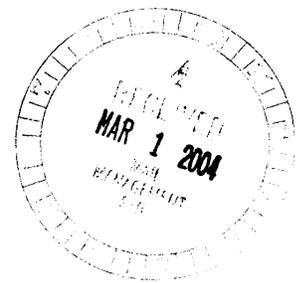


ORIGINAL

LAW OFFICE
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210191

THOMAS F. MCFARLAND



February 27, 2004

By UPS overnight mail
(Monday delivery)

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
MAR 1 2004
Part of
Public Record

Re: Docket No. AB-33 (Sub-No. 132X), *Union Pacific Railroad Company --
Abandonment Exemption -- in Rio Grande and Mineral Counties, CO*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Reply in Opposition to (1) Motion to Strike and (2) Motion for Leave to File Limited Rebuttal Statement, for filing with the Board in the above referenced matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

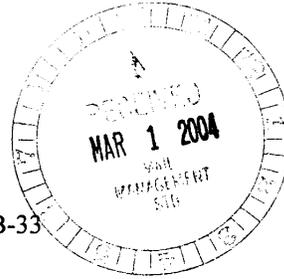
Very truly yours,

ENTERED
Office of Proceedings
MAR 01 2004
Part of
Public Record

Thomas F. McFarland

Thomas F. McFarland
*Attorney for Denver & Rio Grande
Railway Historical Foundation*

BEFORE THE
SURFACE TRANSPORTATION BOARD



UNION PACIFIC RAILROAD)
COMPANY --ABANDONMENT) DOCKET NO. AB-33
EXEMPTION -- IN RIO GRANDE AND) (SUB-NO. 132X)
MINERAL COUNTIES, CO)

**REPLY IN OPPOSITION TO
(1) MOTION TO STRIKE AND
(2) MOTION FOR LEAVE TO FILE
LIMITED REBUTTAL STATEMENT**

DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION
1474 Main Avenue, Suite 223
Durango, CO 81301

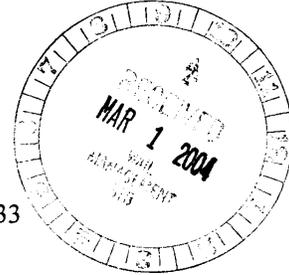
Replicant

THOMAS F. McFARLAND
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Chicago, IL 60604-1112
(312) 236-0204

Attorney for Replicant

DUE DATE: March 1, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD



UNION PACIFIC RAILROAD)
COMPANY --ABANDONMENT) DOCKET NO. AB-33
EXEMPTION -- IN RIO GRANDE AND) (SUB-NO. 132X)
MINERAL COUNTIES, CO)

**REPLY IN OPPOSITION TO
(1) MOTION TO STRIKE AND
(2) MOTION FOR LEAVE TO FILE
LIMITED REBUTTAL STATEMENT**

Pursuant to 49 C.F.R. § 1104.13(a), DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION (the Foundation) hereby replies in opposition to (1) a Motion to Strike filed by Adjacent Land Owners (the Landowners) on February 9, 2004; and (2) a Motion for Leave to File Limited Rebuttal Statement filed by the City of Creede, Colorado (the City) on February 10, 2004.

In the event that the City's Rebuttal Statement is accepted for filing over the Foundation's objection, the Board is respectfully requested to accept for filing the verified statement of Donald H. Shank, attached to this Reply, in the nature of surrebuttal.

I.

REPLY TO THE LANDOWNERS' MOTION TO STRIKE

The Landowners' Motion to Strike is frivolous.^{1/} It is based on the absence of signature and verification of the matter contained in Appendix DHS-8. That appendix is attached to the

^{1/} The Motion is improperly used as a vehicle for the Landowners to reply to the Foundation's reply. The Motion itself should be stricken on that basis. See 49 C.F.R. § 1104.13(c). If it is not stricken, the Board is respectfully requested to consider the responsive matter in the tendered verified statement of Donald H. Shank.

verified statement of Donald H. Shank that was filed as part of the Foundation's Reply in Opposition to Petition to Reopen Decision Served May 11, 1999. Mr. Shank made specific reference to Appendix DHS-8 at page 4 of his verified statement, identifying it as his own testimony in rebuttal of the false and misleading statements in the Landowners' comments.

