

THE WESTERN PACIFIC RAILROAD COMPANY

WESTERN PACIFIC BUILDING, 526 MISSION STREET
SAN FRANCISCO, CALIFORNIA 94105
TELEPHONE: (415) 982-2100

WALTER G. TREANOR
VICE PRESIDENT-LAW

KATHERINE M. GRIFFIN
GENERAL ATTORNEY
MICHAEL P. HEARNEY
EUGENE J. TOLER
ATTORNEYS

July 18, 1979

File: 6116-54

DELIVERED TO:

Honorable H. G. Homme, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RECORDATION NO. 7044/B Filed 1425

JUL 23 1979

JUL 23 1979 - 12 50 PM

Date _____
Fee \$ 10.00

INTERSTATE COMMERCE COMMISSION

CC Washington, D. C.

Dear Sir:

Enclosed for recording with the Interstate Commerce Commission are the original and two (2) certified true copies of an Assignment and Assumption Agreement dated April 4, 1979 between The Western Pacific Railroad Company, a California corporation, 526 Mission Street, San Francisco, California 94105 as Assignor and The Western Pacific Railroad Company, a Delaware corporation (formerly Newrail Company, Inc.) as Assignee, 526 Mission Street, San Francisco, California 94105 wherein the Assignor assigned and the Assignee assumed that certain Lease of Railroad Equipment dated as of May 1, 1973 between Trust Company for USL, Inc., 1211 West 22nd Street, Oak Brook, Illinois 60521, Lessor, and United States Leasing International, Inc., 633 Battery Street, San Francisco, California 94111, Agent for Lessor and Assignor as Lessee. Prior recording data:

<u>Document</u>	<u>Date</u>	<u>Recordation No.</u>
Lease of Railroad Equipment	May 1, 1973	7044
First Amendment to Equipment Lease	June 1, 1973	7044-A

The document relates to the following railroad equipment:

7 Excess height 60-foot hi-cube box cars manufactured by Greenville Steel Car Company; AAR mechanical designation XP; Road numbers WP 3761-3767, both inclusive.

30 100-ton center dump hopper cars manufactured by The Maxon Corporation; AAR mechanical designation HM; Road numbers WP 10201-10230, both inclusive.

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- 3 1500 h.p. diesel switching locomotives manufactured by General Motors Corporation (Electro-Motive Division); AAR mechanical designation BB; Road numbers WP 1501 - 1503, both inclusive.
- 5 100-ton hi-cube gondola cars manufactured by Thrall Car Manufacturing Company; AAR mechanical designation GBSR; Road numbers WP 6011-6015, both inclusive.
- 40 100-ton hi-cube gondola cars manufactured by Thrall Car Manufacturing Company; AAR mechanical designation GB; Road numbers WP 7701-7740, both inclusive.
- 25 86-foot hi-cube box cars manufactured by Thrall Car Manufacturing Company; AAR mechanical designation XP; Road numbers WP 86103-86127, both inclusive.

Identifying marks on all of the foregoing equipment: The words "Western Pacific" and the words "Leased through United States Leasing International, Inc., as Agent for Owner-Trustee, and subject to a Security Interest Recorded with the I.C.C." printed on each side of each unit.

Also enclosed is this Company's voucher in the sum of \$10.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document.

Please return the original and counterpart with recordation data stamped thereon to the representative of the office of Kunkel Transportation Services, Inc., 425-13th Street, N.W., Suite 523, Washington, D.C. 20004, who will be delivering this letter on our behalf.

Very truly yours,



Katherine M. Griffin

KMG:jc

Attachment

July 79

THE WESTERN PACIFIC RAILROAD COMPANY

CHECK NO. 42819

INVOICE DATE	INVOICE NO.	AMOUNT	DISCOUNT	NET AMOUNT	DUE DATE
Fil Fee		10.00		10.00	

JUL 23 1979 - 12 50 PM

ASSIGNMENT AND ASSUMPTION AGREEMENT

INTERSTATE COMMERCE COMMISSION

1. PARTIES

This Assignment and Assumption Agreement is made this fourth day of April, 1979, between THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (Assignor), and THE WESTERN PACIFIC RAILROAD COMPANY, a Delaware corporation, formerly named Newrail Company, Inc. (Assignee).

2. FACTS

2.1 Assignor is party to an Equipment Lease with Trust Company for USL, Inc., and U.S. Leasing Company, effective May 1, 1973, recorded with the Interstate Commerce Commission on May 31, 1973, Recordation No. 7044, which was supplemented by a First Amendment to Equipment Lease effective June 1, 1973, recorded with the Interstate Commerce Commission on June 18, 1973, Recordation No. 7044-A, hereinafter collectively referred to as the "Agreement."

2.2 By a Purchase and Sale Agreement dated February 16, 1978, Assignor has agreed to sell substantially all of its assets, properties and rights of every kind and description, and business as a going concern to Assignee, and Assignee has agreed to assume, with certain exceptions, all of the duties, liabilities and obligations of Assignor.

2.3 Pursuant to the Agreement described in Paragraph 2.2, Assignor desires to assign its interest in the Agreement, and Assignee desires to assume the obligations of Assignor thereunder.

3. ASSIGNMENT AND ASSUMPTION

3.1 Assignment. Assignor hereby sells, assigns and transfers to Assignee, its successors and assigns, all of its right, title and interest under the Agreement.

3.2 Assumption. Assignee hereby assumes and agrees to perform, fulfill and discharge in accordance with the terms of the Agreement, at the sole cost of Assignee, each and all of the obligations, covenants, terms and conditions to be kept or performed by Assignor under the Agreement, including, but not limited to (if applicable), Basic Rent, all Supplemental Rent and Casualty Value. Assignee will, at its sole cost and expense, appear in and defend every action or proceeding arising under, growing out of, or in any way resulting from, the Agreement, or the duties, obligations or covenants of Assignor thereunder, and to pay any and all amounts for which Assignor or Assignee may be held liable in respect thereof, including the payment of all reasonable attorneys' fees incurred by Assignor in any such action or proceeding.

4. APPOINTMENT OF ATTORNEY IN FACT

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney, irrevocably, with full power to ask for, and receive, any property, or refund monies to which Assignor is entitled under the Agreement, or to enforce any and all other rights or privileges of Assignor under the Agreement.

5. MISCELLANEOUS

5.1 Assignee shall notify all other parties to the Agreement of this Assignment and Assumption Agreement, and shall cause this Assignment and Assumption Agreement to be recorded with the Interstate Commerce Commission promptly after the execution and delivery hereof.

5.2 Any provision of this Assignment and Assumption Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Assignor hereby waives any provision of law

which renders any provision hereof prohibited or unenforceable in any respect.

ASSIGNOR:

THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation

By

W. W. Kumbo Jr.
Its Sr. Vice President - Finance

Attest

Its

A. D. Brew
SECRETARY

ASSIGNEE:

THE WESTERN PACIFIC RAILROAD COMPANY, a Delaware corporation (formerly named Newrail Company, Inc.)

By

W. W. Kumbo Jr.
Its Sr. Vice President - Finance

Attest

Its

A. D. Brew
SECRETARY

STATE OF CALIFORNIA)
)
CITY AND COUNTY OF SAN FRANCISCO) ss

ON April 2, 1979, before me, the undersigned, a Notary Public in and for the said State, personally appeared R. W. STUMBO, JR. and W. D. BREW, known to me to be the persons who executed the within Instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within Instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



Diane Lorette Fafoutis
Notary Public in and for said State

STATE OF CALIFORNIA)
)
CITY AND COUNTY OF SAN FRANCISCO) ss

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