's operations.

RFTA's residual common carrier obligation, such STB jurisdiction remain. While the 8th Street Project necessitated removing tracks and the western wye, the City has an agreement with RFTA to replace the crossing by building a rail overpass when necessary for RFTA's future use.⁷ The City desires that RFTA's connection to the interstate rail network remain and not be severed from the interstate rail network.⁸

DISCUSSION

A. UP's retained rights to use the Wye Trackage

The City acknowledges that UP owns an easement to use the Wye Trackage for freight rail purposes. However, since UP does not have any common carrier obligations with respect to the Wye Trackage, UP only has the right to use the Wye Trackage as "ancillary" track. Ancillary track is typically used for loading, unloading, switching and other purposes incidental to main line operations. Ancillary track does not allow a carrier to penetrate or invade a new market, but simply augments the capacity of existing main line operations. *See Brazos River Bottom Alliance – Petition for Declaratory Order*, FD 35781 (STB served Feb. 19, 2014), slip op. at 4-5. There are no customers located on the Wye Trackage. UP removed the switch to the eastern wye and has not used it for many years. With respect to the western wye, UP has likewise removed

⁷ The City has an agreement with RFTA to construct and install a rail bridge structure to carry the west wye over the newly reconfigured 8th Street connection if such a rail bridge is in the sole discretion of RFTA necessary to meet the future needs of RFTA.

⁸ While the removal of a portion of the western wye is intended to be temporary, in contrast and previously noted, RFTA removed the eastern wye track from the NITU and has fully abandoned its interests in the eastern wye track. RFTA has also sold the underlying real property to the City, subject to UP's easement. The only remaining jurisdiction the Board has over the eastern wye is with respect to UP's use of that wye for Section 10906 operations via its retained easement. If the Petition is granted and the City is successful in condemning UP's easement over the eastern wye, the City intends to remove any remaining track on the eastern wye.

the switch,⁹ and prior to that, UP had used a portion of the western wye track only sporadically over the past decade, and then only for storing and staging of maintenance of way equipment and to facilitate a turnaround operations, clearly indicating the ancillary track nature of UP's rights. The City's Petition does not seek to remove the portion of the western wye that UP has in fact used from STB jurisdiction. The City only seeks to remove Wye Trackage that has not been used by UP for many years and is not necessary for UP's common carrier obligations.

B. Standards and process for removal of jurisdiction over ancillary tracks

A railroad must obtain authority from the Board under 49 U.S.C. §10903 to abandon a "line of railroad" that is part of the interstate rail network. However, under 49 U.S.C. §10906, prior Board approval is not required for the abandonment of spur, industrial, team, switching or side tracks.¹⁰ Such track known as excepted or ancillary track is exempt from the Board's prior approval requirements (for construction, operation and abandonment) "because it simply augments the capacity of existing mainline operations that have already been authorized." *Pinelawn Cemetery – Petition for Declaratory Order*, FD 35468 (STB served April 21, 2015) ("*Pinelawn*"), slip op. at 1 fn.3 (citing *Brazos River Bottom Alliance – Petition for Declaratory Order*, FD 35781 (STB served Feb. 19, 2014), slip op. at 4-5).

⁹ RFTA has reminded UP of UP's obligations to reinstall the switch to the western wye tracks, as well as tracks that have been temporarily removed for the 8th Street Project. See Exhibit F. The relief requested herein does not seek to remove the Board's jurisdiction over the switch or the connecting western wye tracks, or any of RFTA's rights with respect thereto, and should not affect UP's obligations to reinstall the switch or connecting tracks.

¹⁰ The City acknowledges that although "excepted" under 49 U.S.C. §10906, ancillary tracks are part of the national rail system and thus generally remain subject to federal regulation. *Pinelawn Cemetery – Petition for Declaratory Order*, FD 35468 (STB served April 21, 2015), slip op. at 6-7.

Therefore, because UP's use of the Subject Wye Trackage constitutes Section 10906 excepted track for UP,¹¹ it is not subject to the Board's abandonment authority under 49 U.S.C. §10903, or to the Board's adverse abandonment process. *See NewVista Property Holdings, LLC – Adverse Abandonment of the Ironton Branch – In Utah County, Utah*, Docket No. AB 1241, slip op. at 2. Instead, the Board has held that the proper method for removing the Board's jurisdiction over excepted track is through a declaratory order proceeding. *Id.*; *Pinelawn*, slip op. at 11 n.31.

Excepted track "can be removed from the Board's jurisdiction upon a showing it is no longer needed for the interstate rail system." *Pinelawn*, slip op. at 9. In order to determine if the Board's jurisdiction over excepted tracks should be removed, the Board applies a case-by-case analysis to the particular facts and circumstances. *NewVista Property Holdings, LLC – Petition for Declaratory Order*, Docket No. FD 36040 (STB served March 17, 2017) ("*NewVista Petition*"), slip op. at 2.

C. Lack of need for UP's use of the Subject Wye Trackage for the interstate rail system

UP has sporadically used a portion of the western wye track (from M.P. 0.27 to M.P. 0.39) to support its interstate rail operations on the adjacent main line through the storage and staging of work equipment. However, in or around early 2016, UP removed the switch between its main line and the western wye track. From correspondence between RFTA's engineer and UP, it appears that UP has no plan to use any of the western wye track for any purposes, indicating to RFTA that it will discuss reinstallation of the switch only at "such time as

¹¹ Of course, for RFTA, the entire western wye from MP 0.27 to the beginning of the wye tail track at MP 0.44 now constitutes part of the railbanked corridor and is the crucial link to RFTA's connection to UP and the interstate rail system in the event RFTA were to restore rail service in the future. Nothing in this Petition is intended to impact RFTA's ability to restore the line for future rail service or to sever RFTA's connection to the interstate rail network.

[RFTA's] revenue generating operations on the Wye are imminent." *See* letters between Hall & Evans and UP attached hereto as Exhibit F. Although it appears that UP has no current intention of making any use of any of the western wye track for Section 10906 purposes, the City is *not* seeking abandonment of the portion of the western wye track that has been previously used by UP.¹² Rather, the City only seeks to remove the Board's jurisdiction on the western wye from M.P. 0.39 to M.P. 0.44 / M.P. 360.51, the wye tail from M.P. 360.51 to the end of UP's easement at M.P. 360.91, and the eastern wye from M.P. 360.31 to M.P. 360.51. The City has no objection to UP retaining Section 10906 rights over the portion of the western wye track from M.P. 0.27 to M.P. 0.39 for its continued ancillary operations in support of its interstate common carrier operations. Because this is the only portion that UP has used prior to removing the switch, this portion should be more than sufficient for UP to continue conducting ancillary operations in support of its mainline operations (assuming the switch is restored) if UP were to determine that indeed it needs to make any use of the western wye track.

With respect to the Subject Wye Trackage, none of it has been used for many years, at least since the Line and Wye Trackage were sold to RFRHA. UP removed the switch that connected the eastern wye track to the UP main line track in 2012, and UP has not since that time had any access to the eastern wye track.¹³ No maintenance has been done on the track or ties of the Subject Wye Trackage by UP for over a decade and UP has given no indication that it has

¹² The City is also not seeking to remove any of RFTA's interim trail use or residual common carrier rights with respect to this segment, or to interfere with RFTA's connection to the interstate rail network.

¹³ The tracks on the western wye between M.P. 0.39 and M.P. 0.44, and on the wye tail track to the end of UP's easement at M.P. 360.91 have long been in disrepair. As such, since the removal of the eastern wye switch in 2012, it has been impossible for UP to access the eastern wye track from UP's main line.

any need for or use of the Subject Wye Trackage to support its main line operations.¹⁴ The fact that the Subject Wye Trackage has not seen any use for many years is a clear indication that it is not needed to support UP's interstate rail system. *Cf. NewVista Petition*, slip op. at 4 (holding that actual use is an indication that excepted track is needed for the interstate rail system). This is not a case where the totality of the circumstances indicates that UP has kept the tracks and ties of the Subject Wye Trackage in place and maintained them in a state of readiness for service. *Compare Beaufort Railroad – Modified Rail Certificate*, FD 34943 (STB served March 19, 2008), slip op. at 6-8.

Moreover, there is a public project (the 8th Street Project) planned for the eastern wye property (and a portion of the western wye property between M.P. 0.39 and M.P. 0.44) that would be frustrated by the continuation of UP's easement over the Subject Wye Trackage. The City of Glenwood Springs is located in a narrow river valley and bisected by two rivers, an interstate highway, a State highway and a railroad mainline. A portion of the Wye Trackage cuts through the proposed permanent 8th Street corridor which connects the eastside of Glenwood Springs to the west side over one of only two bridges across the Roaring Fork River. Increased traffic by both residents and commuters passing through the City has rendered the current alignment obsolete and inadequate. The proposed permanent 8th Street Project will realign and widen the portion of 8th Street as it crosses a portion of the Wye Trackage. In addition, the presence of the unused eastern wye track and right of way renders valuable space that could be used for redevelopment including parking, residential and commercial uses, useless. Allowing the City to

¹⁴ Prior to the removal of the western wye switch at M.P. 0.27 in 2016, UP did use a portion of the western wye track from M.P. 0.27 to M.P. 0.39 for the temporary storage and staging of maintenance equipment and work trains. The City's Petition does not seek to remove that portion from the STB's jurisdiction and that portion is not included in the Subject Wye Trackage.

proceed with condemnation of the unneeded Subject Wye Trackage will facilitate the construction of the 8th Street Project and for the redevelopment of the City's downtown.

Based on the lack of use and need for the Subject Wye Trackage to support UP's interstate rail network operations, the public benefits that would flow from allowing the City to proceed with the proposed permanent 8th Street Project unburdened by UP's easement, and the fact that the City does not seek to remove STB jurisdiction from that portion of the Wye Trackage from M.P. 0.27 to M.P. 0.39 which portion has been used by UP to support its mainline operations, the Board should find that the Subject Wye Trackage does not need to be part of UP's interstate rail network. As such, the Board should remove its Section 10906 jurisdiction over the Subject Wye Trackage to the extent such jurisdiction stands as a bar to the City's ability to condemn UP's easement interest in those tracks. The STB should retain its jurisdiction over those portions of the Subject Wye Trackage that are subject to the NITU and RFTA's residual common carrier obligation.

REQUESTED PROCEDURAL SCHEDULE

The City requests that the Board accept this Petition and commence a proceeding using the Board's modified procedures at 49 C.F.R. Part 1112. This Petition would constitute the City's opening statement and evidence. In accordance the Board's modified procedures, the City asks that the Board set the following procedural schedule¹⁵:

Board acceptance of Petition and opening of proceeding	Day 0
Replies to Petition	Day 20
Rebuttal of City	Day 30

¹⁵ This procedural schedule is similar to the one established in a previous declaratory proceeding for abandonment of excepted tracks. *See NewVista Property Holdings, LLC – Petition for Declaratory Order*, Docket No. FD 36040 (STB served June 24, 2016).

SERVICE

Although there are no required service requirements for a petition for declaratory order, the City is serving a copy of this Petition on counsel for UP as the party that would be affected by the relief requested herein so that it will have additional time to prepare any reply. The City is also copying counsel for RFTA although its remaining interests in the Subject Wye Trackage will not be affected by the relief requested.

CONCLUSION

For the foregoing reasons, the City of Glenwood Springs, CO requests that the Board issue an order declaring that the Subject Wye Trackage is not required for UP to conduct its interstate rail operations and removing the Board's jurisdiction over UP's use of such trackage.

Respectfully submitted,



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Attorneys for
City of Glenwood Springs, CO

Dated: November 15, 2017

VERIFICATION

I, Debra Figueroa, City Manager of the City of Glenwood Springs, CO, verify under penalty of perjury that the foregoing Petition for Declaratory Order is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on November 13, 2017.

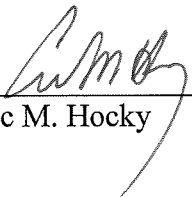

Debra Figueroa, City Manager

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2017, a copy of the forgoing Petition for Declaratory Order was served by U.S. first class mail, postage prepaid upon the following persons:

Rhonda S. Ferguson
Jeremy Berman
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Omaha, NE 68179
Counsel for Union Pacific Railroad Company

William A. Mullins
Baker & Miller PLLC
2401 Pennsylvania Avenue, NW
Washington, DC 20037
Counsel for Roaring Fork Transportation Authority



Eric M. Hocky

EXHIBITS

- A. Subject Wye Trackage**
- B. Purchase and Sale Agreement**
- C. Shared Use Agreement**
- D. Deed**
- E. Photographs of Right of Way**
- F. Correspondence between Hall & Evans and Union Pacific**
- G. 8th Street Project Drawing**

EXHIBIT A

GLENWOOD SPRINGS WYE AREA REDESIGNATION OF MAIN TRACK TO WEST LEG OF WYE

NOTE: BACKGROUND INFORMATION SHOWN ON THIS EXHIBIT IS FROM A RAILROAD RIGHT-OF-WAY SURVEY PERFORMED BY FARNSWORTH GROUP IN DECEMBER, 2008. THIS SEGMENT OF THAT SURVEY IS RECORDED IN THE LSP SURVEY MAP RECORDS OF GARFIELD COUNTY AT RECEPTION NO. 787.

SYMBOL & LINE TYPE LEGEND

SYMBOL	LINE TYPE
	Solid line
	Dashed line
	Dotted line
	Long-dash-short-dash line
	Wavy line
	Center line
	Section line
	Hidden line
	Phantom line
	Break line
	Extension line
	Dimension line
	Leader line
	Object line
	Construction line
	Reference line
	Cutting plane
	Spot weld
	Weld
	Bolt
	Nut
	Washer
	Pin
	Screw
	Nail
	Rivet
	Bracket
	Arrow
	Circle
	Triangle
	Square
	Diamond
	Hexagon
	Octagon
	Star
	Cross
	Dot
	Dash
	Wavy line
	Long-dash-short-dash line
	Dotted line
	Dashed line
	Solid line

 CITY OF GLENWOOD
 SPRINGS OWNERSHIP
 RFTA OWNERSHIP
 SUBJECT WYE TRACKAGE

MONUMENT LEGEND

Figure 1: Typical set monument. The figure shows a plan view of a typical set monument. It includes a central circular area labeled 'TYPICAL SET MONUMENT' with a 'TYPICAL SET MONUMENT' label. To the left, there is a list of items: 1. TYPICAL SET MONUMENT, 2. TYPICAL SET MONUMENT, 3. TYPICAL SET MONUMENT, 4. TYPICAL SET MONUMENT, 5. TYPICAL SET MONUMENT, 6. TYPICAL SET MONUMENT, 7. TYPICAL SET MONUMENT, 8. TYPICAL SET MONUMENT, 9. TYPICAL SET MONUMENT, 10. TYPICAL SET MONUMENT. To the right, there is a list of items: 1. TYPICAL SET MONUMENT, 2. TYPICAL SET MONUMENT, 3. TYPICAL SET MONUMENT, 4. TYPICAL SET MONUMENT, 5. TYPICAL SET MONUMENT, 6. TYPICAL SET MONUMENT, 7. TYPICAL SET MONUMENT, 8. TYPICAL SET MONUMENT, 9. TYPICAL SET MONUMENT, 10. TYPICAL SET MONUMENT. The figure also includes a scale bar and a north arrow.

TYPICAL SET MONUMENT



DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C. 20080

Roaring Fork
Transportation Authority
0758 Industry Way
Carbondale, CO 81623

Date:	8-03-07
Drawn:	MIOG
Checked:	MIOG
Book No:	2195

Farnsworth GROUP
1001 FURNACE AVENUE, SUITE 100 • DENVER, CO 80202 800.233.7223

Railroad ROW Survey. Glenwood Springs Segment
Portion of Former Denver & Rio Grande Railroad
Aspen Branch Right-Of-Way
Sections 8, 16, 21, 22
Township 6 South, Range 6 West, 60th P.M.

Project No.
305007.7

SHEET 3 OF 10
0.0000
SHEET 3 OF 12

SHEET 3 OF 10
OVERALL
SHEET 3 OF 12

EXHIBIT B

TABLE OF CONTENTS

	Page
ARTICLE 1: PURCHASE AND SALE	1
1.1 <u>Purchase and Sale</u>	1
1.2 <u>Purchase Price</u>	2
1.3 <u>Adjustments and Costs</u>	2
ARTICLE 2: TITLE	4
ARTICLE 3: INFORMATION, PRE-CLOSING INSPECTION AND TERMINATION RIGHTS	5
3.1 <u>Information</u>	5
3.2 <u>Inspection of Property</u>	5
3.3 <u>Termination Rights</u>	5
ARTICLE 4: REPRESENTATIONS AND WARRANTIES	6
4.1 <u>Seller's Representations and Warranties</u>	6
4.2 <u>Purchaser's Representations, Warranties and Covenants</u>	8
4.3 <u>Pre-Closing Covenants of Seller</u>	9
ARTICLE 5: CLOSING	9
5.1 <u>Closing</u>	9
5.2 <u>Conditions Precedent to Closing</u>	10
5.3 <u>Closing Obligations of the Parties</u>	12
ARTICLE 6: RETAINED RIGHTS	14
6.1 <u>Railroad Easement</u>	14
ARTICLE 7: CONDITION OF THE PROPERTY	14
7.1 <u>Toxic Wastes</u>	14
7.2 <u>No Other Warranties of Seller</u>	16
ARTICLE 8: RISK OF LOSS	16
ARTICLE 9: DEFAULT AND REMEDIES	17
9.1 <u>Remedies</u>	17
9.2 <u>Costs of Enforcement</u>	17
ARTICLE 10: MISCELLANEOUS MATTERS	18
10.1 <u>Brokers</u>	18

10.2	<u>Recording</u>	18
10.3	<u>Assignment</u>	18
10.4	<u>Notices</u>	18
10.5	<u>Further Assurances</u>	20
10.6	<u>Street Crossings</u>	20
10.7	<u>Press Releases</u>	20
10.8	<u>Property Subject to Sale by Seller</u>	21
10.9	<u>Freight Operations</u>	21

ARTICLE 11: INTERPRETATION OF AGREEMENT 21

11.1	<u>Governing Law</u>	21
11.2	<u>Headings</u>	21
11.3	<u>Effect of Agreement</u>	21
11.4	<u>Severability</u>	22
11.5	<u>Entire Agreement</u>	22
11.6	<u>Time</u>	22
11.7	<u>Counterparts; Facsimile Transmission</u>	22

List of Exhibits

Exhibit A - Description of the Real Estate

Exhibit B - Description of Wye Property

Exhibit C - Railroad Easement

Exhibit D - Property Subject to Sale by Seller

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT, dated October 3, 1996, is entered into between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("Seller"), and ROARING FORK RAILROAD HOLDING AUTHORITY, a governmental entity formed pursuant to C.R.S. 25-1-201, et seq., and Article XIV of the Colorado Constitution ("Purchaser").