It is evident that the signature and verification that appear at the end of Mr. Shank's verified statement serve to identify and verify the matter contained in Appendix DHS-8. The matter contained in Appendix DHS-8 is no less the sworn testimony of Mr. Shank than the matter contained in the body of his verified statement. The matter in Appendix DHS-8 was filed as an appendix rather than as part of the body of Mr. Shank's statement solely for convenience inasmuch as the comments of the Landowners, to which the matter in Appendix DHS-8 was responsive, were filed at a later time in reply to the City's Petition to Reopen, rather than concurrently with that Petition. The matter in the body of Mr. Shank's statement is responsive to allegations in the City's Petition. The matter in Appendix DHS-8 is responsive to the later-filed allegations in the Landowners' comments.

It is beyond legitimate dispute that a verification of a statement of a witness also verifies matter contained in an appendix to his statement, at least where, as here, the statement shows that the witness has specifically adopted the matter in the appendix as his own testimony.

In seeking to strike Appendix DHS-8 for failure to have a verification in addition to the verification attached to Mr. Shank's statement, the Landowners request that the Board elevate form over substance. It is the Board's practice not to do so. Instead, the Board construes its rules liberally to secure a just, speedy and inexpensive determination of the issues developed. 49

C.F.R. § 1100.3; *St. Louis, S.W. Ry. Co. - Temp. Authority - Chicago*, 360 I.C.C. 539, 543 (1979); *D&H Ry. Co. - Unilateral Joint Rate Cancellation*, 2 I.C.C.2d 631, 632 (1986).

For all of the foregoing reasons, the Landowners' Motion to Strike should be denied.

II.

REPLY TO THE CITY'S MOTION FOR LEAVE TO FILE A REBUTTAL STATEMENT

The City filed a 30-page Petition to Reopen, accompanied by over 400 pages from a Court record. Now the City wants to file even more material, euphemistically referred to as "limited rebuttal."

The Board and the parties have been deluged by the City's pleadings. It is time for the Board to say: "Enough!" The City's Motion should be denied on the ground of undue verbosity.

The purported basis for the City's Motion appears to be that the Foundation raised new matter in reply. The City emphasizes that its rebuttal "is directed solely to statements raised by the Foundation for the first time in its reply" (Motion at 1).

The City has not provided justification for filing rebuttal. Rebuttal is not warranted on the ground that the statements to be rebutted were made for the first time in the Foundation's Reply. All statements made in the Foundation's Reply were necessarily made for the first time in that Reply; that Reply was the first and only pleading submitted by the Foundation in response to the City's Petition to Reopen.

The City may have intended to allege that the statements sought to be rebutted constituted new matter not responsive to allegations made in the City's Petition to Reopen. Neither does that allegation justify rebuttal. First, the statements in question do not constitute new matter. Those

statements are responsive to allegations made in the City's Petition to Reopen, as illustrated below:

<u>Statement by Foundation</u>	<u>Responsive to City Allegation</u>
1. Offeror presumed capable of operating line for two years.	The Foundation was not capable of restoring rail service (Petition at 20-24).
2. Mr. Shank has discharged his pledge to the Foundation.	Mr. Shank never had the financial ability to make good on his pledge (Petition at 9-20).
3. The Foundation is capable of rehabilitating the rail line.	The Foundation was not capable of restoring rail service (Petition at 20-24).

Secondly, the prohibition against new matter in reply applies to rebuttal statements, not reply statements. *See* 49 C.F.R. § 1112.6 ("Rebuttal statements shall be confined to issues raised in the reply statements to which they are directed"). The Foundation's Reply is a reply statement, not a rebuttal statement.

