

9-184A106

ITEL

Pullman

June 28, 1989

Itel Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000
(415) 781-1035 Fax

RECORDATION NO. *16412-A* FILED 1425

JUL 5 1989 -10 15 AM

INTERSTATE COMMERCE COMMISSION

Hon. Noretta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

**Re: Schedule No. 1 to Master Lease dated as of June 15, 1989,
between Itel Rail Corporation, Itel Railcar Corporation
and McCloud River Railroad Company**

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Schedule under the Master Lease dated as of June 15, 1989, between Itel Rail Corporation, Itel Railcar Corporation and McCloud River Railway Company, which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation and
Itel Railcar Corporation (Lessors)
55 Francisco Street
San Francisco, California 94133

McCloud River Railroad Company (Lessee)
325 Main Street
McCloud, California 96057

This Schedule covers ninety (90) 3600 cubic foot, 100-ton, open top hopper cars bearing reporting marks MR 45100-45189.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Department

MOTOR OPERATING UNIT
JUL 5 10 05 AM '89

RECORDATION #10 16412-A FILED 1425

JUL 5 1989 -10 15 AM

Lot No. 2218-01

INTERSTATE COMMERCE COMMISSION

SCHEDULE NO. 1

THIS SCHEDULE No. 1 ("Schedule") to that certain Lease Agreement, (the "Agreement") made as of June 15, 1989 between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and MCCLOUD RIVER RAILROAD COMPANY, as lessee ("Lessee") is made this 15th day of June, 1989, between ITEL RAILCAR CORPORATION ("Lessor") and Lessee.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 1, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig.	Description	Numbers	Length	Dimensions		Door Width	No. of Cars
				Inside Width	Height		
HT	3600 Cubic Feet, 100-Ton, Rotary Quad, Open Top Hoppers	MR 45100 - 45189	47'4"	9'10"	----	----	90

3. The term of the Agreement with respect to each Car described in this Schedule shall commence on the date such Car is remarked ("Delivery") and shall continue as to all of the Cars described in this Schedule for three (3) years from the earlier of (i) the date on which the last Car described in this Schedule was remarked or (ii) sixty (60) days from the date the first Car described in this Schedule was delivered to the railroad line of the Union Pacific Railroad Company and Missouri Pacific Railroad Company, collectively, (the "Term"). Upon the delivery of the final Car, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit B attached hereto, including the Delivery date for each Car and the expiration date of the Agreement with respect to the Cars described in this Schedule. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.

4. When a Car has been remarked, such Car shall be moved to the railroad lines of Union Pacific Railroad Company and Missouri Pacific Railroad Company (hereinafter collectively referred to as "Assignee") pursuant to the Agreement for Assigned Service dated June 5, 1989 ("UP Assignment") between Lessee as assignor ("Assignor") and Assignee which is attached hereto as Exhibit A. To ensure optimal use of the Cars, Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders to facilitate the movement of the Cars to other railroad lines in accordance with the Interstate Commerce Commission ("ICC") and the Interchange Rules.
5.
 - A. Lessor shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement. Lessee hereby authorizes Lessor to subscribe to the car hire data exchange tape, Train 62 Junction Advices, and the Train 65, 67 and 80 Advices with respect to the Cars and agrees to execute any documents necessary to implement such authorization. If, for any reason, Lessor does not subscribe to Train 65 and 67 Advices, Lessee shall, within ten (10) days after the close of each calendar month, supply Lessor with copies of Lessee's interchange records with respect to Cars interchanged to and from Lessee's railroad line.
 - B. Lessee shall provide Lessor with the UMLER passkey necessary for registering such Cars and shall authorize Lessor to receive the UMLER Fleet Tape. Lessee shall, within thirty (30) days of notification that Lessor has paid a car repair bill for equipment bearing reporting marks not leased to Lessee by Lessor or for which Lessee is responsible for the cost of maintenance as set forth in the Agreement (or any other agreement between Lessor and Lessee), Lessee shall reimburse Lessor for any amount paid.
 - C. Lessor shall perform car hire accounting for any equipment acquired or leased by Lessee from a party other than Lessor, which equipment bears the same reporting marks as any Car for which Lessor performs car hire accounting ("Other Equipment"). Such car hire accounting shall be performed upon terms to be agreed upon between the parties, which terms shall be set forth in a separate car hire service agreement ("Car Hire Agreement"). Under such Car Hire Agreement, Lessor shall, on behalf of Lessee, receive car hire rental and other payments relating to the use and handling of the Other Equipment by other railroads ("Funds") and shall deposit the Funds into an Agency Bank Account for the purpose of segregating the Funds from the Revenues (as defined in Section 8 hereinbelow) relating to the Cars so as to ensure that the interests of both Lessor and Lessee are protected. Such Car Hire Agreement shall provide that Lessee shall pay Lessor on a monthly basis a fee which is mutually agreeable to Lessor and Lessee.
6. Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule, except as set forth in Section 5 of the Agreement. With respect