WHEREAS, Purchaser wishes to acquire the rail line known as the Aspen Branch from Glenwood Springs to its end point near Woody Creek as a continuous corridor from Seller, Purchaser and Seller contract and agree as follows:

ARTICLE 1: PURCHASE AND SALE

1.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller shall sell and convey, and Purchaser shall purchase and pay for, the following described property (all of which is referred to herein collectively as the "Property") and the common carrier obligations pertaining thereto, excepting and reserving to Seller, however, the Railroad Easement (as defined in Article 6):

(a) All of Seller's interest in the property described on Exhibit A (the "Real Estate") and all of Seller's interest in any buildings, structures and improvements located thereon (collectively, the "Improvements"); and

(b) All fixtures attached to the Real Estate that Seller owns and uses in the operation and maintenance of the Property, including all rail, ties, ballast, bridges, viaducts,

trestles, signaling devices and other tangible personal property owned by Seller and located on the Real Estate (other than engines, rail cars and other rolling stock) (collectively, the "Fixtures").

(c) All of Seller's interest in all leases (the "Leases") and all licenses, permits, easements and agreements (the "Other Agreements") affecting the Property, excluding those pertaining to the Railroad Easement.

(d) All mineral rights and water rights (if any) associated with the Real Estate.

1.2 Purchase Price. The price for the Property (the "Purchase Price") shall be \$8,500,000, which, shall be paid to Seller as follows:

(a) \$500,000 (the "Deposit") shall be deposited by Purchaser with an independent escrow agent acceptable to Purchaser and Seller upon the execution of this Agreement, to be held by said escrow agent in an interest bearing account as an earnest money deposit and partial payment of the Purchase Price at Closing, pursuant to the terms hereof;

(b) The balance of the Purchase Price after making the adjustments set forth in Section 1.3, shall be paid by Purchaser by wire transfer of funds or other immediately available funds at Closing as provided in Article 5.

1.3 Adjustments and Costs.

(a) Property taxes and any possessory interest taxes shall be borne entirely by Seller through the Closing Date. Purchaser shall request the cancellation of all applicable property taxes and special assessments at the earliest possible date, and Seller shall be entitled to receive any refunds or credits of taxes previously paid.

(b) Except as otherwise provided in this Agreement, all rents, common area maintenance charges, other amounts paid or payable by a tenant of the Property, and other income from the Property attributable to periods prior to the Closing Date shall be credited to Seller, and all such income attributable to periods subsequent to the Closing Date (other than (i) income from the Easement Agreement between Qwest Communications Corp. and the Denver and Rio Grande Western Railroad Company referenced in Article 2 and (ii) income derived from Seller's continued rail operations) shall be credited to Purchaser.

(c) Seller shall pay all insurance and utility charges and other operating expenses for the Property accrued for the period through the Closing Date. Insurance policies shall not be assigned to Purchaser, and Seller may cancel the coverage provided thereby at the Closing. Subject to the Railroad Easement, all accounts for water, sewer, gas, electrical, telephone and other public utilities payable by Seller shall be transferred to Purchaser's name effective as of the Closing Date.

(d) Purchaser shall pay all transfer, recording, filing, excise, documentary and similar fees and taxes payable in connection with the transaction contemplated by this Agreement.

(e) Seller and Purchaser shall each pay any costs and expenses (such as attorneys' and consultants' costs and expenses) incurred by such party in connection with the transactions contemplated by this Agreement which are not adjusted or allocated as set forth in this Section 1.3 or otherwise provided for in this Agreement.

(f) The foregoing provisions of this Section 1.3 are not intended to prorate revenues from any rail operations performed by Seller on the Property.

1.4 Purchase Price Allocation. The Purchase Price allocation shall be:

Real Property \$8,109,000.

Fixtures \$ 391,000.

ARTICLE 2: TITLE

Seller shall convey all of Seller's right, title and interest in the Property by bargain and sale deed without any covenants or warranties of any kind, and Purchaser acknowledges that Purchaser's title to the Property shall be subject to (i) a lien for real property taxes and assessments for the current year, not yet due or payable, (ii) the Railroad Easement, (iii) the Leases and Other Agreements (including, without limitation, the Easement Agreement between The Denver and Rio Grande Western Railroad Company and Qwest Communications Corp. (f/k/a Southern Pacific Telecommunications Company) dated September 30, 1991), (iv) liens or encumbrances arising out of any activity of Purchaser or its agents with respect to the Property, (v) all matters that would be disclosed by a physical inspection or an accurate survey of the Property and (vi) all other existing liens, encumbrances, clouds of title or other matters affecting title to the Property. Purchaser understands and acknowledges that Seller's predecessor in title obtained the title to certain portions of the Property by various congressional and state grants containing reversionary language.

ARTICLE 3: INFORMATION, PRE-CLOSING INSPECTION

AND TERMINATION RIGHTS

3.1 Information.

(a) As soon as reasonably practicable after the date of this Agreement, Seller shall deliver to Purchaser, to the extent not already delivered:

(i) a true and correct copy of all Leases and Other Agreements covering all or a portion of the Property in effect for or applicable to the Property as of the date of this Agreement, and all amendments and/or supplements thereto;

(ii) all material environmental studies and reports in the possession or under the control of Seller relating to the Property (the "SP Environmental Reports"); and

(iii) copies of all deeds vesting title to the Real Estate in Seller.

(b) All information obtained by Purchaser pursuant to this Agreement shall, subject to applicable laws, be kept confidential by Purchaser until after Closing.

3.2 Inspection of Property. Purchaser has previously inspected the Property and acknowledges that Purchaser is satisfied with the results of such inspection.

3.3 Termination Rights. (a) Purchaser shall have until October 31, 1996 (the "Due Diligence Period") or 15 days after receipt of the documents referenced in subparagraph 3.1(a), whichever is later, to review the documents provided to Purchaser pursuant to Section 3.1 above. Purchaser shall have until the expiration of the Due Diligence Period to elect to terminate its obligation to purchase the Property under this Section 3.3(a) if Purchaser determines that any

such documents, in Purchaser's judgment, renders the purchase of the Property undesirable for the purposes which Purchaser intends.

(b) Upon termination of this Agreement in accordance with Section 3.3(a), Seller shall return the Deposit to Purchaser and Purchaser shall, to the extent permitted by applicable law, (i) return to Seller all copies of all documents provided to Purchaser by Seller with respect to the Property, (ii) provide to Seller copies of all reports, studies, surveys, maps and other documents prepared by or on behalf of Purchaser in connection with its inspection or development of the Property, and (iii) hold in confidence all information with respect to the Property and the terminated transaction to the extent permitted by applicable law.

(c) Purchaser's termination of this Agreement shall not relieve Purchaser from any liability for any damages incurred by Seller by reason of a breach by Purchaser of any of the terms set forth in the Right of Entry Permit previously entered into between Seller and Buyer.

ARTICLE 4: REPRESENTATIONS AND WARRANTIES

4.1 Seller's Representations and Warranties.

Seller represents and warrants to Purchaser as follows:

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation and has full power and authority to enter into this Agreement and to fulfill its obligations hereunder.

(b) This Agreement and all documents contemplated hereby have been or will be duly authorized and executed (and acknowledged where necessary) by the parties

named as signatories in those documents, and all other necessary actions have been or will be taken, so that this Agreement and all documents contemplated herein are valid and binding upon Seller.

(c) Except for the action filed by The Phillips Company against Seller and its affiliates in the United States District Court for the District of Colorado, Civil Action No. 93-Z-1461 (the "Phillips Action") and a similar action filed by T. Gregory and Patricia Kirianoff against Seller and its affiliates in the United States District Court for the District of Colorado, Civil Action No. 96-Z-570 (the "Kirianoff Action"), to the best of Seller's knowledge, there is no pending or threatened litigation regarding the Property. The District Court granted Seller's Motion for Summary Judgment in the Phillips Action, but the case has been appealed to the 10th Circuit Court of Appeals. The Kirianoff Action was dismissed with prejudice by the District Court, but the time for appeal of such dismissal may not have yet expired. The attorney representing The Phillips Company and the Kirianoffs is also pursuing proceedings before the Surface Transportation Board. During the period from the Closing Date through the earlier of (i) the issuance of an order authorizing the railbanking of the Property (or a portion thereof) under 16 U.S.C. §1247(d) (provided, however, that if an appeal of such order is brought within the applicable appeal period, Seller's obligations under this subparagraph shall apply to all subsequent proceedings relating to such appeal) or (ii) the commencement of freight or passenger rail service on the Property (or a portion thereof) (the "Cutoff Date"), Seller will cooperate in the defense of all proceedings referenced in this subparagraph and in any other judicial or administrative proceedings relating to the title to the Property. Such cooperation shall include provision of copies of relevant non-privileged documents in the possession of Seller (without

charge, except for normal costs of duplication); assistance in identifying persons with knowledge of relevant facts; using reasonable efforts to make such persons available without charge for interviews, affidavits, or testimony to the extent they remain employed by Seller; and such other reasonable actions as will assist Purchaser in defending the integrity of the corridor against claims of abandonment or related claims. In the event the line or portions of the line are determined by a court of competent jurisdiction to have been abandoned (and not railbanked) against the intent of Purchaser, or that Purchaser must otherwise pay compensation to some claimant in order to maintain a continuous linear corridor for rail and other public highway purposes, Seller shall indemnify Purchaser for up to \$500,000 for actual costs and expenses incurred by Purchaser anytime prior to the Cutoff Date (i) in securing any disputed title by negotiation, eminent domain, or otherwise, and (ii) for all related administrative and legal proceedings, on the condition that Purchaser pursues all such proceedings in an appropriate and prudent manner and takes all actions Purchaser reasonably should take to defend any adverse claims.

4.2 Purchaser's Representations, Warranties and Covenants.

Purchaser represents, warrants and covenants as follows:

- (a) Purchaser has full power and authority to enter into this Agreement and to fulfill its obligations hereunder.
- (b) This Agreement and all documents contemplated hereby have been or will be duly authorized and executed (and acknowledged where necessary) by the parties named as signatories in those documents, and all other necessary actions have been or will be

taken, so that this Agreement and all documents contemplated herein are valid and binding upon Purchaser.

(c) The execution and performance of this Agreement and the documents contemplated hereby do not violate and are not restricted by any other material agreement, contractual obligation, court order or law to which Purchaser is a party or by which Purchaser is bound.

4.3 Pre-Closing Covenants of Seller. Following execution of this Agreement and prior to Closing, Seller shall, with respect to the Property:

- (a) conduct its business involving the Property in the ordinary course consistent with past operations of the Property;
- (b) maintain in effect the insurance policies insuring the Property;
- (c) maintain the Property in accordance with Seller's existing standards;
- (d) not materially alter any of the Improvements or remove any Fixtures, unless replaced by an item of equivalent value;
- (e) pay all taxes and assessments affecting the Property prior to the date such taxes and assessments are legally due and owing; and
- (f) not encumber or permit to be encumbered any part of the Property, or otherwise impair the state of title to the Property.

ARTICLE 5: CLOSING

5.1 Closing. The closing (the "Closing") of the transactions contemplated by this Agreement shall occur on a date selected by Purchaser, which date shall be on or before

December 16, 1996 (the "Closing Date"); provided, however, that Seller agrees to allow Purchaser to extend the Closing to a date not later than January 15, 1997, if necessary to complete any actions required to obtain the funds to be used by Purchaser to pay the Purchase Price, on the conditions that (i) all such actions are reasonably likely to be completed by such date and (ii) Purchaser is diligently pursuing all such actions. Purchaser shall give Seller at least 30 days prior written notice of the Closing Date.

5.2 Conditions Precedent to Closing.

(a) Neither party shall have any obligation to consummate the Closing (and any deposit shall be returned) unless each of the following conditions has occurred or is waived on or before the Closing, it being understood that each party shall cooperate in good faith to cause each of the following conditions to occur on or before the Closing:

(i) Purchaser shall have received sufficient funds or funding commitments from Great Outdoors Colorado, the Colorado Department of Transportation and/or other sources to pay the Purchase Price; provided, however, that Purchaser need not consummate the closing if any condition related to funding or funding commitments by the funding source is unsatisfactory to Purchaser in Purchaser's absolute discretion, and in such event all deposits under this contract shall be returned. .

(ii) Purchaser and Seller shall have agreed upon the terms and conditions of an operating agreement (the "Shared Use Agreement") to govern the joint use of the portion of the Property described on Exhibit B (the "Wye Property") by Purchaser and Seller if and when Purchaser (or a nominee permitted under the Shared Use Agreement) commences passenger rail operations on the Property.

(iii) Purchaser shall have obtained authority or an exemption from the Surface Transportation Board or its successor (the "STB") to authorize or exempt the transfer of the Property and the consummation of the transactions contemplated by this Agreement, and any authorities necessary (if any) from any other federal or state agencies.

(iv) there shall be no work stoppage imminent or in effect on the lines of Seller or any of its affiliated companies or on the Property as a result of the execution or implementation of this Agreement.

(v) neither Seller nor Purchaser shall be prevented from fulfilling their respective obligations under this Agreement as a result of legislative, judicial or administrative action.

(vi) no substantive condition (including but not limited to, the imposition of labor protection) unacceptable to Seller shall have been imposed by the STB or any other agency, board, arbitrator or court in connection with, or as a result of, the transactions contemplated by this Agreement.

(vii) Purchaser and Seller shall be satisfied with the contents of Exhibits A through E attached to this Agreement. If either party objects to any of such exhibits, such party shall deliver a notice to the other party within 20 days after the date of this Agreement, specifying in reasonable detail the nature of the objection. If either party fails to deliver a notice of objection within such 20 day period, such party shall be deemed to be satisfied with all of the exhibits and to have waived this condition. If either party (or both parties) timely delivers a notice of objection, the parties shall negotiate in good faith to agree upon a resolution of such objection. If the parties are unable to agree in writing upon a resolution of the objection within

30 days after the date of this Agreement, either party may terminate this Agreement (and all deposits shall be returned) by delivering written notice of termination to the other party within 10 days after the end of such 30 day period. If neither party delivers a notice of termination within such 10 day period, both parties shall be deemed to be satisfied with all of the exhibits and to have waived this condition.

(b) In addition, Seller or Purchaser shall have the right to terminate this Agreement at any time prior to Closing if any protest, petition to revoke or similar objection to the transactions contemplated by this Agreement, or any request for conditions is filed with the STB.

5.3 Closing Obligations of the Parties. The parties shall execute and deliver the following documents (the "Closing Documents") and otherwise cause the following events to occur at the Closing, each being a condition precedent to the others but all being deemed to have occurred simultaneously (and all Closing Documents shall be in form and substance reasonably acceptable to Seller and Purchaser):

(a) Seller shall execute and deliver to Purchaser the following items:

(i) a bargain and sale deed (the "Deed") conveying to Purchaser all of Seller's right, title and interest in the Property, excepting and reserving the Railroad Easement;

(ii) an assignment and assumption agreement, conveying to Purchaser all of Seller's interests in and to the Leases and Other Agreements, and indemnifying and holding harmless Purchaser from and against any and all claims thereunder arising prior to

the Closing Date and requiring Purchaser to indemnify and hold harmless Seller from and against any such claims arising after the Closing Date;

(iii) the original Leases and Other Agreements in Seller's possession;

(iv) the Shared Use Agreement;

(v) notices to all tenants of the Real Estate of the transfer of ownership of the Real Estate;

(vi) an affidavit of Seller stating that Seller is not a foreign person in compliance with the requirements of Section 1445(b)(20) of the Internal Revenue Code;

(vii) a certified copy of resolutions of Seller's board of directors approving and authorizing the execution, delivery and performance of this Agreement and the documents to be delivered by Seller pursuant to this Agreement; and

(viii) such affidavits and other documents as may be required or reasonably requested to effect the consummation of the transactions contemplated hereby.

(b) Purchaser shall execute and deliver to Seller the following items:

(i) instruments necessary to provide the Purchase Price by wire transfer of funds or other immediately available funds, adjusted pursuant to Section 1.3;

(ii) a countersigned copy of the assignment and assumption agreement described in Section 5.3(a)(ii);

(iii) the Shared Use Agreement;

(iv) an opinion of Purchaser's legal counsel that this Agreement and the documents to be delivered by Purchaser pursuant to this Agreement have been duly authorized by Purchaser and are the valid, binding and enforceable obligations of Purchaser and as to such other matters as Seller may reasonably request;

(v) a letter to Seller evidencing that the Property is being purchased in lieu of condemnation; and

(vi) such affidavits and other documents as may be required or reasonably requested to effect the consummation of the transactions contemplated hereby.

(c) Purchaser and Seller shall each execute settlement statements showing adjustments to the Purchase Price and payments of the cost of Closing. Prorated items and costs shall be charged or credited to Seller and Purchaser as provided in Section 1.3.

(d) Seller shall surrender possession of the Property to Purchaser, except as provided in Article 6.

ARTICLE 6: RETAINED RIGHTS

6.1 Railroad Easement. Seller shall except and reserve in the Deed an exclusive easement to use the Wye Property for rail freight purposes in the form set forth in Exhibit C (the "Railroad Easement").

ARTICLE 7: CONDITION OF THE PROPERTY

7.1 Toxic Wastes.

(a) Purchaser acknowledges that it is being afforded extensive access to the Property in order to make an on-site inspection thereof and have independent consultants prepare environmental studies (the "Purchaser Environmental Reports") regarding the presence of toxic wastes and otherwise investigate the Property to Purchaser's satisfaction. Purchaser shall perform and rely upon its own independent investigation of the physical condition of the Property. Purchaser further acknowledges that it is buying the Property in an "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS and that Purchaser has not relied on any warranty, promise, understanding or representation, express or implied, of Seller or any agent of Seller relating to the physical condition of the Property and Purchaser hereby releases Seller and Seller's shareholders, officers, directors, agents and employees from any and all claims, demands, causes of action and liabilities relating to or arising out of the condition of the Property, including, but not limited to, the condition of the soil, presence of hazardous materials, toxic wastes or contaminants in, on, under or about the Property, and all other physical characteristics of the Property.

(b) Notwithstanding the foregoing, Seller agrees (as its sole obligation to Purchaser with respect to environmental matters) (a) to indemnify Purchaser for up to \$100,000 of expenses incurred by Purchaser after the Closing relating to the removal of hazardous materials, toxic wastes or contaminants which are located in, on, under or above any portion of the Property other than the Wye Property on the Closing Date, and (b) if Seller ever abandons the Wye Property, to remediate any existing contamination of the Wye Property to then legally required standards.

7.2 No Other Warranties of Seller. Except as otherwise expressly set forth in this Agreement, Purchaser has not relied on any other warranties, promises, understandings or representations, express or implied, of Seller or any agent of Seller relating to the Property, any Lease or any other document relating to the Property. Purchaser acknowledges that any and all feasibility or marketing reports, environmental assessments, engineering studies and other information of any type that Purchaser has received or may receive from Seller or its agents are furnished on the express condition that Purchaser shall make an independent verification of the accuracy of any and all such information, all such information being furnished without any warranty whatsoever. Purchaser agrees that it will not attempt to assert any liability against Seller and/or its agents for furnishing such information, unless such information was known by Seller to be misleading or inaccurate, and Purchaser releases and indemnifies Seller and Seller's shareholders, officers, directors, agents and employees from all responsibility and liability regarding the condition, valuation or utility of the Property other than that arising out of Seller's obligations expressly and specifically set forth in this Agreement.

