

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

COUNSEL
MAURICE T. MOORE

TELEPHONE
212 422-3000

TELETYPE
RCA 233063
WUD 125547
WUI 620976

CABLE ADDRESSES
CRAVATH, N. Y.
CRAVATH, LONDON E. C. 2
2 HONEY LANE, CHEAPSIDE
LONDON EC2V 8BT, ENGLAND
TELEPHONE: 1-606-1421
TELETYPE: 8814901
RADIOFAX/INTELEC:
1-606-1425

5-155A080

RECORDATION NO. 13633-A FILED 1425

JUN 4 1985 - 10 25 AM

No.

Date

JUN 04 1985

INTERSTATE COMMERCE COMMISSION

Fee \$

10.00

ICC Washington, D.C.

June 4, 1985

The Denver and Rio Grande Western Railroad Company
First Supplemental Agreement Dated as of March 15, 1985
Amending Equipment Trust Agreement
Filed under Recordation Number 13633

Dear Mr. Bayne:

Pursuant to 49 U.S.C. § 11303 and your Commission's rules and regulations thereunder, as amended, I have enclosed on behalf of The Denver and Rio Grande Western Railroad Company for filing and recordation counterparts of the following document:

First Supplemental Agreement dated as of March 15, 1985, between First Interstate Bank of Denver, N.A., as Trustee, and The Denver and Rio Grande Western Railroad Company, as Railroad.

The First Supplemental Agreement amends an Equipment Trust Agreement dated as of May 1, 1982, previously filed and recorded with your Commission on April 30, 1982, at 1:45 p.m., Recordation Number 13633.

The First Supplemental Agreement amends the Equipment Trust Agreement to allow for a secondary sale of the Trust Certificates.

Please file and record the First Supplemental Agreement submitted with this letter and assign it Recordation Number 13633-A.

*This one is
13633-A*

Cooney and O'Hann

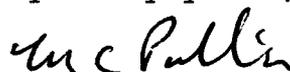
RALPH L. McAFEE
ALLEN F. MAULSBY
STEWART R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN-F. CRANE
JOHN F. HUNT
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK
GEORGE T. LOWY
ROBERT ROSENMAN
JAMES H. DUFFY
ALAN J. HRUSKA
JOHN E. YOUNG
JAMES M. EDWARDS
DAVID G. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. HIEGEL
CHRISTINE BESHAR
ROBERT S. RPKIND
DAVID BOIES
DAVID O. BROWNWOOD
PAUL M. DODYK

RICHARD M. ALLEN
THOMAS R. BROME
ROBERT D. JOFFE
ROBERT F. MULLEN
RONALD S. ROLFE
JOSEPH R. SAHID
PAUL C. SAUNDERS
MARTIN L. SENZEL
DOUGLAS D. BROADWATER
ALAN C. STEPHENSON
RICHARD L. HOFFMAN
JOSEPH A. MULLINS
MAX R. SHULMAN
WILLIAM P. DICKEY
STUART W. GOLD
JOHN W. WHITE
JOHN E. BEERBOWER
EVAN R. CHESLER
PATRICIA GEOGHEGAN
D. COLLIER KIRKHAM
MICHAEL L. SCHLER
DANIEL P. CUNNINGHAM
KRIS F. HEINZELMAN
B. ROBBINS KIESSLING
ROGER D. TURNER
PHILIP A. GELSTON
RORY O. MILLSON
NEIL P. WESTREICH

I have also enclosed our check for \$10 payable to the Commission for the recordation fee for the First Supplemental Agreement.

Please stamp all counterparts of the enclosed document with your official recording stamp. You will wish to retain one copy of the instrument and this transmittal letter for your files. Kindly deliver the remaining counterparts of the document to the bearer of this letter.

Very truly yours,



Myles C. Pollin
as Agent for
The Denver and
Rio Grande Western
Railroad Company

Mr. James H. Bayne, Secretary,
Interstate Commerce Commission,
Washington, D.C. 20423

Encls.

