

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT  
701 COMMERCE STREET  
DALLAS, TEXAS 75202

STEVEN R. PITZNER  
General Attorney

214-651-6742

September 28, 1984

In reply refer to:

RECORDATION NO. **14438** Filed 1425

410.043-101

OCT 2 1984 - 10 05 AM

INTERSTATE COMMERCE COMMISSION

No. **4-276A030**  
Date **OCT 2 1984**  
Fee \$ **10.00**

Mr. James H. Bayne, Secretary  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, DC 20423

ICC Washington, D. C.

ICC OFFICE OF  
THE SECRETARY  
OCT 2 9 50 AM '84  
MOTOR OPERATING UNIT

RE: Locomotive Lease Agreement between Kennecott Corporation, Lessor and Missouri-Kansas-Texas Railroad Company, Lessee

Dear Secretary Bayne:

I have enclosed an original and four (4) counterparts of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Locomotive Lease Agreement dated as of the 2nd day of August, 1984.

The names and addresses of the parties to the document are as follows:

Lessor: Kennecott Corporation  
Utah Copper Division  
P. O. Box 31838  
Salt Lake City, Utah 84131-0838

Lessee: Missouri-Kansas-Texas Railroad Company  
701 Commerce Street  
Dallas, Texas 75202

A description of the equipment covered by the document follows:

Nine Model GP-39-2, 2300 H.P. Diesel Electric Locomotives, bearing Kennecott road numbers 779, 780, 781, 782, 783, 785, 787, 788, and 789.

A fee of \$10.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to the undersigned, or the bearer of this letter if hand delivered, for distribution to the parties.

*See A. M. M. (L.S.M.-7)*

*0*

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT

Mr. James Bayne

- 2 -

September 28, 1984

A short summary of the document to appear in the Index follows:

Locomotive Lease Agreement between Kennecott Corporation and Missouri-Kansas-Texas Railroad Company covering Nine (9) Model GP-39-2 2300 H.P. Diesel Electric Locomotives bearing Kennecott Corporation road numnbers 779, 780, 781, 782, 783, 785, 787, 788, and 789.

I certify that I have knowledge of the foregoing.

Yours very truly,



Steven R. Pitzner  
General Attorney

SRP:sh

Interstate Commerce Commission  
Washington, D.C. 20423

10/2/84

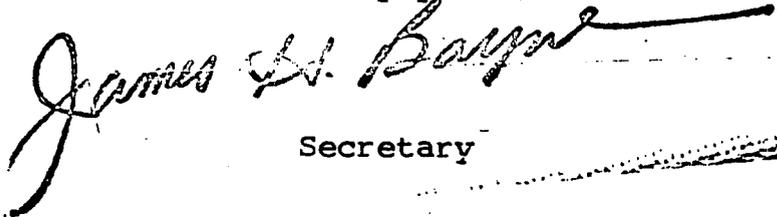
OFFICE OF THE SECRETARY

Steven P. Pitzner  
General Attorney  
Missouri-Kansas-Texas Railroad Co.  
701 Commerce St.  
Dallas, Texas 75202

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 01/2/84 at 10:05am and assigned re-  
recording number (s). 14438

Sincerely yours,

  
Secretary

Enclosure(s)

14438

RECORDATION NO. .... Filed 1425

OCT 2 1984 10 05 AM

LOCOMOTIVE LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT made this 2nd day of August, 1984, by and between Kennecott Corporation (hereinafter called the "Lessor"), and Missouri-Kansas-Texas Railroad Company (hereinafter called the "Lessee").

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. Lessee agrees to lease from Lessor the locomotives in Exhibit A (the "Locomotives"). All Locomotives presently bear Kennecott reporting marks. The Lessee may stencil its name on the units so long as it removes same should Lessee not elect to extend the lease of the Locomotives pursuant to Section 9 hereof. The Lessee agrees to enter into a power pool agreement with the Denver and Rio Grande Western Railroad for incidental operation and use to enable the locomotives to be delivered to the Lessee FOT D&RGW RR at Salt Lake City, Utah.

2. The Lease shall commence with respect to each Locomotive when said Locomotive is interchanged to the Denver & Rio Grande, ("Delivery"), at Coppertone Yard, Bingham Canyon, Utah, and Lessee has accepted same. Rent will commence on the date Lessee places each Locomotive in service at Parsons, Kansas, but not later than fifteen (15) days after said Locomotive is interchanged to the Lessee, which date is herein called the "Rent Commencement Date". The expiration date of this Lease, unless the provisions of Section 9 are invoked, shall be 270 days after the Rent Commencement Date. The daily rental shall be \$200.00 per day per Locomotive, payable monthly in arrears, for the initial 270 day lease term only.