ARTICLE 8: RISK OF LOSS

If, between the date of this Agreement and the Closing Date, any material part of the Property is materially damaged or destroyed by fire or other casualty in the reasonable judgment of Purchaser, or if any material part of the Property is taken in condemnation or under the right of eminent domain, or proceedings for such taking shall be pending or threatened, Purchaser shall have the right to terminate this Agreement by notice given to Seller within 10 days after receiving notice thereof. In the event of such terminations, Purchaser shall comply

with the provisions of Section 3.3(b) above. Seller shall promptly notify Purchaser of each occurrence of the kind specified above and shall give Purchaser such information relating thereto as Purchaser may thereafter reasonably request. Alternatively, Purchaser may elect to purchase the affected portion of the Property notwithstanding the damage or taking, without any abatement or diminution of the Purchase Price, in which case Seller shall, on the Closing Date, deliver to Purchaser any insurance proceeds or condemnation awards received by Seller as a result of any occurrence specified herein and assign to Purchaser all of Seller's right, title and interest in and to any insurance proceeds or condemnation awards resulting from any such occurrence that have not yet been received by Seller on that date. Seller shall cooperate with and assist Purchaser in collecting any such proceeds or awards.

ARTICLE 9: DEFAULT AND REMEDIES

9.1 Remedies. In the event that Purchaser or Seller fails to perform or comply with any of its obligations or the terms contained in this Agreement, the injured party shall have all rights and remedies available at law or in equity, including damages, specific performance and termination of this Agreement, which remedies shall be cumulative and not exclusive, except for circumstances where an exclusive remedy is otherwise specified elsewhere in this Agreement. Without limiting the foregoing, in the event of a default by Purchaser, Seller shall have the right to retain the Deposit as liquidated damages.

9.2 Costs of Enforcement. In any action to enforce this Agreement, to collect damages as a result of a breach of its provisions, or to collect any indemnity provided for herein, the prevailing party shall also be entitled to collect all its costs in such action, including the costs

of investigation, settlement, expert witnesses and reasonable attorneys' fees, together with all additional costs incurred in enforcing or collecting any judgment rendered.

ARTICLE 10: MISCELLANEOUS MATTERS

10.1 Brokers. Seller and Purchaser each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fees arising from the execution of this Agreement or the closing of the purchase and sale hereunder alleged to be payable because of any act, omission or statement of the indemnifying party.

10.2 Recording. Neither party shall record this Agreement or any memorandum of it, and such recording shall be a material default hereunder.

10.3 Assignment. Purchaser may not assign its rights or delegate its duties under this Agreement without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion.

10.4 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally on the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (ii) on receipt, if mailed to the party to whom notice is to be given by first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To Seller:

**Southern Pacific Transportation Company
1860 Lincoln Street
Denver, Colorado 80295
Attention: S. David Steel
Telecopy No. (303) 812-7620**

and

**Southern Pacific Transportation Company
1860 Lincoln Street
Denver, Colorado 80295
Attention: Vice President and General Counsel
Telecopy No. (303) 812-5098**

with a copy to:

**Holme Roberts & Owen LLC
1700 Lincoln, Suite 4100
Denver, Colorado 80203
Attention: Paul V. Timmins, Esq.
Telecopy No. 303-866-0200**

To Purchaser:

**Roaring Fork Railroad Holding Authority
c/o Tom Newland
Assistant Manager, Pitkin County
530 East Main, Suite 301
Aspen, Colorado 81611
Telecopy No. (970) 920-5198**

with a copies to:

**John Worcester, Esq.
City Attorney
City of Aspen
130 South Galena
Aspen, Colorado 81611
Telecopy No. (970) 920-5119**

**James Fritz
Eagle County Attorney
P.O. Box 850
500 Broadway
Eagle, CO 81631
Telecopy No. (970) 328-7207**

**Donald DuFord
County Attorney
Garfield County
2585 Midland
Glenwood Springs, CO 81601
Telecopy No. (970) 945-7785**

10.5 Further Assurances. From time to time after the Closing Date, (and, if reasonably required, prior to the Closing Date), each of Seller and Purchaser shall execute and deliver such instruments of conveyance, assignment and transfer, in addition to those expressly provided for herein, and shall take such other actions as the other party reasonably may request in order more effectively to transfer, convey, assign and deliver to Purchaser any of the Property or to implement the reservations provided for in Article 6. Each of Seller and Purchaser also shall provide such cooperation and furnish such information to the other party as that party reasonably may request for purposes of necessary and voluntary filings, related to the transactions contemplated hereby, with any governmental entity, including, without limitation, the STB and the Internal Revenue Service.

10.6 Street Crossings. Seller agrees to consent to the construction and operation by Purchaser (or some other governmental agency) (at no cost or expense to Seller) of a street crossing in the City of Glenwood Springs, either at grade or sub-grade, in the vicinity of 8th Street, on the condition that such crossing is constructed in accordance with Seller's engineering standards. Purchaser shall indemnify and hold Seller harmless from and against any such costs and expenses relating to the construction and operation of such crossing.

10.7 Press Releases. Neither Seller nor Purchaser shall issue any press releases or otherwise make any public announcements regarding this Agreement or the transaction contemplated hereby without the prior written consent of the other party; provided, however, that nothing contained herein shall prevent or prohibit discussion of this Agreement or the transaction contemplated hereby in public meetings relating to implementation of this Agreement or transaction, or the discharge of obligations arising thereunder.

10.8 Property Subject to Sale by Seller. Purchaser acknowledges that Seller is currently engaged in negotiations to sell the property described on Exhibit D attached hereto and such property is not included in the Property to be sold to Purchaser pursuant to this Agreement.

10.9 Freight Operations. If at any time after the Closing Purchaser conducts any freight rail operations on the Property to or from Seller's rail line, Purchaser (or an operator selected by Purchaser) shall to enter into Seller's standard interchange agreement, cooperative marketing agreement and such other related agreements as are customary; provided, however, that if Purchaser does not elect to perform such freight operations itself, Purchaser shall offer Seller the right, on commercially reasonable terms, to perform such service. If Seller does not notify Purchaser of Seller's election to provide such service within 60 days after Purchaser offers such right to Seller, Purchaser may elect another operator to provide such service.

ARTICLE 11: INTERPRETATION OF AGREEMENT

11.1 Governing Law. This Agreement shall be deemed to be made under the laws of the State of Colorado and for all purposes shall be governed by and construed in accordance with such laws, without reference to the conflicts-of-laws rules and principles of such state.

11.2 Headings. The article and section headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

11.3 Effect of Agreement. No provision of this Agreement shall be altered, amended, revoked or waived except by an instrument in writing signed by the party to be

charged with such amendment, revocation or waiver. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11.4 Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Agreement shall not be affected but shall remain in full force and effect.

11.5 Entire Agreement. This Agreement contains the entire agreement between Seller and Purchaser with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements between Seller and Purchaser with respect thereto.

11.6 Time. Time is of the essence of this Agreement. If any of the conditions or obligations in this Agreement are not timely met by Purchaser or Seller (including but not limited to tendering funds and signing of closing documents on or before the applicable Closing Date), then Purchaser or Seller, as the case may be, shall be deemed to be in default hereunder, and the non-defaulting party may, at its option, exercise its rights under Article 9.

11.7. Counterparts; Facsimile Transmission. This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument. Delivery of a signed counterpart by facsimile shall have the same effect as delivery of an original.

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it as of this day and year first above written.

SELLER:

**SOUTHERN PACIFIC TRANSPORTATION
COMPANY, a Delaware corporation**

PURCHASER:

**ROARING FORK RAILROAD
HOLDING AUTHORITY**

By: _____
Title: _____

By: *James R. Vane*
Title: Chairman
Pitkin County OCC

By: *[Signature]*
Title: Eagle County Engineer

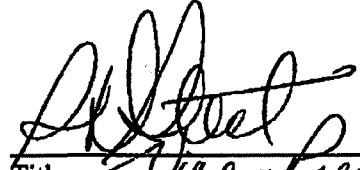
By: *Jonathan W. Tripp*
Title: Mayor Pro Tem City of
Greenwood Springs

SELLER:

**SOUTHERN PACIFIC TRANSPORTATION
COMPANY, a Delaware corporation**

PURCHASER:

**ROARING FORK RAILROAD
HOLDING AUTHORITY**

By: 

Title: Vice-President

By: _____

Title: _____

By: _____

Title: _____

By: _____

Title: _____

Exhibit A

Description of the Real Estate

The real property described on Exhibit B and the following six sheets, excepting therefrom (a) the property conveyed to the Town of Carbondale by special warranty deed recorded in Garfield County on August 22, 1995 under Reception No. 482181, (b) the property conveyed to American Tree and Cement, Inc., by special warranty deed recorded in Garfield County on June 30, 1995 under Reception No. 480081, and (c) the property described in Exhibit D.

269.
12-10-1993Aspen Branch
Garfield County

Sale #37

Exhibit "A"

All those strips and parcels of land, comprising the Aspen Branch of said railroad,
situated in the County of Garfield, State of Colorado, described as follows:

All of the land described in deeds to the Denver and Rio Grande Railroad Company
as follows:

<u>Grantor</u>	<u>Recording Date</u>	<u>Book</u>	<u>Page</u>
Frank Enzensperger	3-29-1888	3	302
Hiram P. Bennett	2-21-1888	19	44
Lewis Bailor	6-16-1888	3	313
Joseph S. Reef, et al	5-3-1889	3	375
Thomas Flannery	2-21-1888	3	288
Howard B. Westover	2-21-1888	19	35
Collins D. Fuller	2-21-1888	19	34
Myrtle E. Hardwick	2-21-1888	3	287
Hyrcaus Staton	2-21-1888	19	33
John Gregory	2-21-1888	19	36
Andrew Thorson	2-21-1888	1	325
Delancy C. King	2-21-1888	19	37
Stephen Peebles	2-21-1888	19	42
Luther K. Crane	2-21-1888	19	43
Louis Lang	2-21-1888	3	292
Fred Childs	7-7-1887	3	208
William Wells	2-21-1888	3	291
Thomas Turpin	2-21-1888	19	41
Phillip E. Weaver	2-21-1888	19	40
Crystal River Land and Improvement Company	4-4-1898	44	273
Isaac Vosseller	3-21-1898	43	195
Ludocia Moore	4-11-1895	35	403
John F. Turner	2-21-1888	17	89
James W. Campbell	6-16-1888	19	153
Milton D. Campbell	2-21-1888	17	88
James W. Zimmerman	2-21-1888	14	308
Alexander Paterson	2-21-1888	3	290
John Cummings	2-21-1888	19	39
Joseph Bogue	2-21-1888	19	38

Also, those strips of land, 200 feet wide, lying 100 feet each side of the original surveyed center line, pursuant to an Act of Congress dated March 3, 1875, situated within subdivisions of Sections as follows:

SW $\frac{1}{4}$ of NW $\frac{1}{4}$, E $\frac{1}{2}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$ Section 22; NE $\frac{1}{4}$ of NE $\frac{1}{4}$ Section 27; Lot No. 9, 17, 18, 20 and 26 Section 35; Lot No. 2 Section 36, Township 6 South, Range 89 West; E $\frac{1}{2}$ of NW $\frac{1}{4}$, NE $\frac{1}{4}$ and SE $\frac{1}{4}$ of fractional Section 1, Township 7 South, Range 89 West; E $\frac{1}{2}$ of SE $\frac{1}{4}$ Section 18; NW $\frac{1}{4}$ Section 20; Lot No. 1 Section 29; SW $\frac{1}{4}$ Section 28; NE $\frac{1}{4}$ Section 33, Township 7 South, Range 88 West; S $\frac{1}{2}$ Section 31, W $\frac{1}{2}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$, W $\frac{1}{2}$ of SW $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 33, Township 7 South, Range 87 West. All of 11th Guide Meridian.

Also, a strip of land, 200 feet wide, lying 100 feet each side of the center line of main track of The Denver and Rio Grande Western Railroad Company described as follows:

Beginning at the intersection of said center line with the South line of Section 34, Township 7 South, Range 88 West, 11th Guide Meridian; thence southeasterly, along said center line, to the west line of land described in deed to Denver and Rio Grande Railroad Company recorded April 11, 1895, in Book 35, Page 403, Deed Records of said County.

EXCEPTING THEREFROM those parcels of land described in deeds from The Denver and Rio Grande Western Railroad Company as follows:

<u>Grantee</u>	<u>Recording Date</u>	<u>Book</u>	<u>Page</u>
Colorado Dept. of Highways	4-6-1970	409	13
Colorado Dept. of Highways	1-14-1969	399	6
Colorado Meadows, Inc.	10-14-1975	479	666

ALSO EXCEPTING THEREFROM a strip of land described as follows:

That portion of the 200 foot wide strip of land as described in deed dated March 17, 1898, from Isaac Vosseller to The Denver and Rio Grande Railroad Company, recorded

March 21, 1898, in Book 43, Page 195, Records of said county, lying southwesterly of a line parallel with and distant 50 feet southwesterly, measured at right angles from the center line of The Denver and Rio Grande Western Railroad Company's main track (Aspen Branch).

Aspen Branch
Eagle County

Sale #37

267
12-15-93

Exhibit "A"

All those strips and parcels of land, comprising the Aspen Branch of said railroad, situated in the County of Eagle, State of Colorado, described as follows:

00000

All of the land described in deeds to the Denver and Rio Grande Railroad Company as follows:

<u>Grantor</u>	<u>Recording Date</u>	<u>Book</u>	<u>Page</u>
Michael Dunkin	3-29-1888	3	300
Sarah Heeley	3-29-1888	31	262
Edward S. Robinson	3-29-1888	5	287
William L. Hopkins	3-29-1888	31	263
School District #7	3-29-1888	5	286
William R. Hook	3-29-1888	31	260
Benjamin M. Prewitt	3-29-1888	33	11

ALSO a parcel of land situated in the northeast quarter of Section 10, Township 8 South, Range 87 East, 6th P.M. described as follows:

Beginning at a point in the center line of The Denver and Rio Grande Western Railroad Company main track, Aspen Branch; said point being the intersection of said center line with the north line of the southwest quarter of the northeast quarter of said Section 10; thence in a southeasterly direction a strip of land fifty feet wide on the southwesterly side to the wagon road fence which is on average of sixteen feet in width on the northeasterly side of said railroad through the said southwest quarter of the northeast quarter, a distance of about eight hundred and eighty two feet.

20.60
12-16-93

Aspen Branch
Pitkin County

Sale #37

Exhibit "A"

All those strips and parcels of land, comprising the Aspen Branch of said railroad,
situated in the County of Pitkin, State of Colorado, described as follows:

All of the land described in deeds to the Denver and Rio Grande Railroad Company
as follows:

<u>Grantor</u>	<u>Recording Date</u>	<u>Book</u>	<u>Page</u>
Benjamin M. Prewitt	3-29-1888	33	11
Clark S. Chatfield	3-29-1888	3	310
Vincent Vanoni	3-29-1888	3	315
Daniel S. Shehi	3-29-1888	3	316
Gustavis G. Grace	3-29-1888	3	313
Benjamin D. Grace	3-29-1888	3	312
Fredrick A. Shehi	3-29-1888	3	314
Edward A. O'Neil	3-29-1888	3	307
Edwin McMillan	3-29-1888	3	309
George B. Henton	3-29-1888	3	311
George E. Davis	3-29-1888	33	9
George Pollock	3-29-1888	33	12
John E. Wheatly	3-29-1888	3	296
Michael Fitzsimmons	6-18-1888	33	163
Simon Wheatley	3-29-1888	3	297
State of Colorado	7-14-1888	31	120
Harvey W. Boyce	3-29-1888	3	302
Arthur B. Foster, et al	3-29-1888	3	298
George F. Wathen	3-29-1888	3	299
Frank Rivoux	3-29-1888	3	300
Benidict Bourg	3-29-1888	3	301
Frank Frasson	3-29-1888	3	306
Melvin S. Steinburg	3-29-1888	3	303
William Tierney	3-29-1888	3	317
F.F. Avignon	3-29-1888	3	295
Theodore Blohm	3-29-1888	3	304
Albert and Laura Grange	8-29-1941	166	192

Also those strips of land, 200 feet wide, lying 100 feet each side of the original surveyed center line, pursuant to an Act of Congress dated March 3, 1875, situated within subdivisions of Sections as follows:

SE $\frac{1}{4}$ of NW $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ Section 21, Township 8 South, Range 86 West; SW $\frac{1}{4}$ Section 31, Township 8 South, Range 85 West, 11th Guide Meridian.

EXCEPTING THEREFROM those parcels of land described in deeds from The Denver and Rio Grande Western Railroad Company as follows:

<u>Grantee</u>	<u>Recording Date</u>	<u>Book</u>	<u>Page</u>
A.J. Kitzelman	10-28-1975	304	742
Colorado Dept. of Highways	4-13-1988	561	148
County of Pitkin	7-30-1980	392	440

Exhibit B

Description of Wye Property

See attached drawing

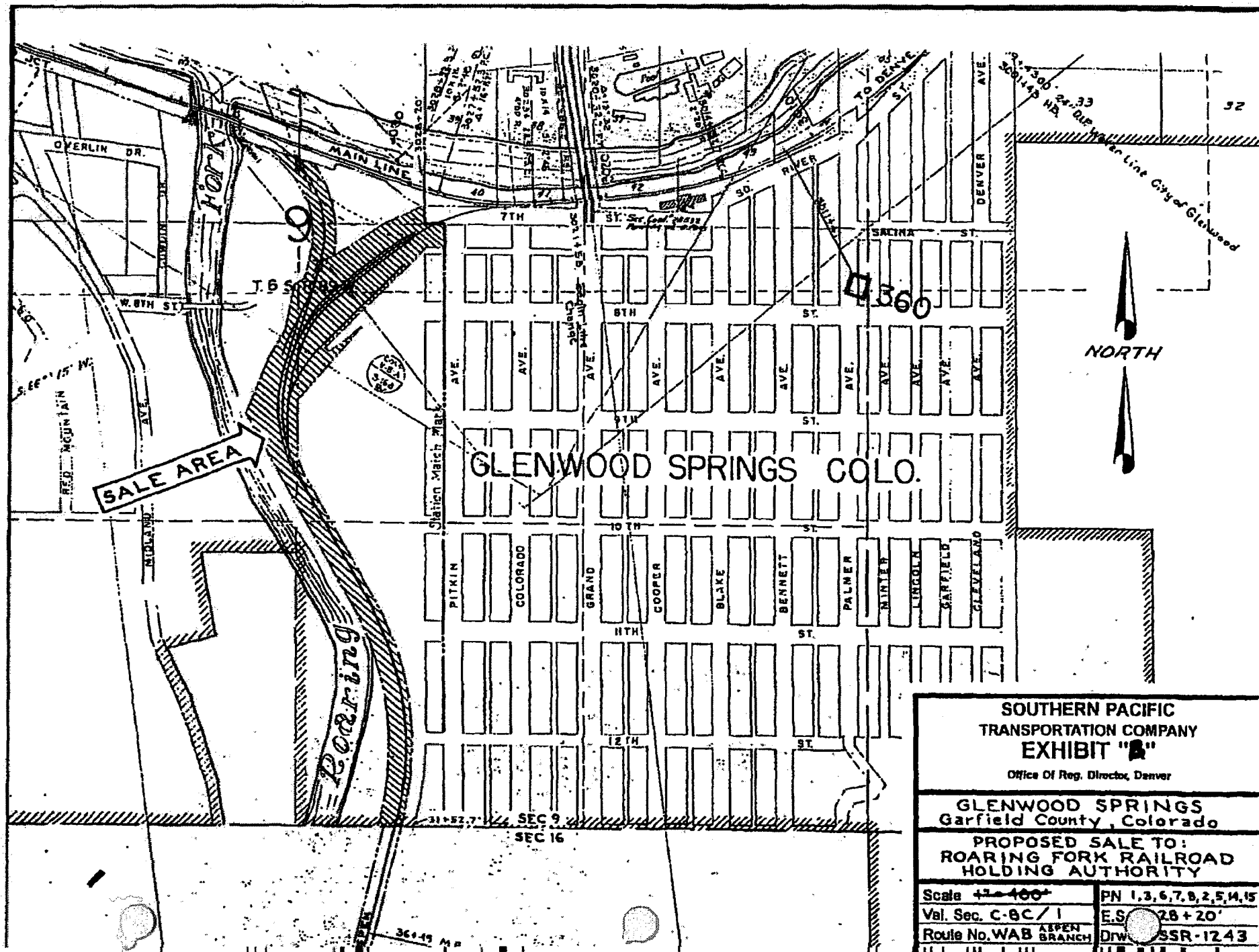


Exhibit C

Railroad Easement

Grantor excepts from the Property hereby conveyed and reserves unto itself, its affiliates, successors and assigns, a perpetual, exclusive freight rail easement, on, under, over and through the portion of the Property described on Exhibit B attached hereto for the purpose of maintaining, repairing, replacing, installing, operating, storing and using in connection with Grantor's rail operations existing and/or future railroad, rail and railroad-related equipment, railroad facilities, transportation systems, and railroad communication systems, including, but not limited to, all existing facilities and related equipment and appurtenances.