Interstate Commerce Commission
Washington, D.C. 20423

6/4/85

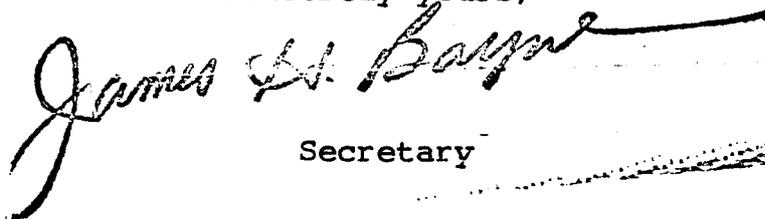
OFFICE OF THE SECRETARY

Myles C. Pollin
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/4/85 at 10:25am and assigned re-
recording number(s). 14380-A & 13633-A & 14690

Sincerely yours,


Secretary

Enclosure(s)

SE-30
(7/79)

13633-A

RECORDATION NO. 13633-A Filed 1425

JUN 4 1985 -10 25 AM

INTERSTATE COMMERCE COMMISSION

This FIRST SUPPLEMENTAL AGREEMENT dated as of March 15, 1985, between FIRST INTERSTATE BANK OF DENVER, N.A., a national banking association, as Trustee (hereinafter called the Trustee), and THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a Delaware corporation (hereinafter called the Railroad):

W I T N E S S E T H :

WHEREAS, the Trustee (then The First National Bank of Denver) and the Railroad have entered into an Equipment Trust Agreement dated as of May 1, 1982 ("Original SS Trust Agreement"), filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on April 30, 1982, at 1:45 p.m. and assigned recordation number 13633;

WHEREAS, the parties hereto desire to amend the Original SS Trust Agreement in various respects;

WHEREAS, such amendments have been consented to by the holder of all the outstanding Trust Certificates;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree that certain provisions of the Original SS Trust Agreement are hereby amended as set forth below:

1. The form of Trust Certificate is hereby amended so as to (i) make reference to this First Supplemental Agreement in the first paragraph of the text thereof and (ii) delete the references to May 1 and November 1 wherever they appear in said form.

2. The last WHEREAS clause is hereby amended so as to delete the words "on May 1 and November 1".

3. Article I is hereby amended so as to change the definition of "Equipment" contained therein by adding "box cars, gondola cars" in the parenthetical clause of the definition and by adding the following definitions thereto:

"Equipment Notes means the Railroad's 13.375% Equipment Notes due June 5, 1992 secured by a second lien on the Trust Equipment.

"Equipment Note Trustee shall mean First Interstate Bank of Denver, N.A., or any successor trustee for the holders of the Equipment Notes.

"Single Maturity Certificates shall mean Trust Certificates issued hereunder with a single maturity specified in a Request delivered pursuant to Section 2.5 hereof."

4. The first paragraph of Section 2.5 is hereby amended so as to add the following proviso at the end thereof:

"provided, however, Trust Certificates issued pursuant to the penultimate paragraph of this Section 2.5 may be dated as of such date as may be specified in a Request delivered pursuant to said paragraph."

5. The fifth and sixth paragraphs of Section 2.5 are amended to read in their entirety as follows:

"Unless otherwise specified in a Request delivered pursuant to the next succeeding paragraph, each Trust Certificate delivered, pursuant to any provision of this Agreement, in exchange or substitution for, or upon the transfer of, the whole or any part of one or more other Trust Certificates shall carry all the rights to dividends accrued and unpaid, and to accrue, which were carried by the whole or such part of such one or more other Trust Certificates, and, unless so specified as aforesaid, anything to the contrary herein notwithstanding such Trust Certificates, shall be so dated that neither gain nor loss in dividends shall result from such exchange, substitution or transfer.

"In the event that all or any part of the Trust Certificates are issued pursuant to Section 2.1 hereof to an Affiliate of the Railroad or any interim investor approved by the Railroad (as evidenced by a Request), and should such Affiliate or interim investor decide to make a secondary offer of such Trust Certificates, upon surrender for transfer of such Trust Certificates as hereinabove provided in this Section 2.5, the Trustee shall, upon Request, issue and deliver to the purchaser of such Trust Certificates new Serial Certificates or Sinking Fund Certificates or Single Maturity Certificates as specified in said Request and in like principal amount and having a maturity or maturities, bearing

dividends at such rate or rates and payable at such time or times as may be specified in said Request."

6. Section 4.1 is hereby amended to read in its entirety as follows:

"SECTION 4.1. The Trustee does hereby let and lease all the Trust Equipment to the Railroad for the term of 15 years from and after the date of this Agreement; provided, however, if all of the Trust Certificates shall have matured and been paid on a date prior to the expiration of such term of 15 years in accordance with their terms, the term of this lease shall expire on such prior date."

7. The second paragraph of Section 4.7 is hereby amended to read in its entirety as follows:

"Whenever any of the Trust Equipment shall be worn out, lost or destroyed or become unsuitable for use by the Railroad, the Railroad shall deliver to the Trustee an Officer's Certificate describing such Trust Equipment and stating the Fair Value thereof and shall deposit with the Trustee an amount in cash equal to such Fair Value. Fair Value of Trust Equipment shall be determined as of the date when such Trust Equipment was worn out, lost or destroyed or became unsuitable for use by the Railroad. Cash deposited with the Trustee pursuant to this Section 4.7 shall be held and applied as provided hereinafter."