Thirdly, the appropriate remedy in regard to impermissible new matter in reply is a motion to strike such matter. The City has not filed such a motion.

It is not a ground for filing rebuttal that the City wants to have the last word on several issues. That is especially the case when the City has already filed hundreds of pages of documents allegedly bearing on those issues. The City's Motion should be denied, and its

tendered rebuttal should be rejected. If the City's Motion is not denied, the Board should also consider the responsive matter submitted by Mr. Shank, attached to this Reply as Appendix 1.

Respectfully submitted,

DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION
1474 Main Avenue, Suite 223
Durango, CO 81301

Replicant

Thomas F. McFarland

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Attorney for Replicant

DUE DATE: March 1, 2004

APPENDIX 1

**BEFORE THE SURFACE TRANSPORTATION BOARD
OF THE UNITED STATES**

UNION PACIFIC RAILROAD	 	
COMPANY - ABANDONMENT	 	DOCKET NO. AB-33
EXEMPTION - IN RIO GRANDE	 	(SUB NO. 132X)
AND MINERAL COUNTIES, CO	 	

**RESPONSE TO OPPOSITION'S MOTION FOR LEAVE
TO FILE LIMITED REBUTTAL STATEMENT**

This Response is prepared by Donald H. Shank, Executive Director for the Denver & Rio Grande Railway Historical Foundation ("the Foundation") and shall serve as our rebuttal to the City of Creede's Limited Rebuttal Statement as prepared by their counsel, George Allen.

The Foundation hereby submits the following Limited Rebuttal Statement.

Mr. Allen contends that the Foundation is, "both incapable of paying the purchase price *and* incapable of conducting operations for two years."

1. The Foundation has never been in default of our financial obligation to the Union Pacific. The next Note payment is not due until March 2005. The buyer [Foundation] and seller [UPRR] don't have a problem with this arrangement. Union Pacific's willingness to support our project and empathize in our frustration over the continued legal attack perpetrated by the City of Creede through Mr. Allen is readily apparent by the level of their commitment. Our Foundation has been blessed with a solid professional working relationship with UP and we intend to protect it, even in spite of the fact that Mr. Allen has repeatedly attempted to come between us.
2. Mr. Allen once again makes the assertion that, "two years have long since passed after the date the OFA Award was conclusively ordered (May 2000). In that time nothing remotely resembling operation of rail service has taken place." Once again Mr. Allen is grossly incorrect. "Nothing remotely resembling", the Foundation through the tireless efforts of its volunteers have accomplished a great deal in the form of physical labor to reopen the railroad and initiate the rehabilitation phase of this project. The amount of time and money wasted to answer, re-answer and atone for the fact that we are a small, charitable, non-profit foundation, not a Class 1 billion dollar conglomerate has had a profoundly negative effect on our progress. We're not perfect and we know it. Yes we have made some mistakes, and we know that too. "Nothing remotely resembling", what about the inventory of equipment and materials worth several hundred thousand dollars? Doesn't all that equipment somehow *resemble* significant progress?

3. Stop wasting our time and money. Give us the chance to rehab the railroad, get it certified by the FRA, and commence operations, without your interference. If it doesn't make it, let it be because of us, not because Mr. Allen and the group he represents claim we can't do this and we made some mistakes along the way and therefore don't allow the Foundation the opportunity. Where is it written that we had to adhere to the City's timetable?

An issue has been made regarding the amount I have contributed into the Foundation.

Allow me to correct a couple of issues. (1) I am not now, now have I ever been a client of Rosemary Beckwith and Associates of Grand Junction, CO. Denise Ransford (Jackson) dba DJ's Bookkeeping, has been my bookkeeper since before the Foundation came into existence. (2) Per a statement from Denise today, February 12, 2004, she reminded me of the simple fact that I have given everything possible to the Foundation. I moved in with my sister to save expenses, rented probably the cheapest office in Durango (\$200/mo), liquidated nearly every asset I have and placed way more money into the Foundation than I could hope to write-off. She reminded me that I have not taken the compensation of which I am entitled from the Foundation, ever. It is a matter of record dating from 1997 that I was entitled to \$20.00 per hour as the Foundation's Executive Director. Based upon a forty-hour workweek, that would equate to \$41,600 per annum, not considering overtime, which typically exceeded twenty hours or more per week.