Exhibit D

Property Subject to Sale by Seller

The real property described on the following three sheets.

Sale To D. JAN BLACK SSR #1360

SN
303EP96

EXHIBIT "A"

Survey for Southern Pacific Transportation Company

Surveyed by Sydney Lindicome, dba Lines In Space, Box 121, Carbondale, CO 81623

BEING a portion of that land described in deeds from Philip E. Weaver to the Denver and Rio Grande Railroad Company, as recorded February 21, 1888, in Deed Book 19, Page 40, and recorded September 14, 1891, in Deed Book 26, Page 339, both in the Courthouse of Garfield County, Colorado, also being described as:

A tract of land being a portion of that land described in deeds from the Denver and Rio Grande Western Railroad Company to Southern Pacific Transportation Company recorded December 29, 1993 in Book 888, Page 38, and recorded December 29, 1993, in Book 888, Page 30, both Records of said County, situated in Lots 5 and 12 of Section 34, Township 7 South, Range 88 West of the 6th Principal Meridian, Town of Carbondale, Garfield County, Colorado, and being more particularly described as follows:

Beginning at a point on the Southwesterly right-of-way line of said Southern Pacific Transportation Company right-of-way, also being a point on the Westerly right-of-way line of Sixth Street extended Northerly in said Town of Carbondale, whence the street centerline monument located at the intersection of Eighth Street and Main Street in said Town of Carbondale bears S 41°00'21" W 1068.46 feet; thence N 53°00'37" W 528.52 feet along said Southwesterly right-of-way line of said railroad; thence N 62°10'51" W 154.86 feet along said Southwesterly right-of-way line of said railroad; thence N 27°49'09" E 25.00 feet to a point on a line which lies 25.00 feet Southwesterly of and parallel to the centerline of the Main Track of said Southern Pacific Transportation Company; thence S 62°10'51" E along said parallel line for a distance of 617.36 feet to a point on the Westerly right-of-way line of said Sixth Street extended Northerly; thence S 00°25'00" E 123.99 feet along said Westerly right-of-way line extended Northerly, to the point of beginning, containing 35,686 square feet, more or less.

BEARING STATEMENT

All bearings shown hereon are relative to a bearing of N 89°57'00" W between street centerline monuments found in place at the intersection of Fourth Street and Euclid Avenue and at the intersection of Eighth Street and Euclid Avenue in the Town of Carbondale, Colorado.

Sale to C-Dale, LLC SSR#1745

EXHIBIT "A"

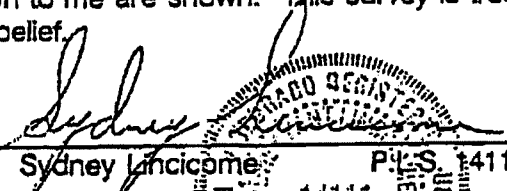
PARCEL NO. 2:

BEING a portion of that land described in deed from The Crystal River Land and Improvement Company to the Denver and Rio Grande Railroad Company, as recorded April 4, 1898 in Deed Book 44, Page 273, in the Courthouse of Garfield County, Colorado, also being described as:

A tract of land being a portion of that land described in a deed from the Denver and Rio Grande Western Railroad Company to Southern Pacific Transportation Company recorded December 29, 1993 in Book 888, Page 38, in the records of said County, situated in Lot 11 of Section 34, Township 7 South, Range 88 West of the 6th Principal Meridian, Town of Carbondale, Garfield County, Colorado, and being more particularly described as follows:

Beginning at the point on the northeasterly right-of-way line of said Southern Pacific Transportation Company right-of-way whence the street centerline monument at the intersection of Fourth Street and Euclid Avenue in said Town of Carbondale bears S 6°20'49" E 1463.21 feet, said point being at the point of intersection of a line that is parallel with and distant 50.00 feet northeasterly, measured at right angles from the centerline of the main track of said Southern Pacific Transportation Company with the west line of said Lot 11; thence North along said west line, 113.07 feet to the most northerly corner of said land as described in said deed recorded April 4, 1898; thence S 62°10'51" E along the northeasterly line of last said land, 202.60 feet to the most northeasterly corner of the 0.31 acre parcel of land described in deed dated October 7, 1975 from The Denver and Rio Grande Western Railroad Company to Colorado Meadows, Inc.; thence S 0°43'19" W along the westerly line of said 0.31 acre parcel of land, 112.33 feet to said parallel line; thence N 62°10'51" W along said parallel line, 201.00 feet to the point of beginning, containing 20,180 square feet, more or less.

I hereby certify that on August 23, 1996 a survey was performed by me on the parcel of land described hereon. All easements, encroachments and rights-of-way in evidence or known to me are shown. This survey is true and correct to the best of my knowledge and belief.

By: 

Sydney Lincicome

P.L.S. 14111



Sale to American Tree & Cement, Inc. SSR #1359

EXHIBIT A

PARCEL NO. 1:

BEING a portion of that land described in deed from Isaac Vosseller to the Denver and Rio Grande Railroad Company, as recorded March 21, 1898 in Deed Book 43, Page 195, in the Courthouse of Garfield County, Colorado, also being described as:

A tract of land being a portion of that land described in deeds from the Denver and Rio Grande Western Railroad Company to Southern Pacific Transportation Company recorded December 29, 1993 in Book 888, Page 38, and recorded December 29, 1993, in Book 888, Page 30, both Records of said County, situated in Lot 11 of Section 34, Township 7 South, Range 88 West of the 6th Principal Meridian, Town of Carbondale, Garfield County, Colorado, and being more particularly described as follows:

Beginning at the point of intersection of the Southwesterly right-of-way line of said Southern Pacific Transportation Company right-of-way with the Northerly prolongation of the Westerly right-of-way line of Fourth Street in said Town of Carbondale whence the street centerline monument at the intersection of Fourth Street and Euclid Avenue in said Town of Carbondale bears S 01°47'54" E 1162.57 feet, said point being the most Southerly corner of the 1.624 acre parcel of land as described in deed dated August 16, 1995, from Southern Pacific Transportation Company to Town of Carbondale, recorded August 22, 1995, in Book 950, Page 861, records of said County; thence N 00°03'00" E along the Easterly line of said 1.624 acre parcel of land, 141.27 feet to a point on a line which lies 25.00 feet southwesterly of and parallel to the centerline of the Main Track of said Southern Pacific Transportation Company; thence S 62°10'51" E along said parallel line for a distance of 354.69 feet to the most Northerly corner of the 1.263 acre parcel of land as described in deed dated June 16, 1995, from Southern Pacific Transportation Company to American Tree and Cement Inc., recorded June 30, 1995, in Book 945, Page 464, records of said County; thence S 07°12'57" W along the westerly line of said 1.263 acre parcel of land, 133.54 feet to said Southwesterly right-of-way line of said railroad; thence N 62°10'51" W 335.87 feet along said Southwesterly right-of-way line to the point of beginning, containing 43160 square feet, more or less.

I hereby certify that on August 23, 1996 a survey was performed by me on the parcel of land described hereon. All easements, encroachments and rights-of-way in evidence or known to me are shown. This survey is true and correct to the best of my knowledge and belief.

By:

Sydney Lindicome
Sydney Lindicome

P.L.S. 14111

14111

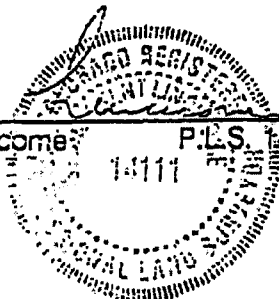


EXHIBIT C

SHARED USE AND PEDESTRIAN WALKWAY AGREEMENT

THIS SHARED USE AND PEDESTRIAN WALKWAY AGREEMENT, dated June 28, 1997, is made by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY ("SPT"), a Delaware corporation, and THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY ("DRGW") (SPT and DRGW and hereinafter collectively referred to as the "Railroads"), on the one hand, and ROARING FORK RAILROAD HOLDING AUTHORITY, a governmental entity formed pursuant to C.R.S. 29-1-201, et seq., and Article XIV of the Colorado Constitution, (hereinafter referred to as "Grantee"), on the other hand.

WHEREAS, pursuant to a Purchase and Sale Agreement of October 3, 1996, Railroads conveyed to Grantee Railroads' Aspen Branch from Glenwood Springs, Colorado to its end point near Woody Creek, Colorado (the "Purchase and Sale Agreement"); and

WHEREAS, in accordance with Article 6 of the Purchase and Sale Agreement, SPT reserved an exclusive easement to use the "Wye Property" (as such term is defined in the Purchase and Sale Agreement and the location of which is illustrated on the attached Exhibit A); and

WHEREAS, Grantee wishes to operate its trains over the trackage located on the Wye Property (the "Wye Trackage") and to install pedestrian walkway(s) over the Wye Property; and

WHEREAS, Railroads are agreeable to Grantee's request to use the Wye Property and Wye Trackage.

NOW, THEREFORE, the parties agree as follows:

1. Railroads hereby agree that Grantee shall have the right to conduct passenger commuter rail operations on the Wye Trackage on the conditions that (i) such operations shall not materially interfere with Railroads' use of the Wye Trackage and Wye Property, (ii) Grantee shall give Railroads at least six months prior written notice of Grantee's intention to commence such operations and (iii) during such six-month period, the parties shall have negotiated and entered into an agreement (the "Joint Operating Agreement") setting forth the parties' respective rights and obligations with respect to such joint use of the Wye Trackage.

2. Railroads agree that the Joint Operating Agreement will allow Grantee reasonable rights, at Grantee's sole cost and expense, to reconfigure the Wye Trackage to accommodate Grantee's passenger commuter rail operations, provided that such reconfiguration does not materially interfere with Railroads' use of the Wye Trackage and Wye Property.

3. The parties acknowledge that Grantee has assumed the common carrier obligations with respect to the property acquired by Grantee pursuant to the Purchase and Sale Agreement, and Grantee has the right to conduct freight rail operations on the Wye Trackage in accordance with Section 10.9 of the Purchase and Sale Agreement, and the Joint Operating Agreement shall allow for such freight operations.

4. Subject to the provisions of this Shared Use and Pedestrian Walkway Agreement, Railroads hereby agree that Grantee shall have the right to install not more than two (2) pedestrian walkways over the Wye Property and Wye Trackage.

5. The rights herein granted are subject to all licenses, leases, easements, encumbrances, and claims of title affecting the Wye Property and Wye Trackage.

6. No less than ninety (90) days prior to Grantee installing the pedestrian walkway(s) over the Wye Property and the Wye Trackage, Grantee shall provide the Railroads with written notice of its intent so to do, including, without limitation, the following information: the proposed date of installation of the pedestrian walkway(s), the proposed location(s) of the pedestrian walkway(s), and pertinent construction details. The Railroads, within sixty (60) days of their receipt of such written notice shall approve or disapprove the proposed installation(s); provided, however, that the Railroads shall not unreasonably withhold, delay, or condition their approval. Upon the approval of any proposed pedestrian walkway(s) by the Railroads, Grantee at its sole cost and expense, and to the satisfaction of the Railroads, shall:

- (a) construct, repair, reconstruct, and maintain such pedestrian walkway(s) in a good and safe condition;
- (b) keep such pedestrian walkway(s) (including the track flangeways, if any) clear of all rubbish, debris, and other material;
- (c) construct, maintain, and replace roadway, whistle, and stop signs as designated by the Railroads.
- (d) furnish, install and maintain bollards in such positions so as to prevent the unauthorized use of the pedestrian walkway(s) by motorized vehicles;
- (e) trim shrubbery to provide proper visibility to trains;
- (f) install and maintain warning devices and make modification to such pedestrian walkway(s) required by public authority; and
- (g) install and maintain such drainage facilities as the Railroads may require.

7. Grantee shall reimburse the Railroads for all costs and expenses incurred by the Railroads in connection with the construction, maintenance, repair, reconstruction, and use of

the pedestrian walkway(s) by Grantee, including but not limited to the items listed in Section 6 above.

8. (a) The parties hereto acknowledge that there are fiber optic cable systems buried on the Wye Property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Grantee shall telephone 1-800-AT-FIBER (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Wye Property to be used by Grantee. If it is, Grantee shall telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or any other protection of the fiber optic cable, and shall not perform any work on the Wye Property until all such protection or relocation has been accomplished. To the extent permitted by law, Grantee shall indemnify and hold the Railroads harmless from and against all costs and expenses, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Grantee's failure to comply with the provisions of this Section 8.
 - (b) In addition to the other indemnity provisions in this Shared Use and Pedestrian Walkway Agreement, Grantee, within its legal ability to do so under the Constitution of the State of Colorado and without in any way or manner intending to waive or waiving the defenses or limitation on damages provided for under and pursuant to the Colorado Governmental Immunity Act (sec. 24-10-101, *et seq.* C.R.S.), the Colorado Constitution, or under common law or the laws of the United States or the State of Colorado, except as specifically waived pursuant to Section 11.4 below, shall indemnify and hold the Railroads harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by the negligence of Grantee, its subcontractors, agents, and/or employees, resulting in (i) any damage to or destruction of any telecommunications system on the Wye Property, and/or (ii) any injury to or death of any person employed by or on behalf of any telecommunications company (ies), and/or its subcontractors, agents, and/or employees, on the Wye Property, except if such costs, liability or expenses are caused by the negligence of the Railroads.
9. Grantee shall not perform any work on the Wye Property (except emergency repairs) unless the Railroads' authorized representative is given five (5) days advance notice thereof and the approval of the Railroads for such work is obtained in writing.
10. Grantee shall pay for all material joined or affixed to the Wye Property, and for all labor performed upon the Wye Property pursuant to Grantee's instance or request,

and Grantee shall not permit or suffer any mechanics' liens or materialman's liens of any kind or nature to be enforced against the Wye Property for any such work done or materials joined or affixed thereto. Railroads shall pay for all material joined or affixed to the Wye Property, and for all labor performed upon the Wye Property pursuant to Railroads' instance or request, and Railroads shall not permit or suffer any mechanics' liens or materialman's liens of any kind or nature to be enforced against the Wye Property for any such work done or materials joined or affixed thereto.

- 11.1 The provisions of this Section 11 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 11, no provisions hereof shall be deemed to deprive Railroads or Grantee of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of this Shared Use and Pedestrian Walkway Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by this Shared Use and Pedestrian Walkway Agreement.
- 11.2 (a) The term "Employee(s)" of either Railroads or Grantee shall mean all officers, agents, employees, and contractors of that party. The inclusion of contractor within the definition of employee shall not be interpreted to mean that a contractor shall be an employee of the Railroad or Grantee for any other purpose than stated in this Agreement including, but not limited to, Workers' Compensation, Social Security or other employee benefits.
- (b) The term "Third Party(ies)" shall mean those persons other than Employee(s) of Railroads or Grantee and who are upon or near the Wye Property or Wye Trackage.
- (c) The term "Joint Employee(s)" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Wye Property or Wye Trackage.
- (d) The term "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto and Third Parties, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on the Wye Property or Wye Trackage and shall include liability for any and all claims, suits, demands, judgments and

damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment.

- 11.3 (a) Railroads shall bear all costs of Loss and/or Damage to its Employees and Equipment (including any lading) or property in its care, custody, or control without regard to which party was at fault.
- (b) Grantee shall bear all costs of Loss and/or Damage to its Employees, Equipment (including any lading), property in its care, custody, or control, or Third Parties without regard to which party was at fault.
- (c) Railroads or Grantee, as the case may be, shall bear all costs of Loss and/or Damage to Joint Employees, and Equipment (including any lading) or property in its (or their) care, custody, or control, as follows:
- (1) In the event Joint Employees are working upon or near the Wye Property or Wye Trackage for the sole benefit of only one of the parties, the party receiving such benefit shall bear the sole cost and expense for such Loss and/or Damage.
 - (2) The sole cost and expense for Loss and/or Damage to Joint Employees maintaining, repairing, constructing, renewing, removing, inspecting or otherwise dealing with pedestrian walkways shall be borne by Grantee.
 - (3) In all other respects, in the event of Loss and/or damage to Joint Employees and Equipment (including any lading) or property in its (or their) care, custody, or control, the party receiving the preponderance of benefit relating from the activity being performed by the Joint Employee(s) at the time of the Loss and/or Damage shall bear all costs thereof.

- 11.4 For purposes of the Loss and/or Damage provisions contained in this section and the indemnity set forth in Section 8 above, and pursuant to C.R.S. § 24-10-104 (as amended) of the Colorado Governmental Immunity Act (the "Act"), Grantee's Board of Directors, pursuant to Resolution No. 2 dated June 26, 1997, waives the immunity and damage limitations of the Act to the extent of the coverage provided by the insurance required below. The waiver of governmental immunity is specifically limited as set forth in the Resolution attached as Exhibit B

hereto, to be adopted by Grantee's Board no later than the Closing under the Purchase and Sale Agreement.

12. (a) Prior to any use by Grantee of the Wye Trackage or Wye Property, Grantee, at its sole cost and expense, shall obtain and maintain, from an insurance company licensed to do business in Colorado, and possessing a current Best's Insurance Guide Rating of B and Class VII, or better, (i) Commercial General Liability Insurance in the amount of Five Million Dollars (\$5,000,000) per occurrence and aggregate limit of at least Five Million Dollars (\$5,000,000) for personal injury, bodily injury, death, and property damage and (ii) during all times when any construction or demolition activities are being performed within 50 feet of the Wye Trackage, Railroad Protective Liability insurance naming only the Railroads as the insured with a combined single limit of Two Million Dollars (\$2,000,000) per occurrence with a Six Million Dollar (\$6,000,000) aggregate. Such insurance shall include blanket contractual coverage for the provisions set forth in Sections 8 and 11 of this Shared Use and Pedestrian Walkway Agreement, and shall include an endorsement which reads as follows:

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

We will not waive, both in the adjustment of claims and in the defense of "suits" against the insured, any governmental immunity of the insured, unless the insured requests that we do so. The insured has requested that governmental immunity be waived as set forth in the Resolution appended hereto as an Exhibit. Said Resolution constitutes a written request for the limited waiver set forth therein.

