

DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION

A COLORADO NOT-FOR-PROFIT CORPORATION
FED TAX I.D.#: 84-1433680

232137

March 29, 2012

Ms. Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, SW
Washington, D.C. 20423

ENTERED
Office of Proceedings
March 29, 2012
Part of
Public Record

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

Dear Ms. Brown:

On Tuesday, March 27th, 2012, outside counsel for the San Luis and Rio Grande Railroad (SLRG) filed a brief response to my request for an additional two weeks to file our opening statement in the Declaratory Order proceeding referenced above. I am aware that replies to replies are generally not permitted under the Board's regulations. However, where new issues are raised by an opposing party in their reply, the Board does, on occasion, permit a reply to be filed to a reply.

I feel that in this case, a reply to a reply may be warranted because of a number of statements made by opposing counsel, if left unchallenged, could be used by the Board, and might be construed in a manner adverse to us. Therefore, I respectfully ask the Board to permit this brief reply.

It should be noted that the opposition parties do not appear to be arguing that they would in anyway prejudiced by the delay, if the Board extended the time period for them to file their response, by an equal period of time. The DRGRHF has no objection to the Board granting the opposition parties additional time to file a response to our opening statement.

As for the argument we were somehow put "on notice" of a Board decision by virtue of the discovery request, we offer this one brief observation. I have enclosed the entirety of the SLRG discovery request for the Board to review. No where does it include a copy of the Board's February 22 decision. Nor does it reference anywhere in the document the Board's Feb 22nd decision. The DRGRHF brought the current action before the Board, we assumed that we would come to learn of the Board's decision when they sent us a copy of the decision. In the past, previous STB decisions where served upon our former outside counsel, Mr. Tom Mc Farland, Esq.

In this proceeding, we did not retain Mr. Mc Farland. Mr. McFarland did not enter his appearance in this proceeding. In the past, I was always forwarded a copy of the Board's decision from Mr. Mc Farland. I personally don't check the STB website on a regular basis. The only reason I checked it on the March 26th was for the fact I was beginning to prepare a response to the discovery request I received on March 6th.

It should be noted, I left on March 7th for my trip. The document attached clearly indicated Mr. Heffner was looking for a response in 20 days time. There is simply no reason for me to call him before I left for my trip. As I mentioned earlier, upon my return from my business trip, a medical emergency in my immediate family kept me busy for 4 days. I also had to address my own health issues as well. Once all those problems were behind us, we proceeded to begin to immediately address Mr. Heffner's request.

On Monday, March 26th, I returned to my office. It was then that we discovered the Feb 22nd decision. I believe there is clearly no credibility gap on our part with respect to our request. We addressed the matter as quickly as we could. Since there does not appear to be any harm to the opposing side, we respectfully request the Board grant our request for an extension of time.

Respectfully submitted,

Donald H. Shank /s/

Donald H. Shank
President & Executive Director
Denver & Rio Grande Railway
Historical Foundation
20 N. Broadway Street
Monte Vista, CO 81144

CC via Email: John D. Heffner, Esq.
Eugene L. 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

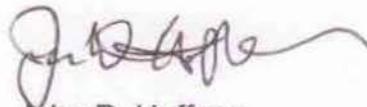
Mr. Donald H. Shank
Denver & Rio Grande Railway
Historical Foundation
20 North Broadway Street
Monte Vista, CO 81144

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.

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35496

**DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION'S**

PETITION FOR A DECLARATORY ORDER

**JOINT DISCOVERY REQUEST OF
THE CITY OF MONTE VISTA
AND THE SAN LUIS & RIO GRANDE RAILWAY**

John D. Heffner
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Dated: March 1, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION'S
FD 35496**

PETITION FOR A DECLARATORY ORDER

**JOINT DISCOVERY REQUEST OF
THE CITY OF MONTE VISTA
AND THE SAN LUIS & RIO GRANDE RAILWAY**

Pursuant to 49 CFR Subpart B §1114 *et al* Respondents the City of Monte Vista, CO, and the San Luis & Rio Grande Railway (hereinafter "Respondents") jointly request that Petitioner Denver & Rio Grande Railway Historical Foundation ("DRGRHF" or "Petitioner") answer the following document requests and interrogatories. Each request should be answered separately and fully in writing and subscribed by an appropriate verification by a representative having personal knowledge of the requested information. Petitioner is requested to serve its responses within twenty days' time.