3. Lessee agrees it will take delivery of the Locomotives and has agreed to lease the Locomotives from Lessor upon completion of the attached repairs/modifications which are to be made to each locomotive prior to delivery as detailed in Exhibit C. Lessor makes no warranty or representation, either expressed or implied, as to fitness in general or for any purpose, merchantability, design, condition or as to the quality of the material, equipment or workmanship in Locomotives or as to any features thereof or as to any matter whatever, similar or dissimilar to the foregoing. Lessee understands that for the initial 270 day lease, except for crankshaft, turbo-charger or alternator failure, all costs and expenses in any way related to the use, maintenance and operation of the Locomotives is for the account of Lessee. The Lessor shall be responsible for complete failure of the crankshaft, turbocharger or alternator for the initial 270 day lease period. If provisions of Section 9 are invoked, Lessee shall be responsible for all costs and expenses in any way related to the use, maintenance and operation of the Locomotives during the extended term of the lease.

4. Lessee shall direct payment of the monthly rent and notices pursuant to Section 13(b) to the following address:

Kennecott Corporation  
Utah Copper Division  
P.O. Box 31838  
Salt Lake City, Utah 84131-0838  
Attention: William Stump

5. Lessee agrees to keep and maintain and make available to Lessor such record of Lessee's use, operation, inspection, repairs and maintenance of each Locomotive while in its possession as shall be reasonably required by Lessor. Lessor, by such agent or agents as it may designate, shall have the right at all reasonable times to go upon the property of Lessee to inspect any Locomotive while in the possession of Lessee.

6. Lessee agrees it will be solely responsible for any loss, damage or destruction of any Locomotive leased to it by Lessor after delivery and while subject to this Lease. In case any of the Locomotives during the initial 270 days term of the Lease period become lost, destroyed or damaged beyond repair from any cause whatsoever, rental with respect to any such Locomotive shall cease immediately, but in such case Lessee agrees to pay Lessor the sum of \$375,000 per Locomotive within thirty (30) days of the event. Lessee shall, in addition, procure liability insurance providing limits of at least \$5 million per occurrence and name Lessor as additional insured thereunder, subject to a deductible of \$750,000 per occurrence or such other lesser deductibles as are customary in the industry. Lessee shall, as promptly as practical after the date hereof, but before Delivery of the first Locomotive, provide Lessor satisfactory evidence of such insurance.

7. Lessee agrees to indemnify, defend and save harmless Lessor against any charge or claim made against Lessor and against any expense or liability which Lessor may incur as a result of the use, condition or operation of any Locomotive after delivery and while subject to this Lease and to indemnify, defend and save harmless Lessor against any claim or suit on account of any accident in connection with the use or operation of any Locomotive resulting in damage to property, including property of Lessor, or injury to any person.

8. Lessee shall comply with FRA and all other applicable governmental laws, regulations and requirements and other binding regulations with respect to use, maintenance and operation of the Locomotives during the Lease period.

The Lessee shall use the Locomotives only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Lessee shall, at its own cost and

expense, maintain and keep the Locomotives in good order, condition and repair, ordinary wear and tear excepted. Any parts installed or replacements made by Lessee upon the Locomotives shall be considered accessions to the Locomotives and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor.

9. At any time, but no later than March 25, 1985, Lessee shall have the right to extend the term of this Lease beyond the initial nine month term for all, but not less than all, of the Locomotives covered by this Lease by giving written or telegraphic notice to Lessor. The monthly lease payments shall be payable within thirty (30) days following the expiration of the initial nine month lease term, and on the same day of each month thereafter. The monthly payments for the first twenty-four (24) months of the extended lease term shall be \$3,042.00 per locomotive; the monthly payments for the next one hundred thirty-two (132) months of the extended lease term shall be \$4,441.00 per locomotive. At the expiration of the 156 month extended term, so long as Lessee is not in default, Lessee may purchase all Locomotives for \$1.00 per Locomotive. At request of Lessee, Lessor shall, when all payments have been received, execute and deliver a bill of sale for said Locomotives, warranting good title thereto in favor of Lessee.

10. In the event that Lessee elects to exercise the long-term lease option set forth in Section 9, and in the further event that any Locomotive during such extended lease term shall become lost, destroyed or damaged beyond economic repair, in the fair opinion of Lessee, from any cause whatsoever, rental with respect to said unit shall terminate upon receipt by Lessor of the casualty payment specified in Exhibit B.