Waiver of immunity as a defense will not subject us to liability for any portion of a claim or judgment in excess of the applicable limit of insurance.

The Resolution to be appended to such endorsement shall be in the form of Exhibit B attached hereto.

Each policy of general liability insurance obtained by Grantee shall name the Railroads as Additional Named Insureds. Grantee shall provide the Railroads evidence of its insurance coverage as of the date of this Shared Use and Pedestrian Walkway Agreement, together with copies of its insurance policies and any amendments as soon as they are available.

- (b) For any claims arising out of the activities or operations resulting from or related to this Shared Use and Pedestrian Walkway Agreement, the insurance obtained in accordance with Section 12 (a) shall be primary with respect to Grantee's obligations under this Shared Use and Pedestrian Walkway Agreement relative to the Railroads. Any insurance maintained by the Railroads shall be excess of the insurance coverage herein defined as primary and shall not contribute with it.
 - (c) Unless otherwise agreed to in writing by the Railroads and Grantee, the Commercial General Liability Insurance required by Section 12(a) shall be obtained by Grantee prior to any use by Grantee of the Wye Trackage or Wye Property and shall thereafter be maintained by the Grantee for the full term of this Shared Use and Pedestrian Walkway Agreement and such insurance shall not be permitted to expire or to be canceled or materially changed except on sixty (60) days' written notice from Grantee to the Railroads. Each insurance policy required by Section 12(a) shall be endorsed to provide that coverage shall not be suspended, voided, canceled by Grantee, or reduced in coverage or limits except after sixty (60) days' written notice has been given to the Railroads by Grantee.
 - (d) Upon request by Railroads, the dollar amount set forth in Section 12 (a) shall be adjusted for changes in the Consumer Price Index, but shall not be reduced below its initial level and shall not be adjusted more frequently than once in any 5 year period. As used in this Section 12 (d), the term "Consumer Price Index" shall mean the United States Department of Labor's Bureau of Labor Statistics' Consumer Price Index, All Urban Wage Earners and Clerical Workers, All Items, U.S. City Average (1967=100). If the base year for the Consumer Price Index is changed from 1967, the Consumer Price Index shall be converted in accordance with the conversion factor published by the United States Department of Labor's Bureau of Labor Statistics. If the Consumer Price Index is discontinued or revised, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.
13. In the event of any default by Grantee under the provisions of this Shared Use and Pedestrian Walkway Agreement, the Railroads reserve the right to perform, at their election and at Grantee's sole cost and expense, all or any portion of work required in connection with the construction, repair, reconstruction, maintenance, use, and removal of the pedestrian walkway(s) (the "Work"). If the Railroads are to perform any Work, Grantee shall, prior to the commencement of such Work, deposit with the Railroads the estimated cost thereof. After completion of such Work, the difference, if any between the Railroads' actual cost and expense to

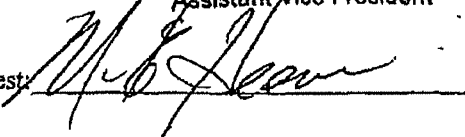
perform such Work, and such deposit shall be promptly paid by Grantee or refunded by the Railroads to Grantee, as the case may be.

14. Grantee agrees that its activities pursuant to this Shared Use and Pedestrian Walkway Agreement shall not obstruct, hinder, or in any way restrict the operations (or related activities) of the Railroads over the Wye Property or Wye Trackage.
15. This Shared Use and Pedestrian Walkway Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Any assignment by Grantee of Grantee's rights hereunder shall be subject to the prior approval by Railroad, which approval shall not be unreasonably withheld, delayed, or conditioned.
16. The permission herein given is non-exclusive, and the Railroads reserve for themselves, their agents and employees the right to use the pedestrian walkway(s) jointly with Grantee. The right to use the walkway(s) shall be to the same extent and for the same uses that the walkway(s) are used by the Grantee.
17. Until the parties have entered into the Joint Operating Agreement and except for any allocation of maintenance costs provided in any agreement entered into pursuant to section 10.9 of the Purchase and Sale Agreement, Railroads shall, at Railroads' sole cost and expense, maintain the Wye Trackage to at least the level of maintenance as exists on the date hereof.
18. Railroads shall indemnify, defend and hold Grantee harmless from and against all liabilities, losses, damages, penalties, fines, costs and expenses (including, without limitation, attorneys' fees, court costs and other costs of investigation and litigation) arising out of any release of hazardous substances resulting from Railroads' future operations on the Wye Property.
19. Neither party shall assign this agreement without the prior written consent of the other party, except that Railroads may assign this agreement to any of their affiliates without Grantee's consent.

IN WITNESS WHEREOF, the parties hereto have caused this Shared Use and Pedestrian Walkway Agreement to be executed in triplicate as of the day and year first herein written.

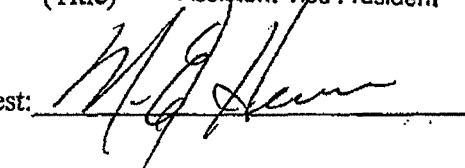
SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: 
(Title) Assistant Vice President

Attest: 

THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

By: 
(Title) Assistant Vice President

Attest: 

ROARING FORK RAILROAD HOLDING
AUTHORITY

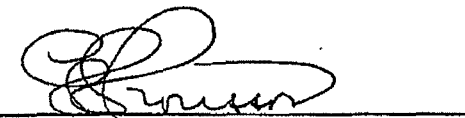
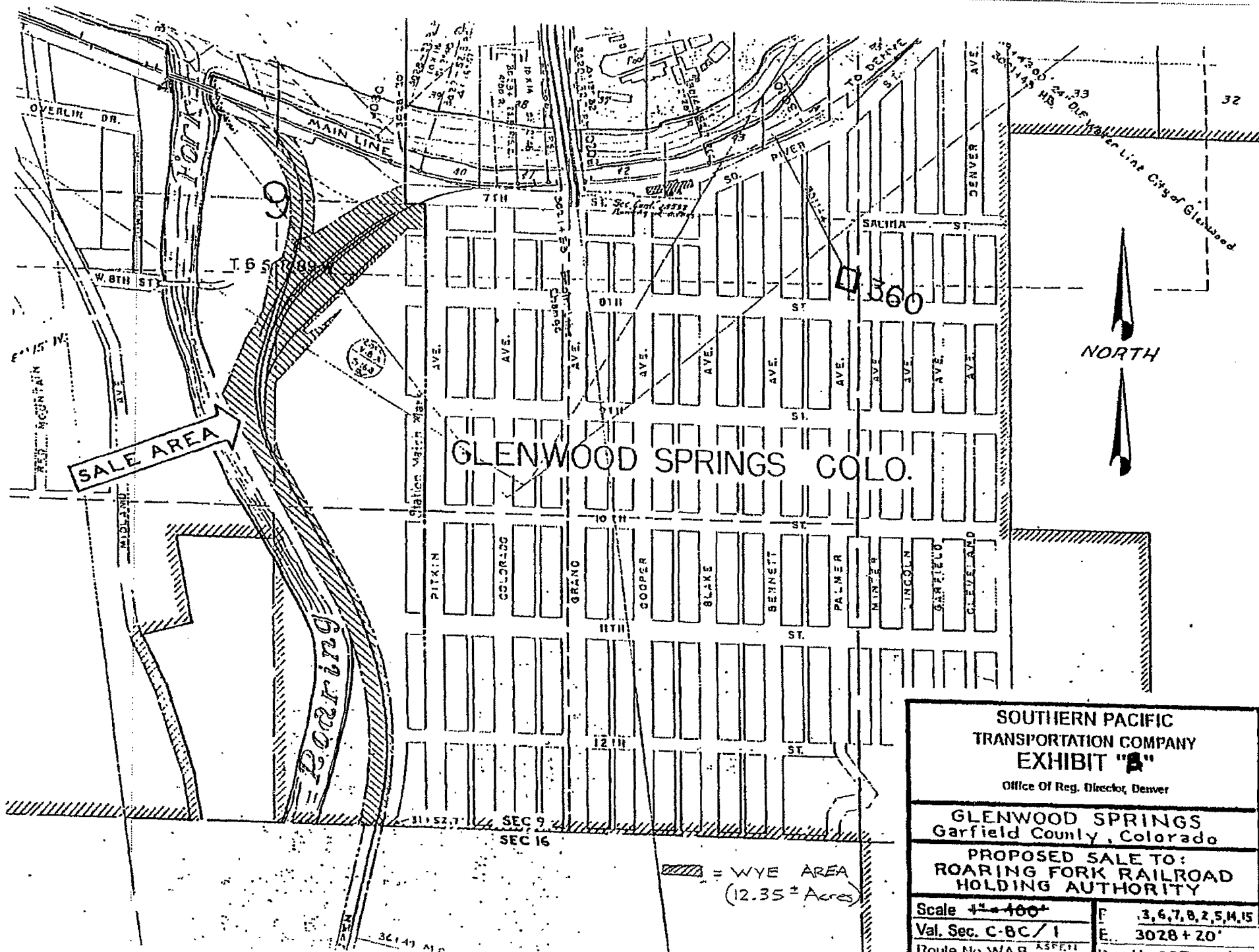
By: 
(Title) Chairman

Exhibit A

Drawing Depicting the Wye Property

[see attached]



SOUTHERN PACIFIC TRANSPORTATION COMPANY EXHIBIT "A" Office Of Reg. Director, Denver	
GLENWOOD SPRINGS Garfield County, Colorado	
PROPOSED SALE TO: ROARING FORK RAILROAD HOLDING AUTHORITY	
Scale 1" = 400' Val. Sec. C-8C/1 Route No. WAB	F 3, 6, 7, 8, 2, 5, 4, 15 E. 3028 + 20' ASPEN BRANCH Urw No SSR-1243

Exhibit B

Form of Resolution

[see attached]

RESOLUTION NO. 2
Series of 1997

A RESOLUTION OF THE ROARING FORK RAILROAD HOLDING AUTHORITY, COLORADO, DECLARING A LIMITED WAIVER OF THE IMMUNITY AND DAMAGES LIMITATIONS OF THE COLORADO GOVERNMENTAL IMMUNITY ACT, SECTION 24-10-101, *ET SEQ.*, C.R.S. TO THE EXTENT OF ITS INSURANCE COVERAGE.

WHEREAS, there has been submitted to the Roaring Fork Railroad Holding Authority a Shared Use and Pedestrian Walkway Agreement between the Roaring Fork Railroad Holding Authority and Southern Pacific Transportation Company ("SPTC") and The Denver and Rio Grande Western Railroad Company ("D&RGW") for the shared use of the "Wye Property" as that term is defined in that certain Purchase and Sale Agreement and in the Shared Use and Pedestrian Walkway Agreement (the "Property"); and

WHEREAS, the Shared Use and Pedestrian Walkway Agreement contemplates that the Roaring Fork Railroad Holding Authority shall waive, to a limited extent, the immunity and damages limitations of the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S., in accordance with Section 24-10-104, C.R.S., to the extent of the insurance coverage required to be maintained by the Roaring Fork Railroad Holding Authority under the Shared Use and Pedestrian Walkway Agreement; and

WHEREAS, the Roaring Fork Railroad Holding Authority desires to comply with the limited waiver requirement as set forth in the Shared Use and Pedestrian Walkway Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE ROARING FORK RAILROAD HOLDING AUTHORITY, COLORADO, THAT:

Section 1.

The Roaring Fork Railroad Holding Authority hereby waives solely for the benefit of SPTC, D&RGW and their successors and assigns the immunity and damages limitations set forth in the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S.; provided, however, that the waiver is specifically limited as follows:

- a. The waiver is limited to the extent of the insurance coverage which the Roaring Fork Railroad Holding Authority is obligated to maintain under the Shared Use and Pedestrian Walkway Agreement. The waiver shall not subject the Roaring Fork Railroad Holding Authority to liability for any portion of a claim or judgment in excess of the applicable limit of the insurance which the Roaring Fork Railroad Holding Authority is obligated to maintain under the Shared Use and Pedestrian Walkway Agreement.

b. The waiver shall not apply to the notice requirements set forth at Section 24-10-109, C.R.S.

c. The waiver shall apply only to "injuries" (as defined in Section 24-10-103(2)) occurring subsequent to the purchase of the Property by the Roaring Fork Railroad Holding Authority.

Dated: June 26, 1997.



George Roussos, Chairman

ATTESTED BY:



Exhibit C

Railroad Easement

Grantor excepts from the Property hereby conveyed and reserves unto itself, its affiliates, successors and assigns, a perpetual, exclusive freight rail easement, on, under, over and through the portion of the Property described on Exhibit B attached hereto for the purpose of maintaining, repairing, replacing, installing, operating, storing and using in connection with Grantor's rail operations existing and/or future railroad, rail and railroad-related equipment, railroad facilities, transportation systems, and railroad communication systems, including, but not limited to, all existing facilities and related equipment and appurtenances.

EXHIBIT D

1
c-1

BARGAIN AND SALE DEED
(Garfield County)

SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, and THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a Delaware corporation, (collectively "Grantors"), in consideration of the sum of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sell and convey to ROARING FORK RAILROAD HOLDING AUTHORITY ("Grantee"), a governmental entity formed pursuant to C.R.S. § 29-1-201, et seq. and Article XIV of the Colorado Constitution, and having an address of 530 E. Main Street, Aspen, CO 81611, all of the Seller's interest in (a) the real property described on Exhibit A attached hereto and made a part hereof, situate in the County of Garfield, State of Colorado (the "Property"); (b) any buildings, structures and improvements located on the Property; (c) all fixtures attached to the Property that Seller owns and uses in the operation and maintenance of the Property, including all rail, ties, ballast, bridges, viaducts, trestles, signaling devices and other tangible personal property owned by Seller and located on the Property (other than engines, railcars and other rolling stock); and (d) all mineral rights and water rights (if any) associated with the Property; excepting and reserving unto Grantors and their successors and assigns, Grantors' rights under the Easement Agreement between The Denver and Rio Grande Western Railroad Company and Qwest Communications Corp. (f/k/a Southern Pacific Telecommunications Company) dated September 30, 1991, as amended; and excepting and reserving unto Grantors and their affiliates, successors and assigns, a perpetual, exclusive freight rail easement, on, under, over and through the portion of the Property described on Exhibit B attached hereto (the "Wye Property") for the purpose of maintaining, repairing, replacing, installing, operating, storing and using in connection with Grantor's rail operations existing and/or future railroad, rail and railroad-related equipment, railroad facilities, transportation systems, and railroad communication systems, including, but not limited to, all existing facilities and related equipment and appurtenances (collectively, the "Rail Facilities"); and a perpetual non-exclusive easement on, under, over and through the Wye Property for the purpose of using the Rail Facilities for passenger rail operations.

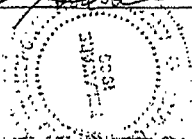
EXECUTED as of June 28, 1997.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY, a Delaware corporation

By: [Signature]
Name: R.D. UHRICH
Title: Assistant Vice President

ATTEST:

#309347



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1 of 21 R 0.00 D 0.00 N 0.00 GARFIELD CLERK

Asst. Secretary

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY, a Delaware corporation

By: 
Name: R.D. UHRICH
Title: Assistant Vice President

ATTEST:


Asst. Secretary



#305347

2



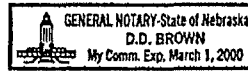
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2 of 21 R 0.00 D 0.00 N 0.00 GARFIELD CLERK

STATE OF Nebraska)
COUNTY OF Douglas) ss.

The foregoing instrument was subscribed and sworn to before me this 28 day of June, 1997 by R. D. UHRICH, as ASST. VICE PRESIDENT of Southern Pacific Transportation Company.

Witness my hand and official seal.

My commission expires: _____



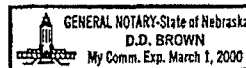
D.D. Brown
Notary Public

STATE OF Nebraska)
COUNTY OF Douglas) ss.

The foregoing instrument was subscribed and sworn to before me this ____ day of June, 1997 by R. D. UHRICH, as ASST. VICE PRESIDENT of The Denver and Rio Grande Western Railroad Company.

Witness my hand and official seal.

My commission expires: _____



D.D. Brown
Notary Public

EXHIBIT A

(Legal Description of the Property)

[see attached 10-page legal description]

#305347

A-1



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4 of 21 R 0.00 D 0.00 N 0.00 GARFIELD CLERK

EXHIBIT "A"

All those certain parcels of land situated in the County of Garfield, State of Colorado, being a portion of the Aspen Branch of the former Denver and Rio Grande Western Railroad Company, more particularly described as follows:

Parcel 1

A strip of land 100 feet in width, lying 50 feet on each side of the center line of the westerly wye track of said Aspen Branch, extending southerly from the intersection of said center line with a line parallel with and distant 65 feet southerly, measured at right angles, from the center line of the main track of said Company to a line drawn South 66°15' West from the southwesterly corner of out-lot 40 in the Town of Glenwood Springs, said 100 feet wide strip of land being a portion of the land described in the following deeds:

(1) Deed dated December 1, 1893, from John L. Noonan to The Denver and Rio Grande Railroad Company, recorded September 1, 1894, in Book 35, page 269, records of the County of Garfield.

(2) Deed dated December 29, 1971, from the State Department of Highways, State of Colorado, to The Denver and Rio Grande Western Railroad Company, recorded February 9, 1972, being a portion of land described therein as Parcel No. 41 and Parcel No. 42, Rev. 3, recorded in Book 427, page 117; Parcel No. 43 Rev. recorded in Book 427, page 118, and Parcel No. 58, recorded in Book



427, page 121, all in the records of the County of Garfield.

(3) Deed dated November 1, 1892, from Clinton Reed to The Denver and Rio Grande Railroad Company, recorded December 13, 1892, in Book 29, page 597, records of the County of Garfield.

Parcel 2

All of the land described in deed dated July 7, 1887, from Elisha B. Cravens to The Denver and Rio Grande Railroad Company, recorded August 26, 1892, in Book 25, page 384, records of the County of Garfield.

(1) Excepting therefrom a portion of the land described in deed dated March 18, 1971, from The Denver and Rio Grande Western Railroad Company to the United Lumber and Mercantile Company described therein as follows:

"A tract or parcel of land containing 0.515 acres, more or less, in Lots 2 and 3 of Section 9, Township 6 South, Range 89 West, 6th Principal Meridian, being a part of the station grounds of the Denver and Rio Grande Western Railroad within the City of Glenwood Springs, Garfield County, Colorado, and more particularly described as follows:

Beginning at a point in the southerly property line of the Railroad Company from whence the street corner monument located at the intersection of 8th Street and Pitkin Avenue bears South 42° 28' 40" East 517.02 feet; thence South 58° 37' West along said southerly property

line a distance of 15.26 feet; thence South 54° 19' West along said southerly property line a distance of 184.68 feet; thence South 59° 09' West along said southerly property line a distance of 25.48 feet to a point that is 50 feet southeasterly at right angles from the centerline of Railroad Company's track ICC No. 102; thence along the arc of a curve to the left of radius 520.92 feet, parallel to and 50 feet at right angles from said track a distance of 258.5 feet, more or less, to the intersection of said curve with the northerly right of way line of Railroad Company's original Main Track (the chord of this arc bears approximately North 1° 59' West a distance of 256 feet, more or less); thence easterly along said northerly right of way line and along the arc of a curve to the left of radius 408.37 feet a distance of 256 feet, more or less, to the intersection of said curve and right of way line with the southerly property line of the Railroad Company (the chord of this arc bears approximately South 65° 03' East a distance of 252 feet, more or less); thence South 59° 03' 35" West along said Southerly property line a distance of 40.47 feet to the point of beginning."