to the Cars listed in this Schedule, Exhibit C attached hereto is hereby added to the Agreement. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.

7. Lessor agrees to reimburse Lessee, within thirty (30) days of Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to any Car, the Agreement, or the delivery of the Cars, which remained unpaid as of the date of the delivery of the Cars to Lessee or which is assessed, levied or imposed during the term of the Agreement, except taxes on income or gross receipts imposed on Lessee or sales or use tax imposed on mileage charges, car hire revenue, or the proceeds of the sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

8. Rent

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. Any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party during the Initial Term or any Extended Term, effective on the date of such sale, are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 8.A.(iii) hereinbelow).
- (ii) "Revenue Rates" is defined as the hourly and mileage car hire rates specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the April 1989 edition of The Official Railway Equipment Register.
- (iii) "Revenues" is defined as the total revenues, calculated at the Revenue Rates, that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to, per diem and mileage, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.

(iv) The "Base Rent" is defined as _____ per Car per calendar quarter. The Base Rent for any Car which is not subject to the Agreement for an entire calendar quarter shall be prorated at _____ per day for such Car during such calendar quarter.

B.

C. Upon the early termination or expiration of the UP Assignment, Lessor

D. (i) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount of such abatement, reduction or offset.

(ii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.

E. If, with respect to any calendar quarter or quarters, Revenues received by Lessor for the Cars on this Schedule are less than the Base Rent, Lessor may, at any time, at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate the Agreement as to such Cars as Lessor shall determine.

9. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.

10. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

ITEL RAILCAR CORPORATION

MCCLOUD RIVER RAILROAD COMPANY

By: [Signature]
Title: President
Date: June 15, 1989

By: [Signature]
Title: President
Date: June 15, 1989

EXHIBIT B

CERTIFICATE OF DELIVERY DATE

Exhibit B to Schedule No. 1 dated as of _____ to Lease Agreement dated as of _____, by and between ITEL RAILCAR CORPORATION ("Lessor") and MCCLOUD RIVER RAILROAD COMPANY ("Lessee").

CAR REPORTING
MARKS AND NUMBER

DELIVERY DATE

The last day of the Term for the above referenced Cars shall be

_____.

ITEL RAILCAR CORPORATION

By: _____

Title: _____

Date: _____

EXHIBIT C

Running Repairs: Open Top Hoppers

Angle Cocks	Wheel Assemblies
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Outlet Gates Repair (Not Gate Replacement)
Hand Brakes	
Brake Beams and Levers	
Truck Springs	

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 15th day of June, 1989, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Railcar Corporation, that the foregoing Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public



STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 15th day of June, 1989, before me personally appeared William J. Herndon, to me personally known, who being by me duly sworn says that such person is President of McCloud River Railroad Company that the foregoing Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public



EXHIBIT A

Lot No. 2228-01

AGREEMENT FOR ASSIGNED SERVICE

THIS AGREEMENT FOR ASSIGNED SERVICE ("Assignment Agreement") is made and entered into as of this 5th day of June, 1989, between MCCLOUD RIVER RAILROAD COMPANY ("Assignor") and UNION PACIFIC RAILROAD COMPANY and MISSOURI PACIFIC RAILROAD COMPANY (hereinafter collectively referred to as "Assignee") Assignor and Assignee agree as follows:

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1. Assignor shall supply Assignee with the following equipment (the "Cars") subject to the terms and conditions of this Assignment Agreement:

AAR Mechanical Designation	Description	Reporting Marks and Numbers	No. of Cars
HTS	3600 Cubic Feet, 47'4", 100-Ton Rotary Quad Open Top Hoppers	MR 45100-45189	90