11. In the event the Lessee does not elect to extend the term of this Lease of the Locomotives pursuant to Section 9, upon expiration of the initial lease term, the Lessee agrees to provide storage at no expense or risk to the Lessor for a period of sixty (60) days pursuant to manufacturer's recommended storage procedures. Lessee will also move the Locomotive(s) to any point on Lessee's tracks (to include trackage rights and affiliated railroads) free of charge for the purpose of returning Locomotives. The Locomotives shall be returned to Lessor in good operating condition, as specified in Section 8, normal wear and tear excepted.

12. Lessee shall not assign or sublet its interest, or any part thereof, under this agreement, or permit the use or operation of any Locomotive subject to this Lease by any other person, firm or corporation, other than wholly-owned subsidiaries, without the prior written consent of Lessor. Lessor expressly consents to incidental operation and use on railroads other than

Lessee under standard run-through and power pooling arrangements. Lessor may at any time assign all or any portion of the rents due or to become due, and/or the leased property without notice to Lessee and in such event Lessor's transferee as assignee shall have all the rights, powers, privileges and remedies of the Lessor hereunder. Lessee shall have no obligation to pay any assignee, and shall continue to pay Lessor, until such time as written notice is given to assignee of such assignment in accordance with Section 13.

13. Unless otherwise specifically provided, any notices to be given under this Lease or any other communications between the parties shall be given by certified mail, postage prepaid, in the following manner:

- (a) Notices from Lessor to Lessee shall be sent to:  
Missouri-Kansas-Texas Railroad Company  
701 Commerce Street  
Dallas, Texas 75202  
Attention: Karl R. Ziebarth

or to such other address as Lessee may from time to time indicate by written notice to Lessor.

- (b) Notices from Lessee to Lessor shall be sent to:

Kennecott Corporation  
Utah Copper Division  
P.O. Box 31838  
Salt Lake City, Utah 84131-0838  
Attention: William Stump

or to such other address as Lessor may from time to time indicate by written notice to Lessee.

14. In the event the Lessee exercises its option pursuant to Section 10 hereof, all of the terms and provisions hereof, except those specifically applying to the nine month term only, such as the rental payment date described in Section 2 and the casualty value described in the second sentence of Section 6, shall continue in full force and effect during the extended term. Lessor may proffer and substitute a new lease agreement if Section 9 is exercised, embodying the aforesaid terms and conditions, as set forth in this agreement, and such other mutually acceptable conditions as are customary in long-term financings.

15. So long as Lessee makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

16. The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Agreement and bind the respective parties to the terms and provisions hereof. Lessor will pay all commissions and fees to Helm Financial Corporation, who has been retained in connection with this transaction, and will hold Lessee harmless for any such fees or commissions.

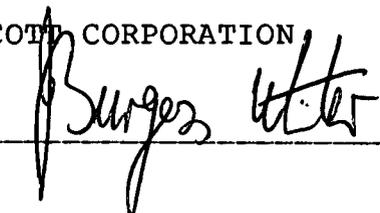
17. Lessee will promptly cause this Lease to be duly filed, registered or recorded in conformity with Section 11303 of the Interstate Commerce Act or other places within or without the United States as Lessor may reasonably request for the protection of its title and will furnish Lessor proof thereof. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Locomotives to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to Lessor proof of such filing.

Lessee, or Lessor at Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, but only as it relates to a sale to Lessee, use and property taxes, gross receipts taxes (except for any gross receipts taxes payable by Lessor arising from the rental payments herein) arising out of receipts from use or operation of Locomotives including without limitation amounts payable under Sections 2, 6 and 10, hereof and other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotives and whether or not the same shall be assessed against or in the name of Lessor or Lessee.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement this 2nd day of August, 1984.

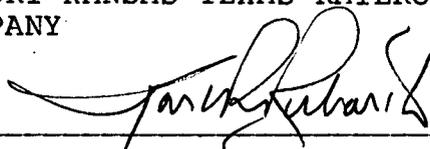
KENNECOTT CORPORATION

By \_\_\_\_\_



MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By \_\_\_\_\_



Executive Vice President-Financial

Title \_\_\_\_\_

EXHIBIT A

Locomotive Description: General Motors (Electro Motive Division)  
GP-39-2, 2300 H.P. Diesel Electric Locomotives as per EMD  
Specification #8075.