(2) Also excepting therefrom all of the land described in deed dated July 15, 1967, from The Denver and Rio Grande Western Railroad Company to the United Lumber and Mercantile Company described therein as follows:

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Page 3 of 10

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"Lots A and B, in Block 41, in the City of Glenwood Springs; together with the Alley formerly located across said Block 41 and bounded on the South by said Lot A and on the North by Lots 1, 2, 3 and 4 of said Block 41, which alley was duly vacated by Ordinance No. 2, Series 1967, a certified copy of which Ordinance is recorded in Book 383 at Page 128, Document No. 237478, of the records in the office of the County Clerk and Recorder of Garfield County, Colorado.

Also, that certain tract or parcel of land situated in Lot 3 of Section 9, Township 6 South, Range 89 West of the 6th P.M., in the City of Glenwood Springs and described as follows: Beginning at the Northwest Corner of Lot A, in Block 41, in the City of Glenwood Springs, as the point of beginning; thence S. 41°33' W. 444.87 feet; thence S. 53°42' W. 94.23 feet; thence S. 55°37' W. 74.75'; thence 20.603 feet along the arc of a curve to the right having a radius of 17.58 feet (the chord of said arc bears S. 89°11'33" W. 19.446 feet); thence N. 57°14' W. 5.83 feet; thence N. 46°31' E. 630.19 feet to the West Line of said Block 41; thence S. 1°32' W. 5.61 feet along the West Line of said Block 41 to the point of beginning."

(3) Also excepting therefrom a portion of the land described in deed dated December 19, 1991, from The Denver and Rio Grande

Western Railroad Company to the Holt Family Funeral Home described therein as follows:

"A tract or parcel of land containing 0.096 acres, more or less, in Section 9, Township 6 South, Range 89 West, of the Sixth Principal Meridian, said tract or parcel being more particularly described as follows:

Beginning at a point from which the N $\frac{1}{2}$ corner of Section 9, T6S, R89W, bears N. 00°07' E., a distance of 2818.7 feet;

1. Thence S. 67°48' W. a distance of 58.0 feet to a point on the west line of Lot 3, Section 9;
2. Thence S. 12°15' W. along the easterly border line of a release of land dated September 8, 1894, recorded in Book No. 35, Page 137 of the Garfield County Recorder's Office, a distance of 103.71 feet to the northerly line of Seventh Street extended;
3. Thence N. 58°38' E. along the northerly line of Seventh Street extended, a distance of 49.02 feet;
4. Thence N. 20°25'30" E. a distance of 58.5 feet;
5. Thence along the arc of a curve to the left, having a radius of 423.5 feet, a distance of 44.9 feet (the chord of this arc bears N. 17°23'30" E. a distance of 44.9 feet), more or less, to the point of beginning."

Parcel 3

All of the land described in deed dated January 4, 1896, from David N. Moffat and Walter S. Cheesman, Trustees, to Edward T. Jeffery and Chester S. Morey, Trustees, recorded September 23, 1896, in Book 20, page 487, records of the County of Garfield.

Parcel 4

All of the land described in deed dated September 10, 1887, from John L. Noonan to The Denver and Rio Grande Railroad Company, recorded November 18, 1887, in Book 14, page 265, records of the County of Garfield.

Excepting therefrom a portion of the land described in deed dated December 19, 1991, from The Denver and Rio Grande Western Railroad Company to the Holt Family Funeral Home as described in item 3 of the above described Parcel 2.

Also excepting all of the land described in Release of Lands dated February 8, 1894, by the United States Trust Company of New York, as Trustees, recorded March 3, 1894, in Book 35, page 137, records of Garfield County.

Parcel 5

All of the land described in deeds to The Denver and Rio Grande Railroad Company recorded in the records of the County of Garfield, as follows:

<u>Grantor</u>	<u>Recording Date</u>	<u>Book</u>	<u>Page</u>
Nellie A. Stows	4-10-1924	142	224
Frank Enzensperger	3-29-1888	3	302
Hiram P. Bennett	2-21-1888	19	44
Lewis Bailor	6-16-1888	3	313
Joseph S. Reef, et al	5-3-1889	3	375
Thomas Flannery	2-21-1888	3	288
Howard B. Westover	2-21-1888	19	35
Collins D. Fuller	2-21-1888	19	34
Myrtle E. Hardwick	2-21-1888	3	287
Hyrceanus Staton	2-21-1888	19	33
John Gregory	2-21-1888	19	36
Andrew Thorson	2-21-1888	1	325
Delancy C. King	2-21-1888	19	37
Stephen Peebles	2-21-1888	19	42
Luther K. Crane	2-21-1888	19	43
Louis Lang	2-21-1888	3	292
Fred Childs	7-7-1887	3	208
William Wells	2-21-1888	3	291
Thomas Turpin	2-21-1888	19	41
Phillip E. Weaver	2-21-1888	19	40
Phillip E. Weaver	9-14-1891	26	339
Crystal River Land and Improvement Company	4-4-1898	44	273
Isaac Yosseller	3-21-1898	43	195
Ludocia Moore	4-11-1895	35	403
John F. Turner	2-21-1888	17	89
James W. Campbell	6-16-1888	19	153
Milton D. Campbell	2-21-1888	17	88
James W. Zimmerman	2-21-1888	14	308
Alexander Paterson	2-21-1888	3	290
John Cummings	2-21-1888	19	39
Joseph Bogue	2-21-1888	19	38

Parcel 6

All those certain strips of land, 200 feet in width, lying 100 feet on each side of the original surveyed center line of said Aspen Branch, acquired by Act of Congress dated March 3, 1875, within the following described subdivisions:

SW $\frac{1}{4}$ of NW $\frac{1}{4}$, E $\frac{1}{2}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$ Section 22; NE $\frac{1}{4}$ of NE $\frac{1}{4}$ Section 27; Lot Nos. 9, 17, 18 and 26 Section 35; Lot No. 2 Section 36,

Township 6 South, Range 89 West; Lot Nos. 2, 3, 6 to 10 and 18 to 20 of fractional Section 1, Township 7 South, Range 89 West; Lot No. 13 of fractional Section 18; Lot Nos. 1 and 5 of Section 20; Lot No. 1 of Section 29; Lot No. 5 and S $\frac{1}{4}$ of Section 28; Lot No. 2 of Section 33, Township 7 South, Range 88 West; S $\frac{1}{4}$ Section 31 (excepting the westerly 446 feet), NW $\frac{1}{4}$ of SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 32 (original survey); NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 33 (original survey), Township 7 South, Range 87 West, and NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 4 (original survey), Township 8 South, Range 87 West, Sixth Principal Meridian.

Parcel 7

A strip of land, 100 feet wide, lying 50 feet each side of the center line of the track of the Aspen Branch of the former Denver and Rio Grande Western Railroad Company described as follows:

Beginning at the point of intersection of said center line of Aspen Branch with the North line of Lot No. 16 of Section 34, Township 7 South, Range 88 West, Sixth Principal Meridian; thence southeasterly, along said center line, to the west line of land described in said deed from Ludocia Moore, recorded April 11, 1895, in Book 35, Page 403, Deed Records of said County.

EXCEPTING from the above described parcels of land all of the land described in deeds from The Denver and Rio Grande Western

Railroad Company recorded in the records of the County of Garfield
as follows:

<u>Grantee</u>	<u>Recording Date</u>	<u>Book</u>	<u>Page</u>
Colorado Dept. of Highways	4-6-1970	409	13
Colorado Dept. of Highways	1-14-1969	399	6
Colorado Meadows, Inc.	10-14-1975	479	666
Town of Carbondale	8-22-1995	950	861
American Tree and Cement, Inc.	6-30-1995	945	464
American Tree & Cement, Inc.	10-22-1996	997	904
C-Dale, LLC	10-22-1996	997	929

ALSO EXCEPTING THEREFROM a portion of the land described in
deed from Philip E. Weaver to The Denver and Rio Grande Railroad
Company, recorded February 21, 1988, in Deed Book 19, Page 40, and
recorded September 14, 1991, in Deed Book 26, Page 339, records of
the County of Garfield, described as follows:

A tract of land being a portion of that land described in
deeds from The Denver and Rio Grande Western Railroad Company to
Southern Pacific Transportation Company recorded December 29, 1993
in Book 888, Page 38, and recorded December 29, 1993, in Book 888,
Page 30, both Records of said County, situated in Lots 5 and 12 of
Section 34, Township 7 South, Range 88 West of the 6th Principal
Meridian, Town of Carbondale, Garfield County, Colorado, and being
more particularly described as follows:

Beginning at a point on the Southwesterly right-of-way line of
said Southern Pacific Transportation Company right-of-way, also
being a point on the Westerly right-of-way line of Sixth Street
extended Northerly in said Town of Carbondale, whence the street
centerline monument located at the intersection of Eighth Street



and Main Street in said Town of Carbondale bears S 41°00'21" W 1068.46 feet; thence N 53°00'37" W 528.52 feet along said Southwesterly right-of-way line of said railroad; thence N 62°10'51" W 154.86 feet along said Southwesterly right-of-way line of said railroad; thence N 27°49'09" E 25.00 feet to a point on a line which lies 25.00 feet Southwesterly of and parallel to the centerline of the Main Track of said Southern Pacific Transportation Company; thence S 62°10'51" E along said parallel line for a distance of 617.96 feet to a point on the Westerly right-of-way line of said Sixth Street extended Northerly; thence S 00°25'00" E 123.99 feet along said Westerly right-of-way line extended Northerly, to the point of beginning, containing 35,686 square feet, more or less.



510445 07/03/1997 02:06P B1024 P613 066
14 of 21 R 0.00 D 0.00 N 0.00 GARFIELD CLERK

EXHIBIT B

Legal Description of Wye Property

[see attached 6-page legal description]

#305347

B-1



510445 07/03/1997 02:06P B1024 P814 066
15 of 21 R 0.00 D 0.00 N 0.00 GARFIELD CLERK

EXHIBIT "B"

All those certain parcels of land situated in the County of Garfield, State of Colorado, being a portion of the Aspen Branch of the former Denver and Rio Grande Western Railroad Company, more particularly described as follows:

Parcel 1

A strip of land 100 feet in width, lying 50 feet on each side of the center line of the westerly wye track of said Aspen Branch, extending southerly from the intersection of said center line with a line parallel with and distant 65 feet southerly, measured at right angles, from the center line of the main track of said Company to a line drawn South 65°15' West from the southwesterly corner of out-lot 40 in the Town of Glenwood Springs, said 100 feet wide strip of land being a portion of the land described in the following deeds:

(1) Deed dated December 1, 1893, from John L. Noonan to The Denver and Rio Grande Railroad Company, recorded September 1, 1894, in Book 35, page 269, records of the County of Garfield.

(2) Deed dated December 29, 1971, from the State Department of Highways, State of Colorado, to The Denver and Rio Grande Western Railroad Company, recorded February 9, 1972, being a portion of land described therein as Parcel No. 41 and Parcel No. 42, Rev. 3, recorded in Book 427, page 117; Parcel No. 43 Rev. recorded in Book 427, page 118, and Parcel No. 58, recorded in Book



427, page 121, all in the records of the County of Garfield.

(3) Deed dated November 1, 1892, from Clinton Reed to The Denver and Rio Grande Railroad Company, recorded December 13, 1892, in Book 29, page 597, records of the County of Garfield.

Parcel 2

All of the land described in deed dated July 7, 1887, from Elisha B. Cravens to The Denver and Rio Grande Railroad Company, recorded August 26, 1892, in Book 25, page 384, records of the County of Garfield.

(1) Excepting therefrom a portion of the land described in deed dated March 18, 1971, from The Denver and Rio Grande Western Railroad Company to the United Lumber and Mercantile Company described therein as follows:

"A tract or parcel of land containing 0.515 acres, more or less, in Lots 2 and 3 of Section 9, Township 6 South, Range 89 West, 6th Principal Meridian, being a part of the station grounds of the Denver and Rio Grande Western Railroad within the City of Glenwood Springs, Garfield County, Colorado, and more particularly described as follows:

Beginning at a point in the southerly property line of the Railroad Company from whence the street corner monument located at the intersection of 8th Street and Pitkin Avenue bears South 42° 28' 40" East 517.02 feet; thence South 58° 37' West along said southerly property

line a distance of 15.26 feet; thence South 54° 19' West along said southerly property line a distance of 184.68 feet; thence South 59° 09' West along said southerly property line a distance of 25.48 feet to a point that is 50 feet southeasterly at right angles from the centerline of Railroad Company's track ICC No. 102; thence along the arc of a curve to the left of radius 520.92 feet, parallel to and 50 feet at right angles from said track a distance of 258.5 feet, more or less, to the intersection of said curve with the northerly right of way line of Railroad Company's original Main Track (the chord of this arc bears approximately North 1° 59' West a distance of 256 feet, more or less); thence easterly along said northerly right of way line and along the arc of a curve to the left of radius 408.37 feet a distance of 256 feet, more or less, to the intersection of said curve and right of way line with the southerly property line of the Railroad Company (the chord of this arc bears approximately South 65° 03' East a distance of 252 feet, more or less); thence South 59° 03' 35" West along said Southerly property line a distance of 40.47 feet to the point of beginning."

(2) Also excepting therefrom all of the land described in deed dated July 15, 1967, from The Denver and Rio Grande Western Railroad Company to the United Lumber and Mercantile Company described therein as follows:

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Page 3 of 6

510445 07/03/1997 02:06P 81024 P617 065
18 of 21 R 0.00 D 0.00 N 0.00 GARFIELD CLERK

"Lots A and B, in Block 41, in the City of Glenwood Springs; together with the Alley formerly located across said Block 41 and bounded on the South by said Lot A and on the North by Lots 1, 2, 3 and 4 of said Block 41, which alley was duly vacated by Ordinance No. 2, Series. 1967, a certified copy of which Ordinance is recorded in Book 383 at Page 128, Document No. 237478, of the records in the office of the County Clerk and Recorder of Garfield County, Colorado.

Also, that certain tract or parcel of land situated in Lot 3 of Section 9, Township 6 South, Range 89 West of the 6th P.M., in the City of Glenwood Springs and described as follows: Beginning at the Northwest Corner of Lot A, in Block 41, in the City of Glenwood Springs, as the point of beginning; thence S. 41°33' W. 444.87 feet; thence S. 53°42' W. 94.23 feet; thence S. 55°37' W. 74.75'; thence 20.603 feet along the arc of a curve to the right having a radius of 17.58 feet (the chord of said arc bears S. 89°11'33" W. 19.446 feet); thence N. 57°14' W. 5.83 feet; thence N. 46°31' E. 630.19 feet to the West Line of said Block 41; thence S. 1°32' W. 5.61 feet along the West Line of said Block 41 to the point of beginning."

(3) Also excepting therefrom a portion of the land described in deed dated December 19, 1991, from The Denver and Rio Grande



Western Railroad Company to the Holt Family Funeral Home described therein as follows:

"A tract or parcel of land containing 0.096 acres, more or less, in Section 9, Township 6 South, Range 89 West, of the Sixth Principal Meridian, said tract or parcel being more particularly described as follows:

Beginning at a point from which the N $\frac{1}{4}$ corner of Section 9, T6S, R89W, bears N. 00°07' E., a distance of 2818.7 feet;

1. Thence S. 67°48' W. a distance of 58.0 feet to a point on the west line of Lot 3, Section 9;
2. Thence S. 12°15' W. along the easterly border line of a release of land dated September 8, 1894, recorded in Book No. 35, Page 137 of the Garfield County Recorder's Office, a distance of 103.71 feet to the northerly line of Seventh Street extended;
3. Thence N. 58°38' E. along the northerly line of Seventh Street extended, a distance of 49.02 feet;
4. Thence N. 20°25' 30" E. a distance of 58.5 feet;
5. Thence along the arc of a curve to the left, having a radius of 423.5 feet, a distance of 44.9 feet (the chord of this arc bears N. 17°23' 30" E. a distance of 44.9 feet), more or less, to the point of beginning."

Parcel 3

All of the land described in deed dated January 4, 1896, from David N. Moffat and Walter S. Cheesman, Trustees, to Edward T. Jeffery and Chester S. Morey, Trustees, recorded September 23, 1896, in Book 20, page 487, records of the County of Garfield.

Parcel 4

All of the land described in deed dated September 10, 1887, from John L. Noonan to The Denver and Rio Grande Railroad Company, recorded November 18, 1887, in Book 14, page 265, records of the County of Garfield.

Excepting therefrom a portion of the land described in deed dated December 19, 1991, from The Denver and Rio Grande Western Railroad Company to the Holt Family Funeral Home as described in item 3 of the above described Parcel 2.

Also excepting all of the land described in Release of Lands dated February 8, 1894, by the United States Trust Company of New York, as Trustees, recorded March 3, 1894, in Book 35, page 137, records of Garfield County.