There was some confusion as to exactly what was contributed into the Foundation for use towards the railroads purchase, for use in acquiring equipment, materials and for use in keeping everything running. During the confusion over contributions, a \$250,000 donation from an anonymous third party [although referenced in my deposition] was made through me, as procuring cause of the quarter million dollar donation. However, procuring cause is not the same as formally donating. Yes, I was responsible for securing the contribution, but not as the contributor. Unfortunately it was incorrectly and recently placed on my schedule of contributions. If we recapture the deferred compensation as reflected above at a rate of \$41,600 per annum and apply that to years 1999, 2000, 2001 and 2002, that equates to \$166,400 that could be added to the adjusted four-year donation totals of \$256,028. I'm not claiming the deferred comp as a donation. Please don't assume that we are not concerned by the error. In fact, quite the opposite now exists as verifiable by all of us, especially our bookkeeper.

As stated on page 4, #3 of Mr. Allen's "Limited Rebuttal", regarding the grant requests from the Colorado Department Of Transportation (CDOT) Enhancement Program, this has been asked and answered repeatedly, but to satisfy Mr. Allen's propensity for reopening wounds, I will recap the events surrounding those documents.

1. The documents provided to CDOT were prepared by Mr. Terrance (Terry) Whelan, City Manager of and for the Town of South Fork, Colorado.
2. The figures reflected in those documents were derived by Mr. Whelan, not the Foundation.
3. Mr. Whelan had previously been successful in securing grant funding through this Enhancement Program for projects benefiting the Town of South Fork.

4. The Town of South Fork was acting as our sponsor.
5. I had only a few moments to review what Mr. Whelan had prepared before I signed them in haste and rushed to the CDOT offices to meet the submission deadline. I also received a speeding ticket during that haste. The ticket is also a matter of record.
6. I questioned the dollar amount requested on those documents. Mr. Whelan replied, "Let's see what we can get. Maybe they'll fund one of them."
7. I questioned the matching funds requirement, reflected in the documents as a \$2.2 million dollar savings account. Terry replied, "if we get one of the grants, we'll find a donor for the matching funds. There are lots of private foundations that might help if we show we have this large grant." For the record, the Foundation has never had a savings account with \$2.2 million in it.
8. I signed the forms. Do I regret doing so? Absolutely.
9. I withdrew from the Enhancement Program soon thereafter.
10. During 2002, Terry Whelan provided the Foundation with a letter [attached to this as Exhibit 1] written by him stating that he had prepared everything, including the compilation of figures and was responsible any problems they created. Of course, once again, regrettably, I signed them.

At footnote 1, bottom of page 4, Mr. Allen once again repeats himself as he recites the events surrounding the inclusion of our home in California on my personal financial statement in 1999. Now he is trying to equate this to the schedule of contributions during 1999 to 2002. His inevitable sense of *déjà vu* brings to mind the same sense for me when the U.S. District Court Judge demanded, "shut up Mr. Allen". Enough is enough.

Page 5 brings on more of the same. Mr. Allen, referencing the \$2.25 million savings account and once again attempts to claim we were in default to the Union Pacific on our purchase obligation. Funny, the UP doesn't see it that way and, after all, they are the seller and holder of the Note. Further into page 5, Mr. Allen again launches his personal attack on my payment and business history.

For the record, about twenty + years ago I fell behind on some child support payments after losing my job and relocating to save my sanity. The payments were brought current and for the remainder of my daughter's adolescence the payments were timely.

The litigation with a business partner Mr. Allen refers to was over the fact that my partner misrepresented a boundary description to a buyer of a lot we jointly owned. We were sued over this and the claim was settled. I wasn't even in the state when the lot was shown. That same partner then forged my signature on a company check and deposited it into his other business account. Our company split through a legal proceeding and that was the end of it. This took place about ten years ago. Is this truly relevant?

