

August 27, 2012

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232874

**VIA EMAIL AND US MAIL**

Mr. Donald Shank  
20 N. Broadway Street  
Monte Vista, CO 81144

ENTERED  
Office of Proceedings  
August 28, 2012  
Part of  
Public Record

**By E-Filing**

Ms. Cynthia A. Brown  
Chief, Section of Administration,  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

**RE: FD 35496, Denver & Rio Grande Railway Historical Foundation, Inc.  
d/b/a Denver & Rio Grande Railroad, LLC**

Dear Mr. Shank and Ms. Brown:

I am writing on behalf of the San Luis & Rio Grande Railroad (“SLRG”) in connection with the above-captioned matter which is currently pending before the Surface Transportation Board (“STB”). It is my understanding that Mr. Shank has asked the STB for one week (presumably from Aug. 23) to respond to SLRG’s letter to the STB forwarding correspondence with the Federal Railroad Administration.

As Mr. Shank will recall, I had contacted both the Railroad Retirement Board and the Federal Railroad Administration to determine whether or not these agencies regard Denver & Rio Grande Railway Historical Foundation, Inc. d/b/a Denver & Rio Grande Railroad, LLC, as a railroad common carrier subject to their respective jurisdictions. The Railroad Retirement Board’s general counsel advised that his agency has no record of coverage for either Denver & Rio Grande Railway Historical Foundation, Inc. or Denver & Rio Grande Railroad, LLC, as well as for

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the Denver & Rio Grande Railroad, LLC, or the Colorado & Southern Railroad. The FRA's Regional Administrator, Steven Fender, reported that the Denver & Rio Grande Railway Historical Foundation is, in his words, "a non-insular tourist railroad subject to the FRA's safety jurisdiction." He added that only the STB can determine whether an entity is a common carrier railroad.

I think Mr. Shank should either advise both agencies that he wishes for them to treat the Denver & Rio Grande Railway Historical Foundation, Inc. as a common carrier railroad subject to their respective jurisdictions or he should withdraw his petition for declaratory relief filed with the STB.

Sincerely yours,



John D. Heffner

Enclosures

cc: Mr. Edwin Ellis  
Eugene Farish, Esq.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FD 35496**

**DENVER & RIO GRANDE RAILWAY  
HISTORICAL FOUNDATION'S PETITION  
FOR A DECLARATORY ORDER**

**CERTIFICATE OF SERVICE**

I, John D. Heffner, hereby certifies that I transmitted a copy of the foregoing letter from San Luis & Rio Grande Railway to Donald Shank to the following parties by first class United States Mail and electronic mail this 27<sup>th</sup> day of August 2012:

Donald H. Shank

Eugene L. Farish, Esq.

  
John D. Heffner