2. Upon Assignor's instruction, and not without Assignor's instruction, Assignee shall place the Cars into an assignment pool on Assignee's railroad lines as provided for in Car Service Rule 16 and under the provisions of Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT-10.
3. The term ("Term") of this Assignment Agreement, with respect to each Car, shall commence on the day that such Car is first interchanged onto Assignee's lines after the full execution of this Assignment Agreement ("Delivery") and shall expire as to all of the Cars three (3) years from the earlier of (i) the date that the last Car was Delivered or (ii) the sixtieth (60th) day after the date that the first Car was Delivered. Upon the Delivery of the final Car, Assignor shall issue to Assignee a fully-executed Certificate of Delivery in the form of Exhibit A hereto that shall contain the expiration date of the Assignment Agreement with respect to all the Cars as determined by Assignor. Unless, within fifteen (15) days of the date of such Certificate of Delivery, Assignee demonstrates to the reasonable satisfaction of Assignor that such expiration date is incorrect, Assignee shall be deemed to have concurred with such expiration date.
4. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession.
5. If any Car returns to Assignor's line as a result of Assignee not filing the assignment pool code properly, Assignee shall be responsible for all

costs associated with returning such Car to Assignee. Assignor shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Assignment Agreement, including advising Assignor's connecting carrier that the Cars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Cars to Assignor during the term of the Assignment Agreement.

6. When used in this Assignment Agreement, each of the following terms shall have the definitions indicated:

a. "Eligible Lines" is defined as the railroad lines owned and operated by Assignee as of the date this Assignment Agreement is executed by the parties. Any lines purchased by Assignee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party, effective on the date of such sale, during the term of the Assignment Agreement are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined hereinbelow). If, at any time during the term of the Assignment Agreement, Assignee operates lines other than the Eligible Lines, then Assignee shall supply Assignor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on the other railroad lines operated by Assignee.

b. "Revenue Rates" is defined as the hourly and mileage car hire rates specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the January 1989 edition of The Official Railway Equipment Register.

c. "Revenues" is defined as the total revenues calculated at the Revenue Rates, that are earned or due for the use and handling of the Car on all railroad lines other than the Eligible Lines, including, but not limited to, per diem and mileage, whether or not collected and received by Assignor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Assignee.

d. "Guaranteed Base Rent" is defined initially as per Car per calendar quarter ("Quarter"). The Guaranteed Base Rent for any Car that is not subject to the Assignment Agreement for an entire Quarter shall be prorated per day for such Car during such Quarter. The Guaranteed Base Rent for each Car shall be calculated by adding a constant factor of to an initial service factor of . Assignor may elect to adjust the service factor as follows: The AAR labor Rate in effect on the date that this Assignment Agreement is fully executed is termed the "Original Labor Rate." The prevailing Labor Rate in effect on each January 1 subsequent to the date that the Original Labor Rate is established will be referred to as the "Current Labor Rate." If the Current Labor Rate increases in any year over the Original Labor Rate, the service factor may be adjusted to an amount not to exceed the product obtained by multiplying the service factor by a fraction, the numerator of which is the Current Labor Rate and the denominator of which is the Original Labor Rate.



If such adjustment is made, the Guaranteed Base Rent shall be revised to be the sum of the constant factor and the adjusted service factor. Any such adjustment shall be instituted by notice from Assignor to Assignee and shall take effect with respect to rents coming due next after the date of notice.

7. Assignee shall be entitled to full per diem and mileage relief for each Car while such Car is on the Eligible Lines and shall furnish interchange records to Assignor as requested.
8. Assignee agrees to pay rent to Assignor for the Cars calculated as follows:
 - a. In the event Revenues earned in any Quarter or applicable portion thereof are less than the Guaranteed Base Rent, Assignor shall retain of the total Revenues and Assignee shall ~~within ten (10) days of receiving an invoice from Assignor,~~ pay to Assignor the difference ("Difference") between the total Guaranteed Base Rent due and the actual Revenues for said Quarter or applicable portion thereof. The Difference shall be due and payable regardless of any claimed abatement, reduction or offset.
 - b. In the event Revenues earned in any Quarter or applicable portion thereof are equal to or exceed the Guaranteed Base Rent, Assignor shall retain an amount equal to the Guaranteed Base Rent and Assignee received of the Guaranteed Base Rent.
9. Upon any abatement, reduction or offset, as set forth in Subsection 6.c. hereinabove, Assignee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amount.
10. Within three (3) calendar months after the end of each Quarter, Assignor shall calculate the amount due either party for such Quarter pursuant to this Assignment Agreement. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation; provided, however, that if, following the final calculation (to be made within five (5) calendar months after the end of each calendar year that this Assignment Agreement is in effect), either Assignor or Assignee determines and demonstrates to the reasonable satisfaction of the other that any calculation required herein was incorrect, then any amount paid to either party in excess of the amounts required shall be refunded to the proper party.
11. During the Term, Assignor may, at its expense, replace any or all of the Cars with similar cars upon not less than ten (10) days' prior written notice to Assignee.
12. Assignor is responsible for normal maintenance and repair expenses except as provided below and except for any transportation costs incurred pursuant to this paragraph, which shall be at Assignee's sole expense. Assignee shall be responsible for and shall pay all costs and expenses of all repair work or other work or materials required because of (i) damage or other conditions caused by Assignee's negligence or misuse in loading or