Page 5, item 4 brings up an interesting situation. Just today, February 12, 2004, I investigated the research conducted by Creede Mayor Myers. Apparently she contacted our prospective shipper GMCO Corporation of Rifle, CO, and talked to someone named Jeremy. Until today I had never spoken with him but I read him word for word what was reflected in Mr. Allen's Limited Rebuttal. He had a significantly different recollection of

his conversation with Mayor Myers and he emphatically recalls telling her how beneficial it would be to have tank cars of mag-chloride delivered to Creede.

Mr. Allen and Mayor Myers claim that our shipper would have no means of storage other than to park cars in the middle of Creede, and no facility exists to do that. This is incorrect! The rail yard is still there, and other than one track having been inappropriately removed by the city it will become functional again. According to GMCO, the cars would only be in the rail yard for a couple of days at a time. The track is there and Mineral and Hinsdale Counties Road Department would have full access to them without interfering with streets or the city. Further, this area of the rail yard currently is being utilized as a staging area for Tomkins Hardware and Lumber, including the parking of lumber trucks for extended periods of time, with no authority from the railroad. Tomkins is one of the former Lessee's that chose to join the mayor of Creede and quit paying a lease to the railroad.

As for Mr. Allen's statement that no facilities will exist without multi millions of dollars being spent to replace or rehab the six bridges over the Rio Grande River and restore the 21 miles of right-of-way with all new roadbed, ballast, track and ties, well let's see, there are three bridges over the Rio Grande, not six, none of which have to be replaced. Yes, they need some work and they will receive that. The other three bridges, Elk Creek is useable as is, Blue Creek will need some abutment work, new flashing on the stringers and new ties, and Willow Creek will get new pilings, flashing and ties. The idea that the entire line needs all new roadbed, ballast, track and ties is completely absurd. We will replace every forth tie with a #1 relay, install tie plates on every new tie, new spikes, and ballast numerous areas. Rail will be replaced only on a need-be basis as will angle bars and track bolts. We know what needs to be done and we know how to do it. The machines to accomplish these tasks are already in our inventory and can be reviewed in that inventory from our last filing to the Board.

We know the shipper demands identified to date won't provide enough funds to operate the line, but it's a start and does constitute a legitimate need for rail freight service to Creede. If we augment this business with some passenger trains while we cultivate yet additional freight business, the operation just might make it in spite of this selfishly motivated opposition.

Conclusion

There is not a level of which Mr. Allen and Mayor Myers will stoop to discredit me, the Foundation and the railroad project as a whole. I do not dispute that some errors were made during the 1999 filing during the OFA process. These have been fully addressed in our previous filing. I do not dispute that a careless error was made during our most recent filing. One key point that must be identified is that I am the one that questioned the contribution figures and brought it to the attention of Denise Ransford. This was shared between Ms. Ransford, Tom McFarland and myself as referenced by her letter to Mr. McFarland dated December 16, 2003, included in Mr. Allen's rebuttal at Exhibit A, page 2. I questioned the figures. I reminded her about the \$250,000 donation I secured. She was confused by the fact that I not only gave \$256,028 but brought in \$250K additional.

Mr. Allen's assertion that it makes little difference to me whether I am under oath or not was received with pure outrage. That is not who I am, nor how I have lived my life.

With respect to the mistake committed regarding the contribution totals, the end result was the same as far as what went into the Foundation. It reduced the total amount I contributed during the four-year period. If my level of commitment is a question for anyone, let them say it to my face. The fact that I haven't been paid by the Foundation for nearly seven years is an indisputable fact. I do not intend to use the deferred compensation as a write-off, nor do I anticipate ever receiving it from the Foundation. It will simply go to the level of my commitment.