DEFINITIONS

1. The names "Denver & Rio Grande Railway Historical Foundation" or any abbreviation thereof and "Petitioner" includes the DRGRHF and also any other corporation, company, or business founded or

controlled by Donald H. Shank including, but not limited to, Rio Grande Southern Railroad Co., LLC, Denver & Rio Grande Railroad, LLC, Colorado & Southern Railroad, Donald H. Shank Construction, or any predecessor or successor thereof and Donald H. Shank in his individual capacity.

2. “Railroad Retirement Board” means that agency that is in charge of administering the Railroad Retirement Act, 45 U.S.C. §231, and the Railroad Unemployment Insurance Act, 45 U.S.C. §351.
3. “Federal Railroad Administration” means that agency in charge of administering the Federal Railroad Safety Act, 49 U.S.C. §20101 and regulations thereunder.
4. “Colorado Department of Transportation” refers to that agency established under Colorado law for administering all transportation functions not assumed or possessed by the federal government.
5. “Communications” means all written documents exchanged between DRGRHF and another party whether in the form of a letter, memorandum, telegram, notice, decision, order, report, or email and whether transmitted by hand, United States Mail, overnight mail service, messenger or courier, or electronic transmission.

6. "Correspondence" means any sort of written document or other communication as defined above and regardless of the form of transmission.
7. "Promotional materials" means any sort of circular, advertisement, printed material, billboard, audio message, or electronic image intended to attract or persuade present or potential customers to ship freight by rail utilizing DRGRHF's services.

INSTRUCTIONS

1. Use of the conjunctive includes the disjunctive and vice versa.
2. The construction of 49 CFR §1101.3 shall apply, including that a word in the singular includes the plural and vice versa.
3. If the person answering cannot supply the exact data in answering any request that calls for a numerical response, he or she should provide the best estimate of the data called for, indicate that he or she has provided the best estimate by making the notation "(est.)" in the response and describe the basis upon which the estimate was derived.
4. If the answering person claims any requested document is privileged from disclosure, he or she should state the basis for the claim or privilege, state the nature of the information or document withheld, state the facts upon which the claim of privilege is based, provide the

number of such documents which are being withheld from production on a claim of privilege along with an identification of each such document (author, addressee, date, length in pages and subject(s)) and answer any remaining part of the discovery request for which such claim is not made.

5. These document production requests and interrogatories are continuing in nature and responses should be supplemented promptly as more information or documents responsive to a request becomes available.

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

1. Please furnish a copy of the financial (profit and loss) statements and balance sheets for the Denver & Rio Grande Railway Historical Foundation ("DRGRHF") for the calendar years 2009, 2010, and 2011.
2. Please furnish a copy of the federal and state income tax returns filed by DRGRHF for the 2009, 2010, and 2011 tax years.
3. Please furnish an inventory or roster of all railroad equipment owned, leased, or operated by DRGRHF including, but not limited to, locomotives, passenger or freight cars, and work equipment. This inventory should include the numbers of cars or engines, the road numbers or other identifying information, the manufacturer and approximate date of manufacture, the model number or type, and, in the case of a locomotive, the horsepower. Please indicate whether the specific equipment is owned, leased, or used, and the name of any lessor or, in the case of equipment encumbered by any security agreement, lien, or encumbrance, the name of the creditor.
4. Please furnish copies of any citations, liens, levies, judgments, sanctions, penalties, notices, rulings, or administrative orders issued against DRGRHF during 2009, 2010, and 2011 by any state, local, or federal agency including any

environmental agency, tax collecting agency, city department, and transportation agency.

