

Strasburger
ATTORNEYS AT LAW

August 2, 2012

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BY E-FILING

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ENTERED

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

Office of Proceedings
August 2, 2012
Part of
Public Record

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

Dear Ms. Brown:

On behalf of the City of Monte Vista, CO, and the San Luis & Rio Grande Railway, Respondents, I am submitting for the Board's consideration in the above-captioned proceeding a letter received from the Federal Railroad Administration's ("FRA's") Kansas City office. That letter states that Petitioner Denver & Rio Grande Railroad Historical Foundation (identified in the FRA's letter as "DRGR") is a "non-insular tourist railroad subject to the FRA's safety jurisdiction." Although DRGR's status is subject to the Board's determination, the FRA's letter is substantial evidence that DRGR is not acting as a common carrier railroad and is therefore not entitled to preemption under the Board's case law and statute.

Sincerely yours,



John D. Heffner

Enclosure

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

Strasburger & Price, LLP

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U.S. Department
of Transportation

**Federal Railroad
Administration**

Region VI

DOT Building
901 Locust Street, Suite 464
Kansas City, MO 64106

July 24, 2012

File No. 2012-DRGR-6-018522

Mr. John D. Heffner, Esq.
Strasburger & Price LLP
1700 K Street NW
Ste 640
Washington, DC 20006-3817

Dear Mr. Heffner:

This letter is in regard to your correspondence to this office dated June 29, 2012. You requested that the Federal Railroad Administration (FRA) provide you with the regulatory status of the Denver and Rio Grande Railway Historical Foundation (DRGR).

The information that is available, with respect to the transportation of passengers over rail between South Fork and Wagon Wheel Gap, Colorado, indicates that the DRGR is a non-insular tourist railroad subject to FRA's safety jurisdiction. To be clear, FRA's safety jurisdiction does not depend on an entity being considered a "common carrier," and thus, FRA may determine that an entity is a railroad subject to FRA's safety jurisdiction even if that entity is not a common carrier for Surface Transportation Board (STB) purposes. Only the STB can determine whether an entity is a common carrier railroad.

If you need further information related to this topic please feel free to contact this office.

Sincerely,

Steven J. Fender
Regional Administrator

**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 the Federal Railroad Administration dated July 24, 2012, and accompanying transmittal letter to the Board on behalf of the San Luis & Rio Grande Railway and the City of Monte Vista, CO, to the following parties by first class United States Mail and electronic mail this 2nd day of August 2012:

Donald H. Shank

Eugene L. Farish, Esq.


John D. Heffner