8. The second paragraph of Section 4.8 is hereby amended to read in its entirety as follows:

"Except as otherwise provided in this Section 4.8, the Railroad shall not without first obtaining the written consent of the Trustee, assign or transfer its rights hereunder, or transfer or sublet the Trust Equipment or any part thereof, except to responsible railroads or industrial companies for a term not exceeding one year or to an Affiliate, and then subject in all respects to the rights and remedies of the Trustee hereunder, or part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment; provided, however, that notwithstanding anything to the contrary contained herein, the Railroad may grant to the Equipment Note Trustee for the benefit of the holders of the Equipment Notes a second lien on the Trust Equipment subject in

all respects to the prior rights and remedies of the Trustee hereunder. An assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all the lines of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each of and all the obligations and covenants of the Railroad hereunder and under the guaranty endorsed on the Trust Certificates, shall not be deemed a breach of this covenant. The Trustee shall have the right to declare the lease contained herein terminated in case of any unauthorized assignment or transfer of its rights hereunder or in case of any unauthorized transfer or sublease of any of the Trust Equipment. The election of the Trustee to terminate the lease contained herein shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided."

9. Section 6.1 is hereby amended by (i) changing the number "30" to "10" in clause (a) thereof, (ii) deleting clause (c) thereof and (iii) adding the following clauses thereto:

"(c) the Railroad shall, for more than 30 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof, or in the Purchase Agreements dated as of June 1, 1985, pursuant to which the Trust Certificates and the Equipment Notes were issued, on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance, or

"(d) a petition for reorganization under Title 11 of the United States Code (as now or hereafter constituted) shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad hereunder shall not have been and shall not continue to have been duly assumed by a trustee or trustees appointed in such proceedings within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended, or

"(e) any proceeding other than referred to in (d) shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been and shall not continue to have been duly assumed by a trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with any such proceedings within 60 days after such proceedings shall have been commenced, or

"(f) an event of default shall have occurred and be continuing under the Equipment Notes".

10. The second paragraph of Section 6.3 is hereby amended to read in its entirety as follows:

"After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Equipment Note Trustee free from any further liabilities or obligations to the Trustee hereunder; provided, however, if the Equipment Notes have been paid in full, as evidenced by a certificate of the Equipment Note Trustee, such conveyance shall be made to the Railroad. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Railroad agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Equipment Note Trustee; provided, however, if the Equipment Notes have been paid in full, as evidenced by a certificate of the Equipment Note Trustee, such surplus shall be paid to the Railroad."

11. The date "May 1, 1997" is hereby deleted in Section 6.4 and the following language is hereby added in lieu thereof:

"the final maturity date of the last maturing Trust Certificate outstanding under this Agreement."

12. Section 7.3 is hereby amended to read in its entirety as follows:

"SECTION 7.3. The Railroad covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provisions for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien, security interest or charge upon or against any of the Trust Equipment, except upon the leasehold interest of the Railroad therein; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim (i) so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, unless such contest will in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates or (ii) in respect of or for the benefit of the Equipment Notes to the extent authorized pursuant to Section 4.8 hereof."

13. The second paragraph of Section 8.3 is hereby deleted in its entirety.

14. The dollar amount of "\$5,000,000" in Section 8.10 is hereby deleted and the dollar amount "\$50,000,000" is hereby inserted in lieu thereof.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate

seals, duly attested, to be hereunto affixed as of the day and year first above written.

FIRST INTERSTATE BANK OF DENVER, N.A, Trustee,

by

[Signature]
Senior Vice President
and Trust Officer



(Corporate Seal)

ATTEST:

Marjorie E. Henderson
Assistant Cashier

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,

by

W. J. Holtman
President

(Corporate Seal)

ATTEST:

C. J. Schaeffer
Secretary

CITY AND COUNTY OF DENVER,)
) ss.:
STATE OF COLORADO,)

On this *31st* day of *May*, 1985, before me personally appeared, ~~JAMES R. COWGILL~~ to me personally known, who, being by me duly sworn, says that he is a Senior Vice President and Trust Officer of FIRST INTERSTATE BANK OF DENVER, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My Commission expires: *10/14/86*

Heaven Sue Johnson

Notary Public

(Notarial Seal)

CITY AND COUNTY OF DENVER,)
) ss.:
STATE OF COLORADO,)

On this *31st* day of *May*, 1985, before me personally appeared, W. J. Holtman, to me personally known, who being by me duly sworn, says that he is President of THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My Commission expires: *10/14/86*

Heaven Sue Johnson

Notary Public

(Notarial Seal)