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unloading, or by use other than as permitted under this Assignment Agreement; (ii) damage for which Assignee is responsible under applicable AAR Rules; (iii) Assignee's failure to note any damage to any Car that returns to its lines, the repair of which is the responsibility under AAR Rules of any third party railroad. Assignee shall promptly notify Assignor of any damage to, defect in, need of repair to, or destruction of any Car. For any damaged Car that requires repairs other than running repairs, as provided in Exhibit B attached hereto, car hire (time and mileage) shall be governed by applicable Car Hire and Car Service Rules. In no event shall Assignee place any Car for repair at a private contract repair facility, or allow repair by a private contractor on the property of Assignee without Assignor's prior approval. Any such repair must be performed under the direction and control of Assignor.

13. Upon expiration or termination of this Assignment Agreement with respect to any Car(s), Assignee shall surrender possession of such Car(s) to Assignor. Assignee shall insure that each Car returned to Assignor upon the expiration or termination of the Assignment Agreement shall be (a) in the same condition, order and repair as when delivered to Assignee, normal wear excepted, (b) in interchange condition in accordance with AAR and FRA rules and regulations, (c) suitable for loading of the commodities allowed under the Assignment Agreement, (d) free from all accumulations or deposits from commodities transported in or on it while in the service of Assignee, and (e) free of any and all Rule 95 damage. Assignee shall remove the Cars from the provisions of Car Service Rule 16 and Car Service Directive 145, and deliver the Cars to a point on the Eligible Lines to be designated by Assignor. At Assignor's option and Assignee's expense, Assignee shall remark the Cars to bear new reporting marks to be provided by Assignor and use its best efforts to provide final outbound loads for each Car.

or as good



14. Assignee's rights shall be subject and subordinate to the rights of Assignor, of any lessor under any lease for the Cars, and of any owner or secured party under any financing agreement with respect to the Cars. Accordingly, following notice to Assignee from any such lessor, secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Assignment Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.

15. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, or when transmitted and received by telex addressed as follows:

If to Assignor:

McCloud River Railroad Company
55 Francisco Street
San Francisco, California

Attention: President

If to Assignee:

Union Pacific Railroad
Union Pacific Building
1416 Dodge Street
Omaha, Nebraska 68179

Attention: Marlyn Eitmann,
Manager Freight Car Planning

- 16. This Assignment Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
- 17. This Assignment Agreement may be executed in two counterparts and such counterparts together shall constitute one and the same contract.

MCCLOUD RIVER RAILROAD COMPANY

By: WJ Hanson
Title: PRESIDENT
Date: 6/5/89

UNION PACIFIC RAILROAD COMPANY
MISSOURI PACIFIC RAILROAD COMPANY

By: RH Anderson
Title: VP OPERATION
Date: 5/26/89

EXHIBIT A

Certificate of Delivery

Assignment Agreement dated _____, 1989

Assignor's
Reporting
Marks and Numbers

Date Delivered
to Assignee

The Term of the Assignment Agreement dated _____, 1989
between MCCLOUD RIVER RAILROAD COMPANY and UNION PACIFIC RAILROAD shall expire
on _____, 19____

MCCLOUD RIVER RAILROAD COMPANY

By: WJ Hume

Title: President

Date: 4/5/89

EXHIBIT B

Running Repairs - Open Top Hoppers

Angle Cocks	Wheel Assemblies
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Outlet Gates Repair (Not Gate Replacement)
Hand Brakes	
Brake Beams and Levers	
Truck Springs	