The Denver & Rio Grande Railway Historical Foundation respectfully requests the denial of Creede's motion to revoke the OFA. We humbly request this Honorable Board recognize that unlike what George Allen is suggesting, you in fact do have a choice. We pray it is denial of Creede's pleading for revocation of our OFA rights. We have never had any intent to defraud anyone. We made some honest mistakes. Just how badly we have to suffer those consequences is up to the Board. The Creede Branch is now a National Historic District. We are rehabilitating it in preparation for freight and passenger movement. We have a legitimate request for freight into Creede. I ask, to what end is this group willing to go? Why are they doing this? What purpose would killing the railroad serve? And just who would be served by its demise?

Respectfully submitted,



Donald H. Shank
Executive Director
D&RG Railway Historical Foundation
1474 Main Avenue, Suite 223
Durango, CO 81301-5182
(970) 259-9498

Dated: February 12, 2004

VERIFICATION

STATE OF COLORADO)
) SS:
COUNTY OF RIO GRANDE)

DONALD H. SHANK, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.

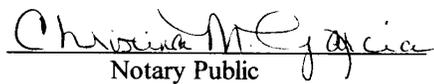


DONALD H. SHANK

SUBSCRIBED AND SWORN to

before me this 12 day of

February, 2004.



Notary Public

My Commission Expires: 4/17/06



**BEFORE THE SURFACE TRANSPORTATION BOARD
OF THE UNITED STATES**

DOCKET NO. AB-33 (SUB-NO. 132X)

**UNION PACIFIC RAILROAD COMPANY
- ABANDONMENT EXEMPTION -
IN RIO GRANDE AND MINERAL COUNTIES, CO**

REBUTTAL TO COALITION'S MOTION TO STRIKE

This Rebuttal is prepared by Donald H. Shank, Executive Director of the Denver & Rio Grande Railway Historical Foundation ("the Foundation") and shall serve as our response to the February 9, 2004 filing of the "COALITIONS" MOTION TO STRIKE the Foundation's "REBUTTAL OF ADJACENT LANDOWNERS' STATEMENT, filed by the Foundation on January 20, 2004.

In responding to Mr. Morell's "BACKGROUND" on page 3, the Foundation recognizes his attempt to invalidate the Foundation's entire 1999 OFA filing as submitted to the Surface Transportation Board ("the Board") in this proceeding. His claims of a lack of appropriate verification and submission under oath of numerous documents are both perplexing and yet redundant.

In a District Court hearing in Denver prior to the referral of the issues which now seem to have little importance, the presiding Judge made a rather significant statement to Creede's counsel, George Allen. He stated: "if the Foundation doesn't have a problem with Mr. Shank's financial information, why should you?" That statement by the Judge is a matter of record, though I apologize for not recalling exactly which hearing this was made and the date.

Now Mr. Morell is finding fault with literally everything we have submitted, past and present. I'm not sure exactly *what* to respond to, or *how* to respond.

On page 4 Mr. Morell makes the bold assertion that the entire financial information submitted with the OFA is false, fictitious, or fraudulent. That's utter nonsense. I've responded to this previously. But who knows if that response, or rebuttal, or motion or whatever it was called passes opposing counsels litmus test. These hundreds of hours that I

have spent at the computer preparing these responses weren't done in a hap-hazard manner. I have tried to respond in an honest, accurate, professional manner. Quite honestly, the sheer number and volume of these documents has become incredibly overwhelming and more than a bit redundant in nature. I cannot imagine the task before this Honorable Board to decipher what has transpired during the past few years. I more than sympathize with the individual(s) that get to analyze these voluminous pleadings and pray they can find the patience necessary to formulate a decision as to what direction to go. Simply put, I sincerely wish you all the best of luck in figuring out what this represents. My apologies to the Board for this paragraph of ramblings, but it needed to be said.

