

231164

**DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION**

A COLORADO 501 (C)(3) NOT-FOR-PROFIT CORPORATION
FEDERAL TAX ID # 84-1433680
COLORADO CHARITABLE REGISTRATION # 20023005766

SENT VIA EMAIL AS AN ATTACHMENT

October 24, 2011

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

**ENTERED
Office of Proceedings**

OCT 24 2011

**Part of
Public Record**

**Re: FD 35496, Denver & Rio Grande Railway Historical Foundation
Petition for Declaratory Order**

Dear Ms. Saddler:

Thank you for bringing an inadvertent omission to my attention in our recent filing dated September 9, 2011. a "Response to a Reply to our Petition for Declaratory Order". Pages 13, 14 and 15 were somehow omitted during the copying, which took place in Los Angeles. I am now back in my Monte Vista, CO office and will forward those three pages via Email to you (STB), Mr. Heffner and Mr. Farish.

Please accept my sincere apology for the inconvenience.

Kindest personal regards.

Donald H. Shank
President & Executive Director

CC: John D. Heffner, Esq., Eugene Farish, Esq.

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FD 35496

at South Fork (Derrick) @ MP 299.3. The Monte Vista Spur is connected to
SLRG's mainline @ MP 269.19.

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PETITIONER'S CONCLUSION

DRGHF clearly understands why SLRG desires a prompt ruling from
your Honorable Board. They really don't want the truth to come to the
surface. The facts are:

- Contrary to what SLRG asserts, the railcars located within the Monte Vista Spur retained by SLRG are not there by DRGHF's choice.
- Contrary to what SLRG asserts, *those* cars are capable of interchange and were brought from South Fork to Monte Vista, then to Alamosa and should have been returned to South Fork. All they would need is an air test.
- SLRG then makes an argument about the cars being on "their" spur and demand their removal, but oops, they disabled the switch to the spur, only three (3) years ago [emphasis added] and the cars SLRG placed there against DRGHF's wishes aren't able to be moved. Create the problem then complain about it and side with the City of Monte Vista sighting the desire to support compliance of the Petitioner with local laws. This from the SLRGs parent company president that ordered the dumping of raw sewage into the environment.
- SLRG should have returned the three cars to the correct railroad they got them from (DRGR), but can't because they store miles of cars between Monte Vista and South Fork.
- One of the three cars (SLRG 5904) was reconfigured on the Monte Vista Spur, on the Subject Property for use on SLRG and did so successfully generating revenue for two years as their concession car. It would be available for use on DRGR if ever returned by SLRG.
- The Monte Vista Court found that an error or oversight has existed for a long time in not even recognizing the existence of the railroad.

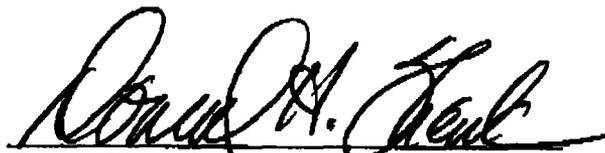
- DRGHF believed at the time that all cars were placed upon the Subject that the property was exempt via federal pre-emption. Cars had been in and out of the Subject for years without a problem. Then the City passes some Amendments directed right at the Petitioner.
- As the Petitioner stated to the Court, there was no intent to violate any Ordinance. It was Petitioners position that this railroad property had been exempt all along, however, neither Petitioner nor its Counsel was allowed to even broach the subject of federal pre-emption during the trial. Why?
- DRGHF utilizes the Subject property for one purpose only, rail car rehabilitation and railroad purposes. That included rehab of equipment used on both SLRG and DRGR in regular for hire passenger transportation.
- Four of the old historic wooden car bodies located on the Subject are simply awaiting paint and will then be transported to DRGR for placement along the line as M-O-W storage sheds to relocate unsightly track materials from public view. The materials will move from being stacked on the ground to inside closed and locked boxcars.
- Four standard gauge stock cars are awaiting rehab for use in moving stock intra-line on the DRGR and eliminate stock drives on Colorado Highway 149. This request for moving stock by rail has been made to Petitioner, through Petitioner's counsel. The cars are currently located on the Subject property and are considered part of the seventeen (17) "offenders" I was found guilty of storing within the City.

Finally, when a company purchases a portion of land from an active railroad and that portion of land is leased to an active railroad company and said land remains in use for railroad purposes suddenly becomes a zoning ordinance violator determined by a municipality that by its own admission failed to recognize the railroads very existence, then sights said companies registered agent, takes him to

trial, finds him guilty for violating said ordinances, sentences him to a fine of \$1,001.00 and ninety (90) days in jail, immediately after the presiding judge states that he has never given a moments jail time to any previous ordinance violator, then something is fundamentally wrong here and this outrageous abuse of our legal system begs for a favorable ruling by this Honorable Board in granting the Petitioner's request for a Declaratory Order.

Thank You.

Respectfully submitted,



Donald H. Shank
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