

4. BNSF admits the allegations in the first sentence of paragraph 4 of the Verified Complaint. BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in the second, third and fourth sentences of paragraph 4 of the Verified Complaint.

5. BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 5 of the Verified Complaint, except that BNSF admits that it has transported coal to the Cholla Station from the McKinley and Lee Ranch mines in New Mexico and that the coal BNSF has transported to the Cholla Station has primarily come from New Mexico mines.

6. As to the first sentence of paragraph 6 of the Verified Complaint, BNSF admits that it has established common carrier rates for service from McKinley and Lee Ranch, although BNSF further states that no common carrier rate for service from Lee Ranch to Cholla is currently in effect. BNSF admits the allegations in the second sentence of paragraph 6 of the Verified Complaint. The third, fourth and fifth sentences of paragraph 6 purport to characterize certain Board decisions which speak for themselves. The last sentence of paragraph 6 is an assertion of complainants' legal position to which no answer is required.

7. BNSF denies the allegations in the first sentence of paragraph 7 of the Verified Complaint, except that BNSF admits that the common carrier rates previously in effect for service from Lee Ranch to Cholla were set forth in Common Carrier Pricing Authority BNSF 90040-A. No response is required to the second sentence of paragraph 7, which purports to characterize the scope of the Complaint. As to the third sentence of paragraph 7 of the Verified Complaint, BNSF admits that Supplement No. 4 to BNSF 90040-A, set forth in Exhibit B to the

Verified Complaint, contains rates that were effective for service from Lee Ranch to Cholla beginning on January 1, 2003.

8. BNSF denies the allegations in paragraph 8 of the Verified Complaint, except that BNSF admits that it is the only rail carrier currently serving Cholla.

9. BNSF denies the allegations in the first and second sentences of paragraph 9 of the Verified Complaint. The third sentence of paragraph 9 states a legal conclusion to which no answer is required.

10. Paragraph 10 is an assertion of complainants' legal position to which no answer is required.

11. Paragraph 11 of the Verified Complaint states a legal conclusion as to the scope of the Complaint to which no answer is required.

12. BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegation made in the first sentence of paragraph 12 of the Verified Complaint that Complainants considered but rejected arbitration as a means of resolving this dispute. The second sentence of paragraph 12 contains a statement about Complainants' future plans to participate in mediation pursuant to 49 C.F.R. §1109.4 to which no response is required.

13. Paragraph 13 of the Verified Complaint states a legal conclusion to which no answer is required.

PRAYER FOR RELIEF

The unnumbered paragraph on pages 5 and 6 of the Verified Complaint consists of a request for relief to which no answer is required. BNSF denies that Complainants are entitled to any of the relief requested.

Respectfully submitted,

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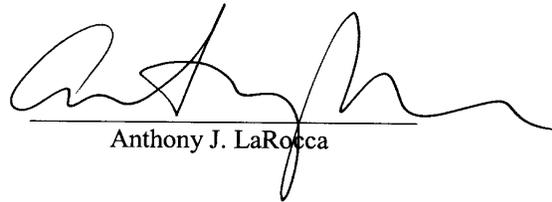
January 6, 2005

*Attorneys for The Burlington Northern
and Santa Fe Railway Company*

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2005, I caused a copy of the foregoing "Answer of The Burlington Northern and Santa Fe Railway Company to the Verified Complaint" to be served by hand upon the following counsel:

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