Mr. Morell refers to my August 3, 2001 deposition in which Mr. Allen asked questions about the \$400,000 pledge to the Foundation in his footnote 2, page 5. In this footnote Mr. Morell quotes the deposition [page 241-242 of the "record"] and refers to two specific questions; (1) had I made the \$400,000 contribution and, (2) was I in a position to make it. If you read the deposition you will find that I answered to first question with a "no". I had made a portion of it by virtue of the donations made during 1999 and 2000, but it wasn't made in its entirety. So I answered no. Mr. Allen didn't ask the question if I had made any portion of the \$400,000 contribution. Had he I would have answered in the affirmative. His second question regarding the \$400K during the deposition was clarified in the middle of it by Mr. Allen asking could I make the \$400,000 contribution today [meaning August 3, 2001], to which I answered "no". That didn't mean that I couldn't complete the contribution at a later date. That wasn't asked either.

Also in Mr. Morell's footnote he asserts that I contributed only \$100,000 in cash. That's not accurate. I continually made cash contributions.

Page 6. Mr. Morell's opening sentence identifies a 14-page reply prepared by me on behalf of myself and the Foundation as a single-spaced unsigned and unverified statement. The reply was included with my verified statement as an exhibit and as such would be included in the verification and should be considered an integral part of the overall response. In opposition to Mr. Morell's statement suggesting my unwillingness to include the assertions concerning the Financial Statements in my Verified Statement I must submit that I remain completely willing to include said assertions and have done so. If the appropriateness of my format doesn't comply with some rule or regulation, I apologize. I'm new at this and I've never in my life been subjected to anything remotely resembling this zany legal maneuvering by Mr. Allen and Mr. Morell. I have not attempted to trivialize information or the manner in which it was presented to this Board. I've admitted that some innocent mistakes were made. I have made every effort to accurately explain and take responsibility for these errors.

Mr. Morell references my statement regarding the loss I suffered as a result of investing in what would be discovered as a "ponzi scheme". Prior to this discovery, I'd never heard of such a thing. I explained that the loss of my principal funds I had borrowed to make the investment set up the domino principle and cost me dearly. It resulted in far more than the loss of \$80,000.

Mr. Morell completes page 6 with a misleading statement regarding an IRS audit. I am not blaming any discrepancy on an IRS audit. Denise Ransford made the corrections as suggested by our auditor. It altered some of the reported figures by rearranging their location, but I'm not blaming the audit. As for informing the Board of the errors, I had no idea that any such notification requirement existed. The Board had determined that the Foundation was a financially responsible offeror. The Rio Grande & San Juan Railroad was also deemed acceptable and the choice of whom the Union Pacific Railroad preferred to negotiate with was left to the railroad. The UP chose us, and to this day we maintain a positive working relationship. Why can't this opposing group accept this?

In conclusion, the Foundation respectfully requests that the Board deny the Coalition's Motion to Strike Appendix DHS-8.

Respectfully submitted,



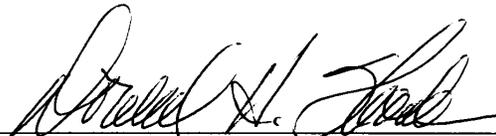
Donald H. Shank
Executive Director
D&RG Railway Historical Foundation
1474 Main Avenue, Suite 223
Durango, CO 81301-5182
(970) 259-9498

Dated: February 12, 2004

VERIFICATION

STATE OF COLORADO)
) SS:
COUNTY OF RIO GRANDE)

DONALD H. SHANK, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.



DONALD H. SHANK

SUBSCRIBED AND SWORN to

before me this 12 day of

February, 2004.



Notary Public

My Commission Expires: 4/17/04



CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2004, I served the foregoing document, Reply In Opposition To (1) Motion To Strike and (2) Motion For Leave To File Limited Rebuttal Statement, on George M. Allen, 206-A Society Drive, Telluride, CO 81435, Karl Morrell, Ball Janik LLP, 1455 F Street, NW, Suite 225, Washington, DC 20005-1004 and Robert T. Opal, Union Pacific Railroad Company, 1416 Dodge Street, #830, Omaha, NE 68179 by UPS overnight mail (Monday delivery).

Thomas F. McFarland

Thomas F. McFarland