5. Please furnish copies of any ruling(s) by the United States Railroad Retirement Board ("RRB") on the issue of whether DRGHF is or is not a "covered employer" under the Railroad Retirement and Railroad Unemployment Insurance Acts.

6. Please furnish copies of all communications between DRGRHF and the RRB for the years 2009 through 2012.

7. Please furnish copies of all communications between DRGRHF and the Federal Railroad Administration ("FRA") and between DRGRHF and the Colorado Department of Transportation for the years 2009 through 2012.

8. Please furnish copies of all tariffs, exempt circulars, and summaries of confidential shipping contracts published by, entered into, or to which DRGRHF is a party for the years 2009 through 2012.

9. Please furnish copies of all correspondence, promotional materials and website listings that DRGRHF has sent or received, published, or used to attract rail freight customers during the years 2009 through 2012.

10. Please provide a map or diagram of the entire railroad owned and operated by DRGRHF or any affiliate thereof indicating the rail weight, tie condition, and FRA track standard, and maximum operating speed per segment.

11. Please furnish a copy of all reports or estimates of the work required to enable DRGRHF to handle the types of railroad equipment commonly used today to transport freight in interchange service. If none exists, so state.

12. Please furnish a copy of the promissory note between DRGRHF and the Union Pacific Railroad Company ("UP") which UP took back at the time it sold DRGRHF the line of railroad between Derrick and the end of the line at Creede, CO. If the note has been paid, please so state.

FIRST REQUEST FOR INTERROGATORIES

13. Has DRGRHF been a party to any litigation initiated or pending against it during the years 2009 through 2012, inclusive? If so, please identify that litigation

by (1) court or agency where pending, (2) case name and number, (3) parties to the proceeding, (4) the nature of the proceeding, and (5) a statement as to outcome or current status.

14. Does DRGRHF owe any real estate taxes for the years 2009 through 2012 that are currently unpaid? If so, please identify (1) the name of the taxing authority, (2) the amount of the tax, and (3) any penalties or interest imposed.

15. Please list all fines or levies imposed during the years 2009 through 2012, inclusive, identifying (1) the name of the agency imposing the fine or levy, (2) the nature of the fine or levy, and (3) the current status (whether paid, contested, dropped, etc.).

16. Please identify all current employees of DRGRHF and their current position.

17. Does DRGRHF own or operate any equipment on which there is a lien or security interest? If so, please identify the (1) the piece of equipment as per the information sought in document production request number 3, (2) provide the name and address of the creditor or other party that imposed the lien or security interest, (3) state where the lien or interest was recorded, and (4) provide all details about the lien or security interest.

18. Has any equipment owned or operated by DRGRHF been the subject of any repossession? If so, please identify the equipment and the circumstances of that repossession.

19. Please identify all freight traffic movements handled by DRGRHF for the years 2009 through 2012 indicating (1) the commodity involved, (2) the number of carloads or tonnage handled, (3) the origin and destination points, (4) the names of the consignees and consignors, (5) whether the traffic was interchanged with other carriers and the names of those carriers, and (6) DRGRHF's portion of the freight rates.

20. Please describe the businesses that you conduct under the name "Donald Shank Construction" at 20 N. Broadway Street, Monte Vista, CO 81144, and any business that you conduct at 0097 Ponderosa Drive, South Fork, CO 81154 under the name "Donald H. Shank." If you do not currently conduct any business under either of these names, please indicate accordingly.

21. Is any segment of the railroad line owned and operated by DRGRHF or any affiliate "excepted track" as that term is used in the FRA track standards?

22. Is any segment of the railroad line owned and operated by DRGRHF or any affiliate subject to a "slow order." If so, please identify such slow order by milepost indicating the maximum operating speed at that location.

23. Please provide the current balance, if any, on the promissory note with UP referenced in document production request 12, and indicate the number of payments still required to be made before the loan represented by that note is paid in full. Please indicate whether DRGRHF is current or in default in its payments.



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Suite 640
Washington, D.C. 20006
(202) 742-8607

Dated: March 1, 2012