EXHIBIT E

East Wye Track

MP 360.325

MP 360.385

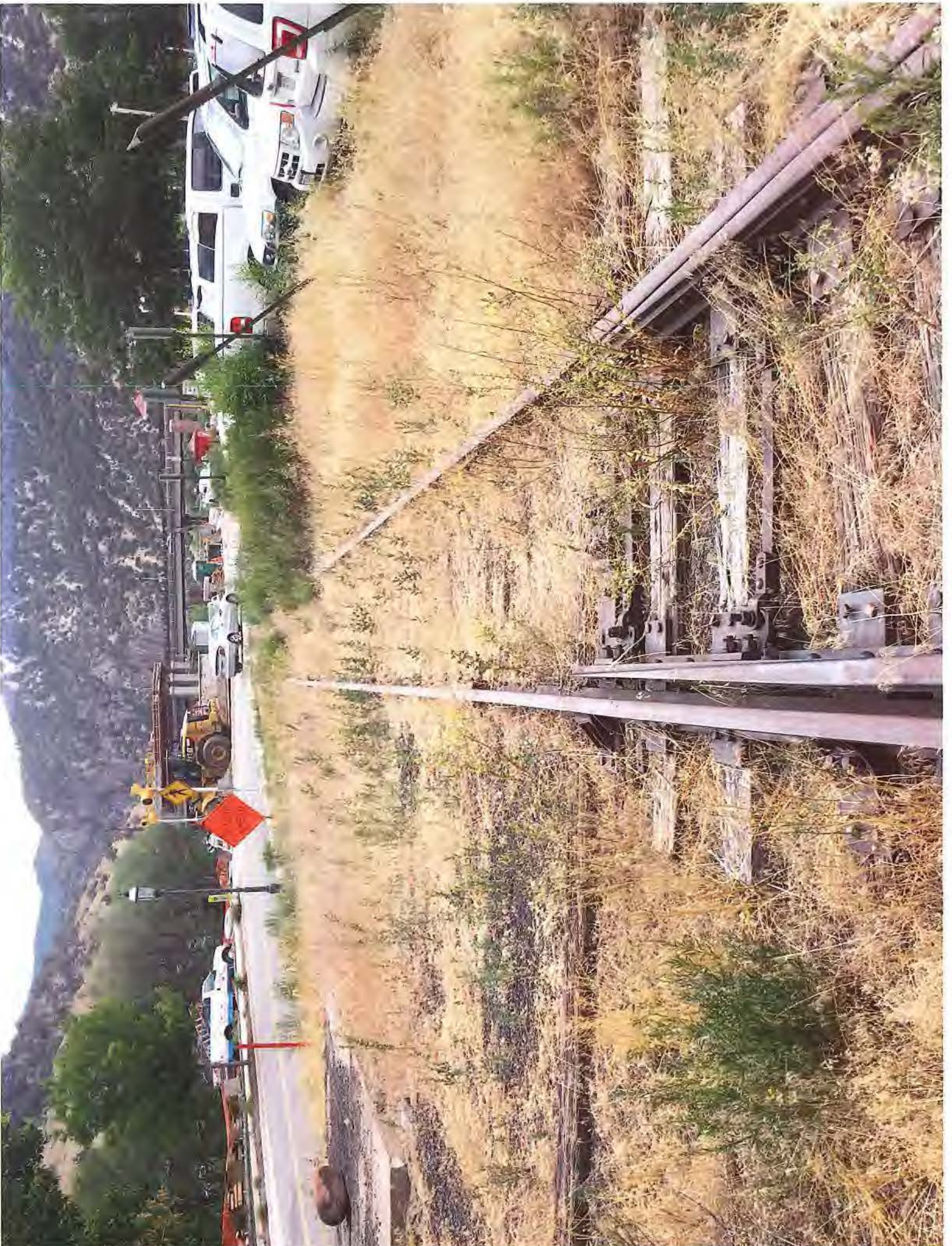
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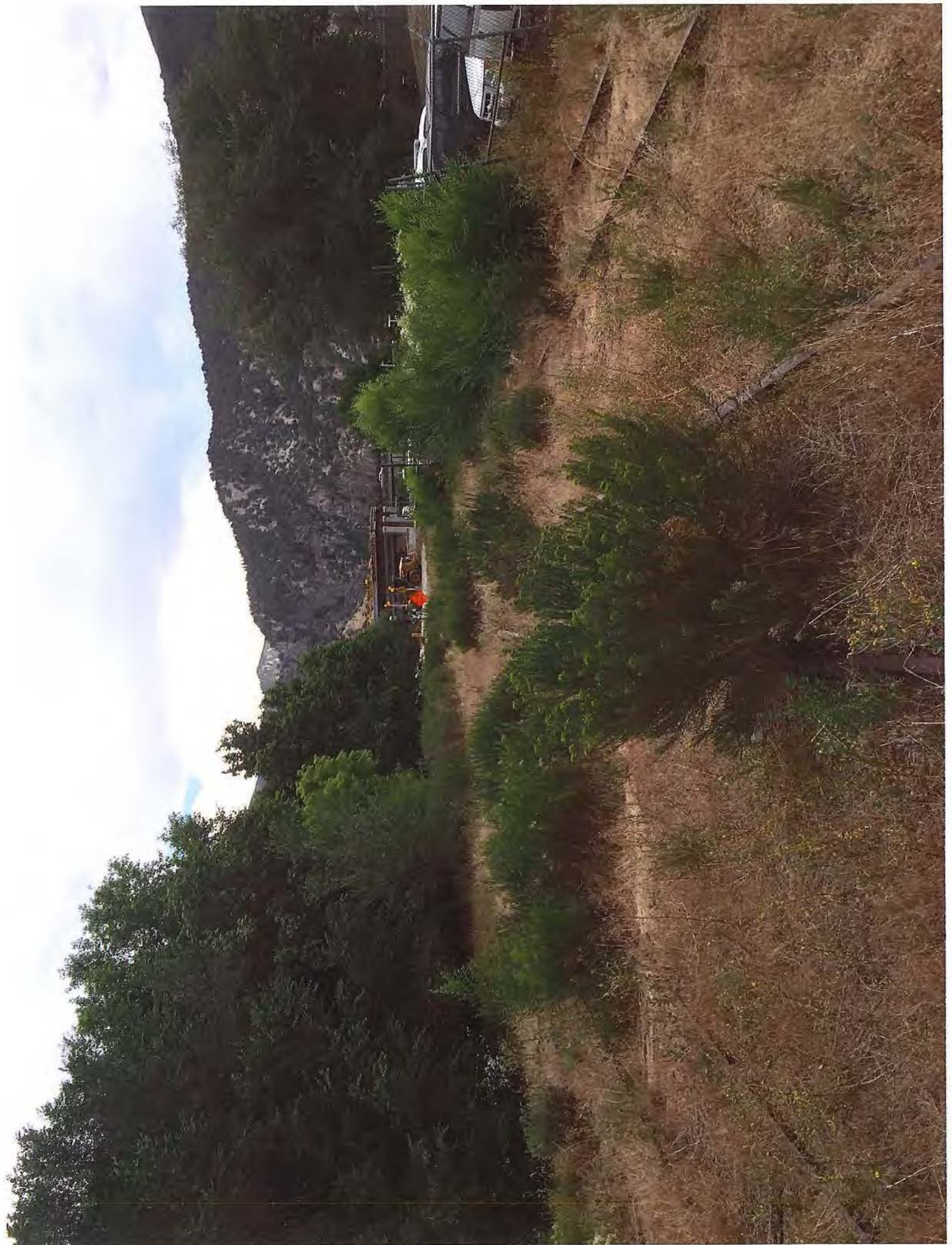
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MP 360.48

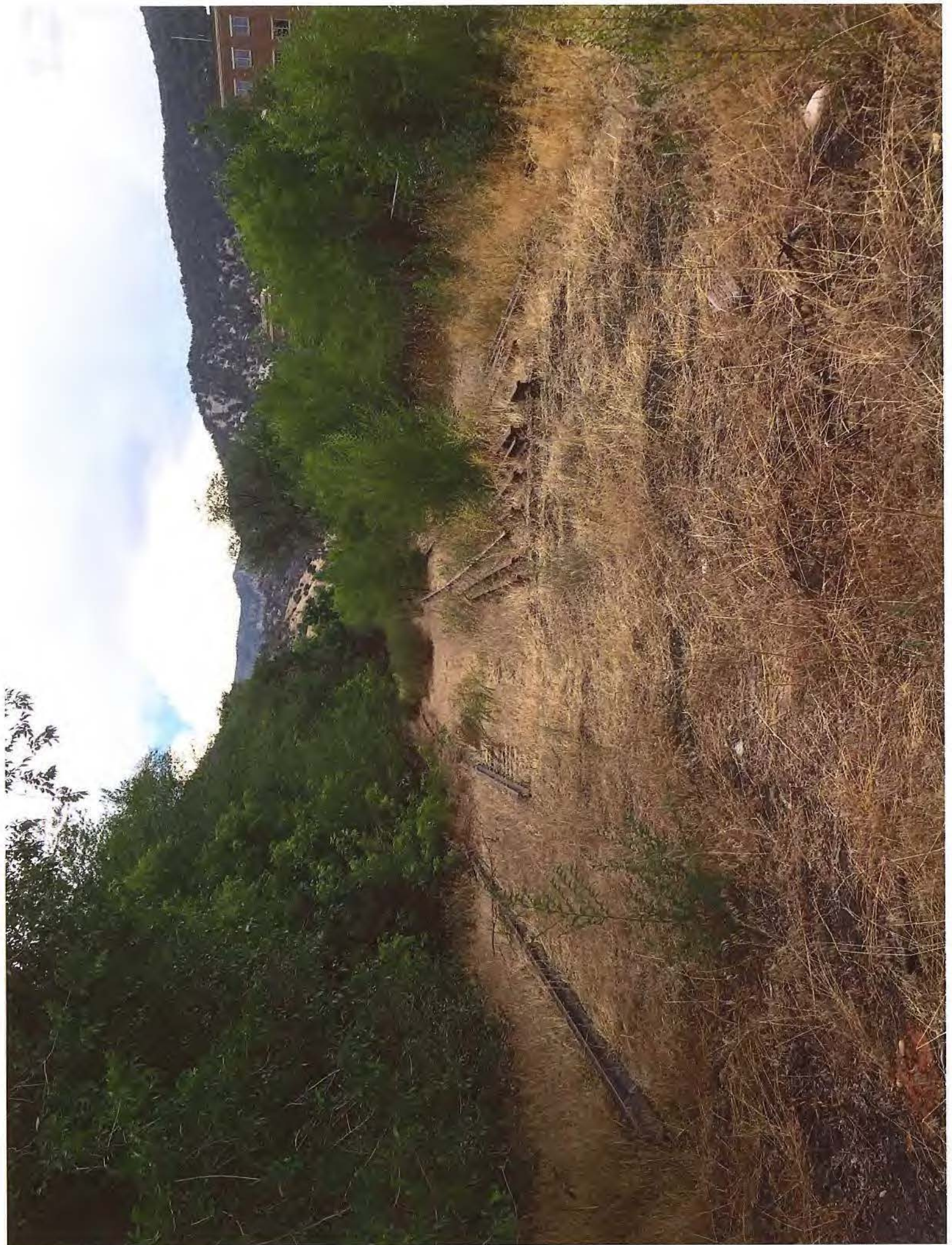
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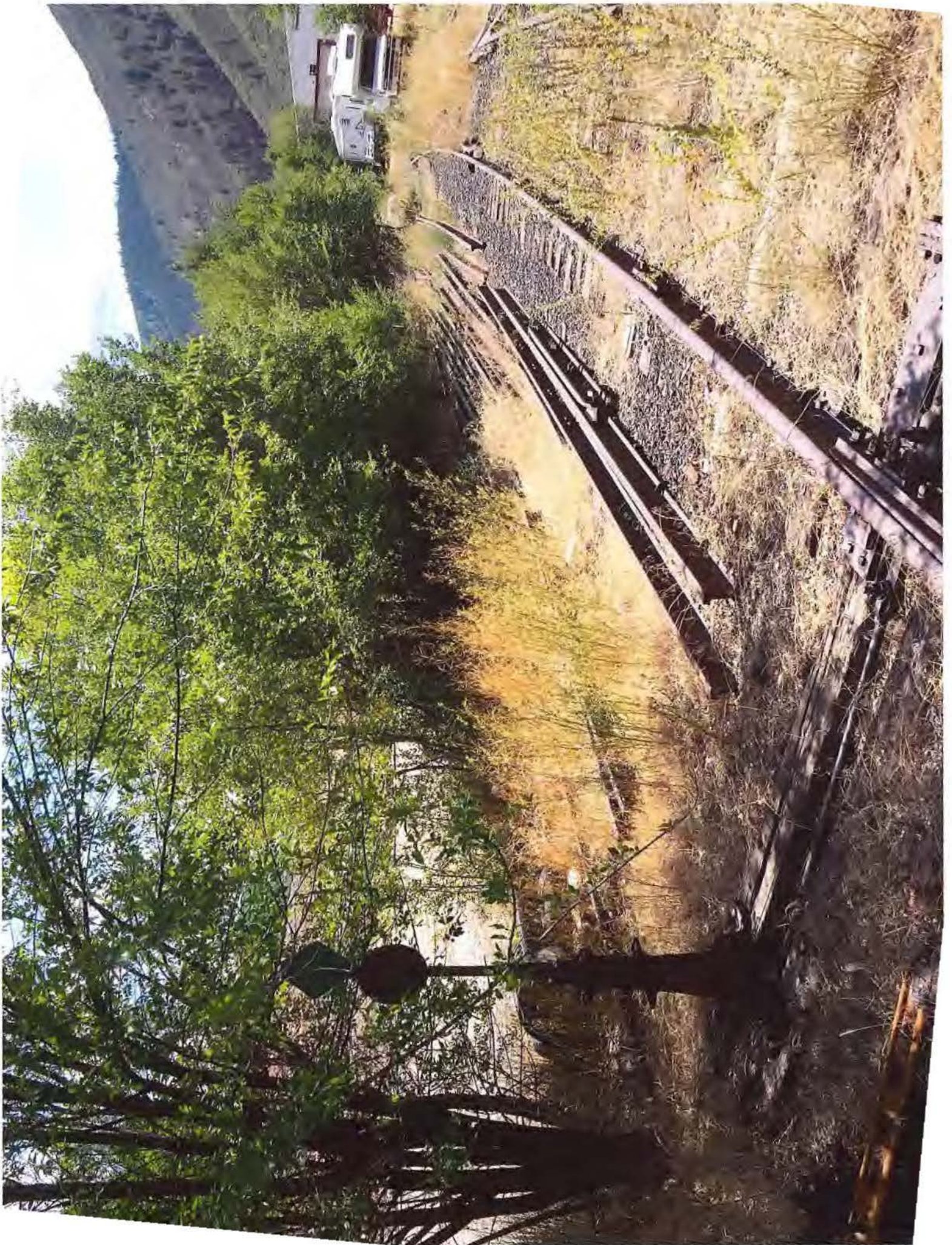












West Wye Track

MP EO.24

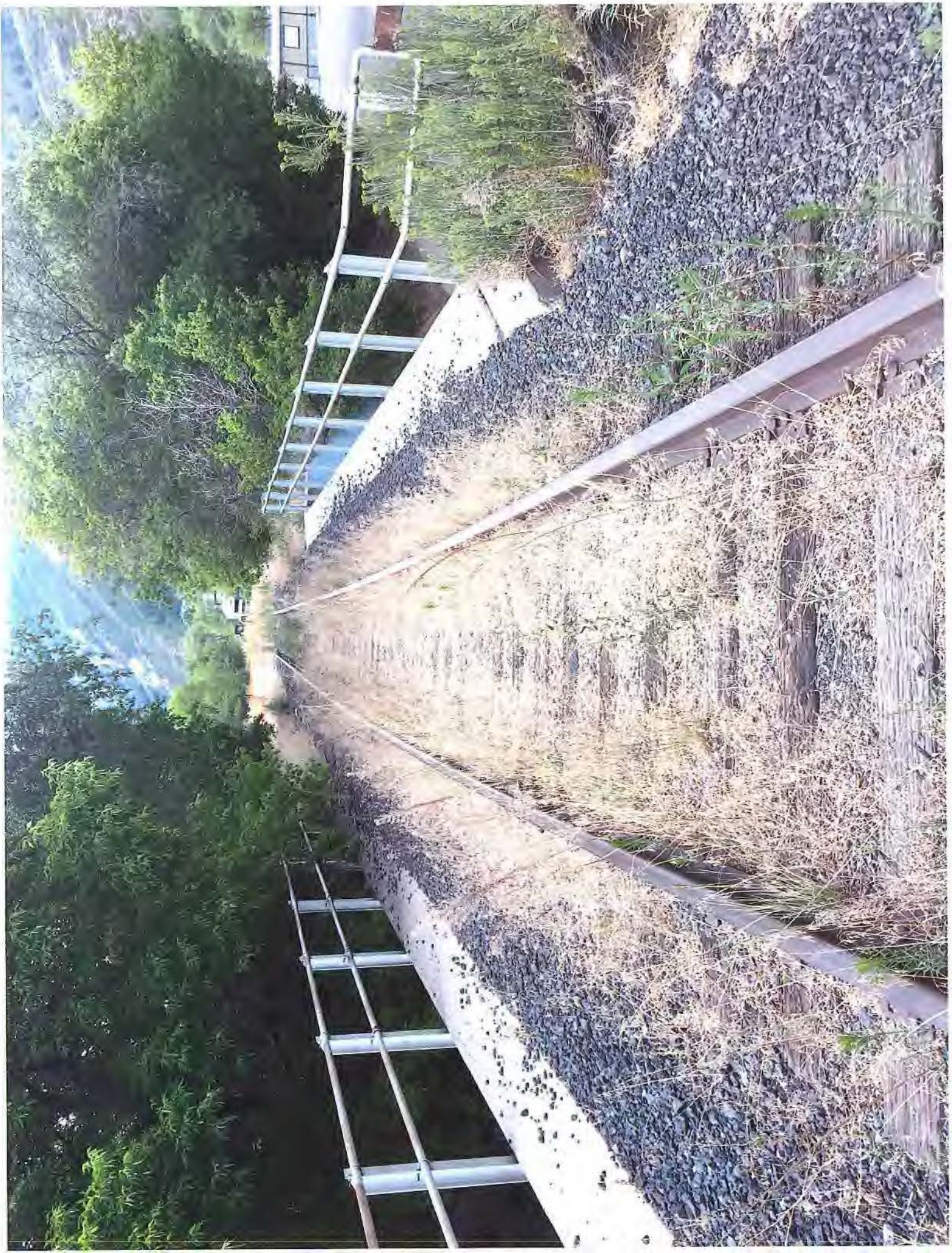
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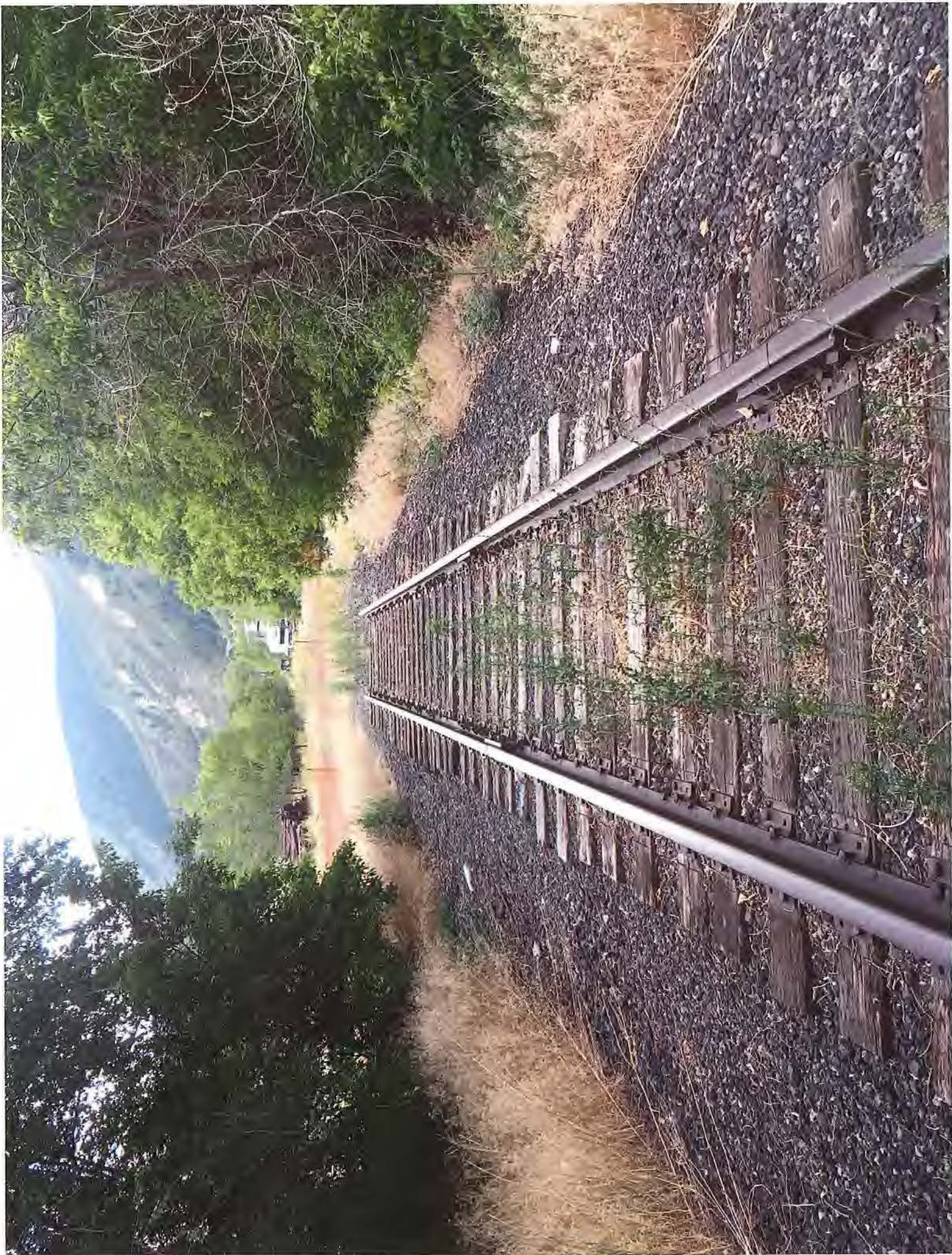
MP EO.40

