

March 27, 2012

JOHN D. HEFFNER

Direct Fax 202-742-8697
Direct Phone 202-742-8607

232128

BY E-FILING

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

ENTERED
Office of Proceedings
March 27, 2012
Part of
Public Record

**RE: FD 35496, Denver & Rio Grande Railway Historical Foundation's
Petition for a Declaratory Order**

Dear Ms. Brown:

I am writing on behalf of the San Luis & Rio Grande Railway (“SLRG”) in response to the last minute request by Donald H. Shank, President and Executive Director of the Denver & Rio Grande Railway Historical Foundation (“DRGRHF”) for an extension until April 9, 2012, in which to file its initial opening argument in the above-captioned proceeding. The City of Monte Vista, CO (“the City”), concurs in these comments.

Normally I would be very sympathetic to Mr. Shank’s request; however, the circumstances here suggest a credibility gap. Mr. Shank would have the Surface Transportation Board believe that he did not receive or even know about the Board’s February 22, 2012, decision setting a schedule for submission of evidence and argument in this matter until his return to the office on March 26.

Assuming the truth of Mr. Shank’s statement that neither he nor any of his staff received a copy of the Board’s decision, he had reason to know of its existence. Shortly after its issuance, I sent Mr. Shank a lengthy discovery request by certified mail. As the enclosed transmittal letter for the discovery request states, “[i]n view of the fact that the [Board] has set April 26, 2012, as the deadline for my

Strasburger & Price, LLP

Ms. Cynthia A. Brown

March 27, 2012

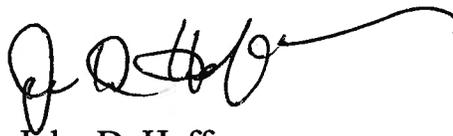
Page 2

clients' reply to your statement, I request that you submit your answers by no later than **20 days'** from the date of receipt of this letter." That statement should have put Mr. Shank on notice that the Board had instituted a proceeding seeking evidence and arguments from DRGRHF, SLRG, and the City of Monte Vista. But instead of viewing the Board's website, contacting the Board, or contacting me, he did nothing. Moreover, Mr. Shank cannot claim that he did not receive the discovery as it was sent by certified mail and he signed the receipt on the day of delivery, March 6, 2012. I am enclosing for the Board's review both the transmittal letter and the postal receipt. Although Mr. Shank may indeed have been out of the office for up to three weeks, that time did not begin to run until after March 6.

Accordingly, the Board should deny the requested extension. In the event that the Board grants that relief, SLRG and the City request that the deadline for their replies be extended until at least May 9, 2012. Moreover, should the Board extend this proceeding and should SLRG and the City be forced to file a motion to compel discovery responses, SLRG and the City will request additional time to submit their evidence and argument.

Additionally, the City has asked me to relay its concern that the blight that exists on DRGRHF's property continues unabated during these delays in the proceeding.

Respectfully submitted,



John D. Heffner

cc: Mr. Donald H. Shank
Mr. Edwin Ellis
Eugene Farish, Esq.

Strasburger
ATTORNEYS AT LAW

March 1, 2012

JOHN D. HEFFNER
DIRECT PHONE 202-742-8607
DIRECT FAX 202-742-8697

VIA CERTIFIED MAIL

Mr. Donald H. Shank
Denver & Rio Grande Railway
Historical Foundation
20 North Broadway Street
Monte Vista, CO 81144

RE: FD 35496, Denver & Rio Grande Railway Historical Foundation-Petition for a
Declaratory Order

Dear Mr. Shank:

I am enclosing for your attention the Joint Discovery Request of the City of Monte Vista, CO, and the San Luis & Rio Grande Railway. This request includes both document production requests and interrogatories requiring your responses. In view of the fact that the Surface Transportation Board has set April 26, 2012, as the deadline for my clients' reply to your statement, I request that you submit your answers by no later than **20 days'** from the date of receipt of this letter. Please call me if you have any questions.

Sincerely yours,



John D. Heffner

Enclosure

cc: Mr. Ed Ellis
Eugene L. Farish, Esq.

Strasburger & Price, LLP

1700 K Street, N.W., Suite 640 • Washington, D.C. 20006.3817 • 202.742.8600 tel • 202.742.8699 fax • www.strasburger.com
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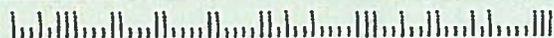
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MR. JOHN HEFFNER
STRASBURGER & PRICE LLP
1700 K ST. N.W., STE 640
WASHINGTON, DC 20006



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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MR DONALD H. SHANK
 DENVER + RIO GRANDE
 RAILWAY HISTORICAL FOUNDATION
 20 NORTH BROADWAY ST.
 MONTE VISTA, CO
 81144

2. Article Number
 (Transfer from service label)

7010 1670 0002 5097 2658

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X *Donald Shank* Agent
 Addressee

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DONALD SHANK Agent
 Addressee

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35496

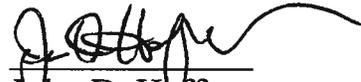
**DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION'S PETITION
FOR A DECLARATORY ORDER**

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certifies that I transmitted a copy of the foregoing
Reply of the San Luis & Rio Grande Railway to the following parties by first class
United States Mail and electronic mail this 27th day of March 2012:

Donald H. Shank

Eugene L. Farish, Esq.


John D. Heffner