MP EO.43









Wye Tail Track

MP 360.515

MP 360.52

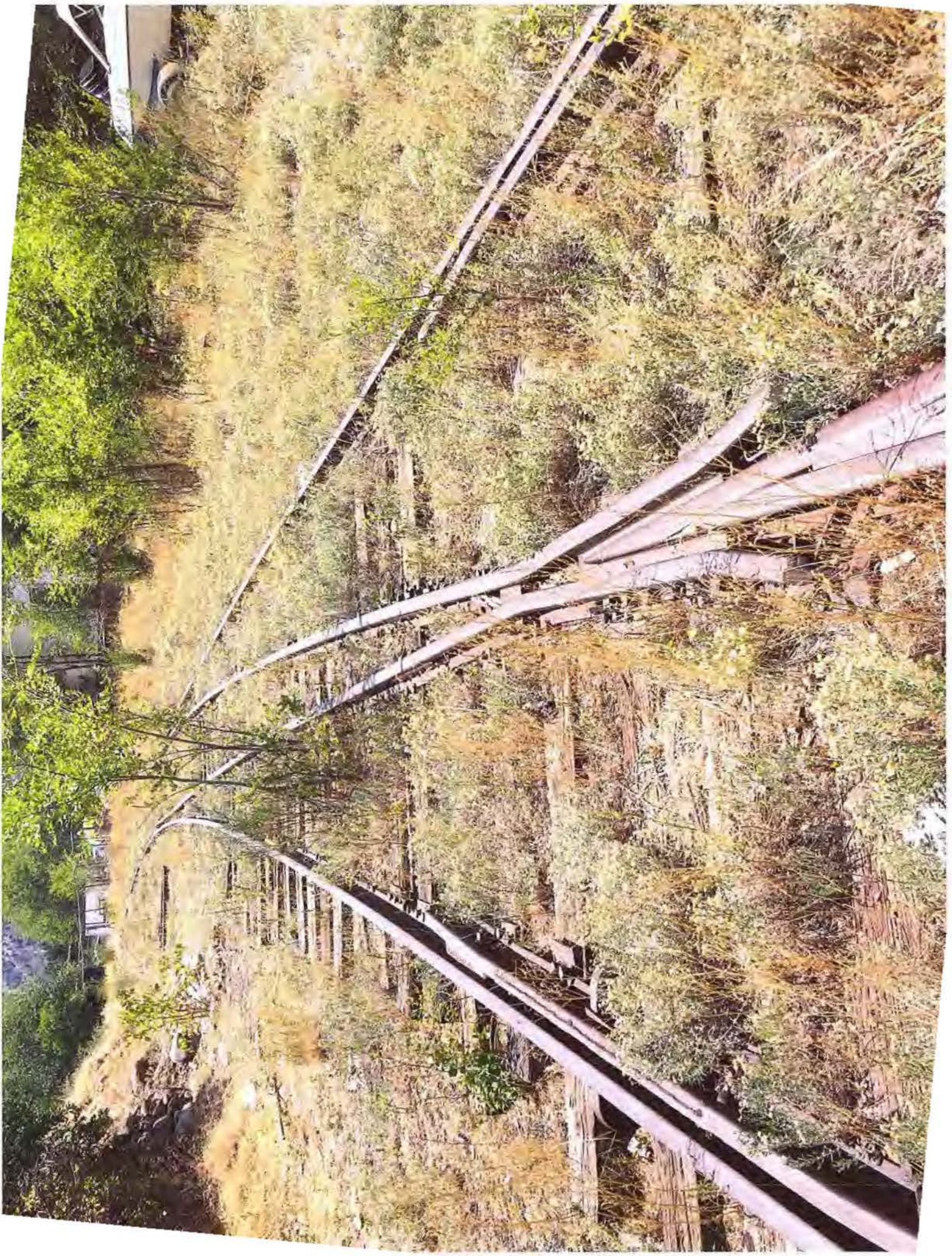
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MP 360.60

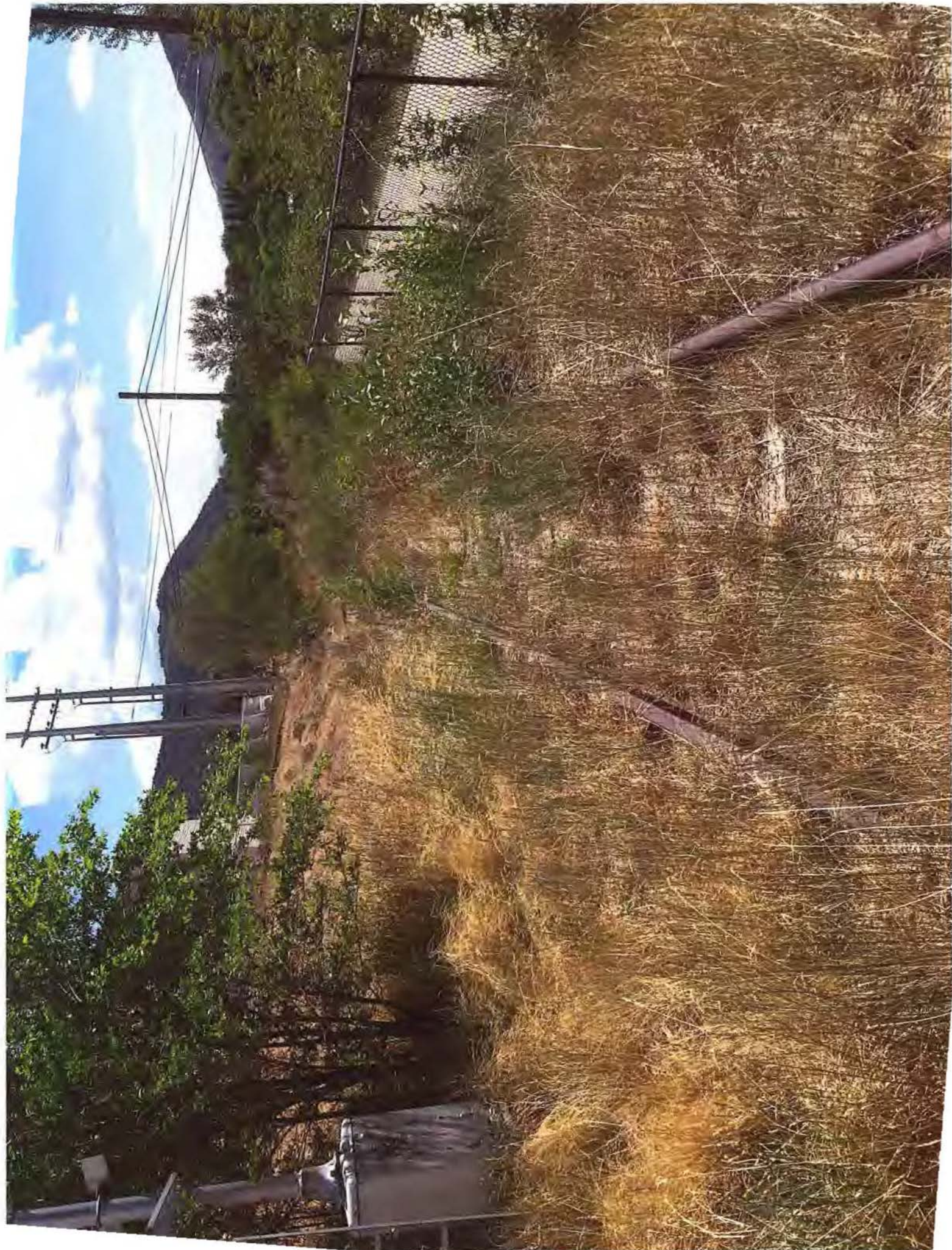
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MP 360.91











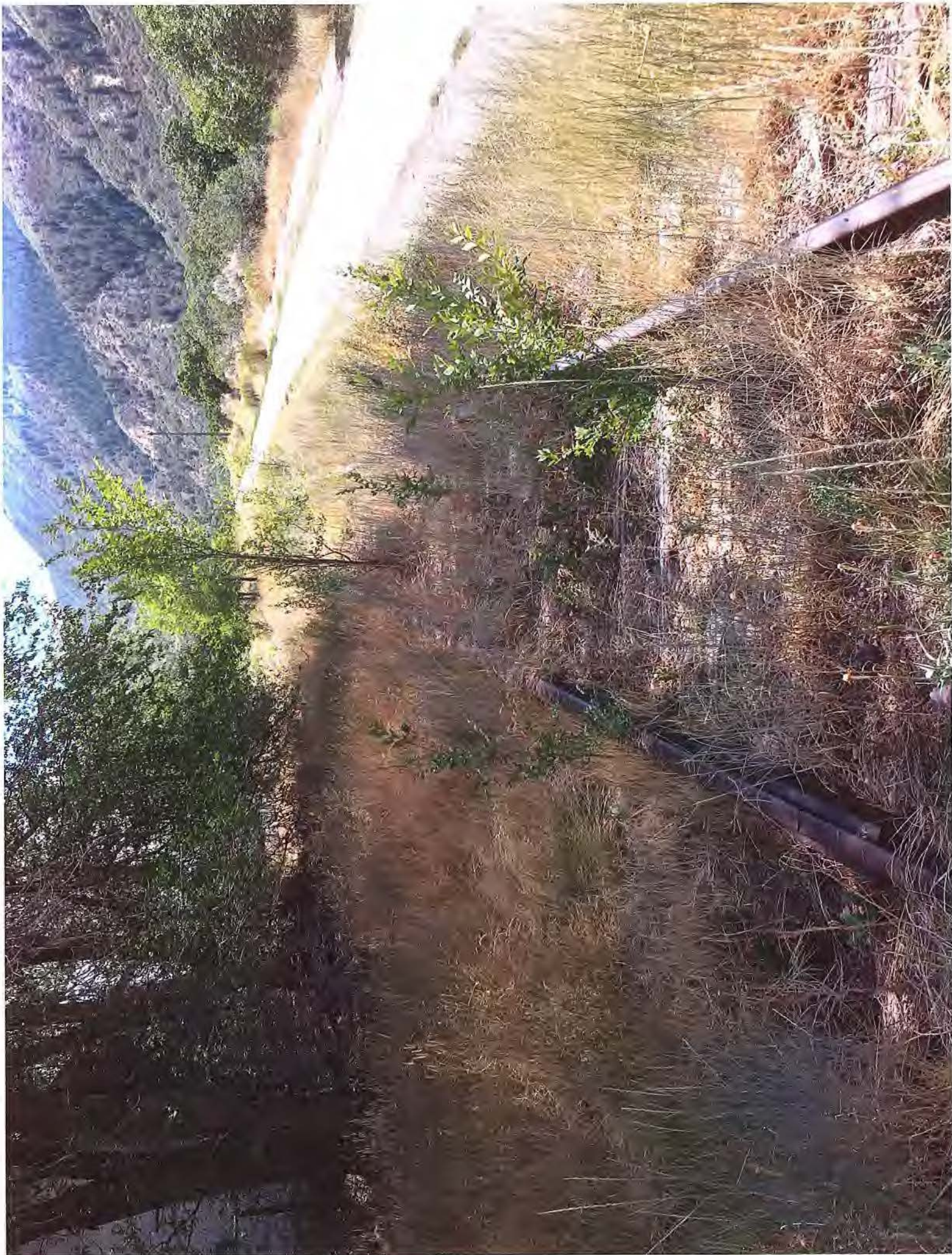


EXHIBIT F

Walter J. Downing
downingw@hallevans.com
(303) 628-3370

June 1, 2016

Alice de Stigter
Union Pacific Railroad Company
1400 W. 52nd Ave.
Denver, CO 80221

Re: Wye in Glenwood Springs, CO

Dear Alice,

I am writing on behalf of the Roaring Fork Transportation Authority (RFTA). The Roaring Fork Railroad Holding Authority (RFRHA) purchased the former Aspen Branch of the DRGW from SP/UP back in 1997. RFTA became the successor in interest to RFRHA in 2001. The relevant portion of the Correction Bargain and Sale Deed is attached for your reference. In addition to selling RFRHA/RFTA "a strip of land 100 feet in width, lying 50 feet on each side of the center line of the westerly wye track of said Aspen Branch," SP sold to RFRHA/RFTA "all fixtures attached to the Property that Seller owns and uses in the operation and maintenance of the Property, including all **rails, ties, ballast**, bridges, viaducts, trestles, signaling devices and other tangible personal property owned by Seller and located on the Property (other than engines, railcars and other rolling stock). SP retained "an exclusive freight rail easement on, under, over and through [the Wye] for the purpose of maintaining, repairing, installing, operating, storing and using in connection with Grantor's rail operations existing and/or future railroad, rail and rail-equipment, railroad facilities . . ."

As you are aware, CDOT has started on the Grand Avenue Bridge replacement project in Glenwood Springs. Part of the project involves a cut across the Wye in Glenwood Springs for a temporary detour of traffic via 8th Street and over the bridge that crosses the Roaring Fork River. It has come to RFTA's attention that UPRR has removed significant portions of RFTA's ties and rails in the west leg of the Wye. While it was to be expected that UP would remove that portion of the trackage lying in the path of the temporary cut for the 8th Street detour as part of its contract with CDOT, it appears that UPRR may have been overzealous in the scope of its removal. Some of the rail removed is stockpiled in the Wye; however, much of the rail is not stockpiled and has been removed by UPRR for use elsewhere. RFTA has engaged Farnsworth Group, Inc. to prepare an inventory of what track was there and what is there now. That Track Consist report is attached hereto along with two photos of the stockpiled rail. According to Farnsworth, the amount of trackage removed for the open cut for the 8th Street detour is roughly double what should have been removed according to the plan set for the CDOT "open cut." The

Alice de Stigter
June 1, 2016
Page: 2

Wye trackage as it was cannot be restored to operating condition with the material on hand. Most importantly, these ties, switches, frogs, gage plates, switch plates, angle bars, and rail belong to RFTA, not UPRR.

RFTA requests that all track material removed from the west leg of the Wye and not currently stockpiled on site be returned to the Wye and stockpiled with the other ties and rail. Otherwise, we will have to go to court to recover what is rightfully RFTA's and to prevent any further similar occurrences.

Another concern noted at the time the Track Consist report was prepared is UPRR's removal of the mainline switch connecting the west of the Wye to the UPRR mainline. To be sure, the switch belongs to UPRR and is on UPRR property. However, it is equally clear that removal of the switch was not part of the work required for the temporary cut or part of any other work for the Grand Avenue Bridge Project. Please advise whether it is UPRR's intent to reinstall the #10 switch at the conclusion of the Grand Avenue Bridge Project which will also coincide with UPRR's obligation under its C&M Agreement with CDOT to replace the rail taken up in the west leg of the Wye for the temporary cut for the 8th Street detour. If it is not UPRR's intent to replace the #10 switch at that time, please advise as to the timeline for replacing that switch with the same type of switch. When the time comes for RFTA to reinstitute rail service over the railbanked line, RFTA will need UPRR to re-install that switch. RFTA needs the #10 switch reinstalled to maintain the alignment of the west leg over the 7th Street bridge and the pedestrian tunnel. No timetable for restoration of rail service on the line exists at this time but RFTA is hopeful that will eventually become a reality.

Sincerely,



Walter J. Downing

cc RFTA



BUILDING AMERICA®

July 27, 2016

Walter J. Downing, Esq.
Hall & Evans
1001 Seventeenth Street, Suite 300
Denver, CO 80202

Re: Wye in Glenwood Springs

Dear Walt:

This letter is my response on behalf of Union Pacific Railroad Company ("Union Pacific") to your June 1, 2016, and July 14, 2016, letters on behalf of the Roaring Fork Transportation Authority ("RFTA").

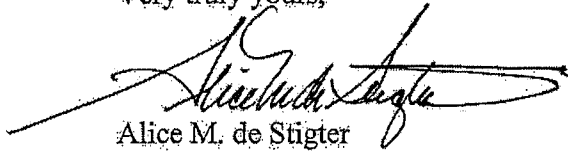
- Jeffery E. Jones, Manager of Track Maintenance for the Glenwood Springs Subdivision confirms that his crews stacked all track and materials on site and did not remove any materials from the premises.
- Phil Egan, Director of Track Maintenance, confirms that he did not direct, or otherwise authorize, the removal of track materials from the RFTA property.
- The 2008 Correction Bargain and Sale Deed reserved an easement to Union Pacific across the Wye for the purpose of maintaining, repairing, replacing installing, operating, storing, and using in connection with the Grantor's rail operation's existing and/or future railroad, rail and railroad-related equipment.
- Sherman Spear, Sr. Manager of Special Projects, confirms that pursuant to the 2015 Construction and Maintenance Agreement ("C&M Agreement") between Union Pacific and the Colorado Department of Transportation ("CDOT"), once the construction detour is no longer needed, Union Pacific will remove and reinstall the Aspen Branch Wye tracks to the original alignment so that they can be placed back in service.
- Although Exhibit D-2 (attached to your most recent letter) is a part of the C&M Agreement, it represents only the 30% Plans for the Temporary Detour Road. Paragraph 22 of that agreement states that the final design Temporary Detour plans representing one hundred percent (100%) detail were to be completed and submitted to Union Pacific, and/or RFTA, as applicable, by the state for approval. I have not been able to obtain these 100% plans, but assume that this is where the discrepancy arose in the amount of track removed.
- Emails from late 2014 through early 2015 confirm that Angela Kincade, RFTA Assistant Director, Project Management & Facilities Operations, actively participated with Union Pacific and the City of Glenwood Springs in the anticipated Wye track replacement design.

Walter J. Downing, Esq.
Hall & Evans
July 27, 2016
Page 2 of 2

Thus, with RFTA's knowledge, Union Pacific reserved the right to repair *and replace* the tracks in the area of the Wye and made a contractual commitment to continue to do so throughout the current overpass projects. This commitment should further resolve RFTA's stated concern that the "Wye trackage as it was cannot be restored to operating condition with the materials on hand."

RFTA also expressed concern that Union Pacific removed the No. 10 switch on the west leg of the Wye. Discussions about an agreement to reinstall a switch at either leg of the Wye will be deferred until such time as revenue generating operations on the Wye are imminent.

Very truly yours,



Alice M. de Stigter

AMD/rg

EXHIBIT G