The Kennecott locomotive numbers and serial numbers are as follows:

<u>Unit Number</u>	<u>Serial Number</u>
779	766028-1
780	766028-2
781	766028-3
782	766028-4
783	766028-5
785	766028-7
787	766028-9
788	766028-10
789	766028-11

**EXHIBIT B**

**Casualty Schedule  
For Extended Lease Term**

<u>Month No.</u>	<u>Casualty Value</u>						
1	773000.00	40	330999.18	79	266970.09	118	163172.13
2	774043.51	41	331651.30	80	264953.10	119	159844.14
3	773078.70	42	330289.13	81	262711.41	120	156477.35
4	772389.99	43	328910.66	82	260544.74	121	153071.29
5	771513.30	44	327516.51	83	258352.79	122	149625.47
6	770413.70	45	326105.90	84	256135.27	123	146139.46
7	769277.81	46	324678.83	85	253891.67	124	142612.78
8	768099.57	47	323235.11	86	251622.30	125	139049.98
9	766876.43	48	321774.55	87	249326.25	126	135453.51
10	765609.01	49	320296.95	88	247003.42	127	131823.95
11	764297.60	50	318802.11	89	244653.49	128	128169.79
12	762942.41	51	317289.83	90	242276.14	129	124489.53
13	761543.39	52	315759.90	91	239871.00	130	120771.67
14	760100.82	53	314212.13	92	237437.91	131	116946.70
15	758613.78	54	312646.30	93	234976.39	132	112977.10
16	757081.09	55	311062.20	94	232486.13	133	108962.34
17	755502.64	56	309459.62	95	229966.87	134	104901.97
18	753878.31	57	307838.34	96	227418.14	135	100795.33
19	752208.95	58	306198.15	97	224839.71	136	96641.97
20	750494.42	59	304538.82	98	222231.20	137	92441.32
21	748735.57	60	302860.13	99	219592.26	138	88192.83
22	746932.24	61	301161.84	100	216922.53	139	83895.94
23	745084.35	62	299443.76	101	214221.65	140	79550.09
24	743191.69	63	297705.65	102	211489.26	141	75154.70
25	741254.13	64	295947.24	103	208724.99	142	70709.20
26	739271.52	65	294168.32	104	205928.47	143	66213.00
27	737243.71	66	292368.64	105	203099.33	144	61665.51
28	735170.54	67	290547.97	106	200237.18	145	57066.13
29	733052.86	68	288706.06	107	197341.64	146	52414.24
30	730890.51	69	286842.66	108	194412.32	147	47709.29
31	728683.33	70	284957.52	109	191449.82	148	42950.59
32	726431.16	71	283050.38	110	188453.75	149	38137.54
33	724134.94	72	281120.99	111	185417.70	150	33269.50
34	721794.20	73	279169.05	112	182349.27	151	28345.84
35	719408.07	74	277194.42	113	179245.04	152	23365.90
36	716976.29	75	275196.71	114	176104.55	153	18329.03
37	714498.68	76	273175.70	115	172927.50	154	13234.56
38	711975.07	77	271131.11	116	169713.35	155	8081.62
39	709405.29	78	269062.67	117	166461.70	156	29170.13

## EXHIBIT C

### Repairs/Modifications Prior to Delivery of Each Locomotive

1. Cab modified to standard height and provide three (3) standard cab seats in each unit. If seats are not equipped with arm rests, then arm rest outside window will be furnished.
2. FRA window glazing installed throughout.
3. End sheet extension applied to comply with FRA and repair and strengthen existing end sheets and step wells.
4. Fuel tank vent repaired to EMD standard including flame arrestor.
5. Repair and secure walkways, railing, end crossover walks, chains and posts, and provide FRA approved steps and coupler pin lifter.
6. Truck rebuilt will include truck frames, springs, bushings, hangers, pull rod, phenolic rings, side bearing, and truck safety clips repair or replacement as necessary, and side bearing adjustment to proper clearance.
7. One complete set of wheels applied to unit #782.
8. Fourteen reconditioned power assemblies installed to seven units where necessary to insure serviceability.
9. Brake valves certified to FRA standards.
10. Number boards repaired.
11. Horns fixed.
12. Condemned knuckles replaced.
13. MU synchronization effected.
14. One toilet per locomotive to be supplied to MKT for MKT's installation. Toilet to be supplied must fit space available under long hood. MKT prefers the unit type which includes seat and retention tank with hand pump made in one piece - such as Inca or Power Parts Co. markets.
15. Kennecott Copper will furnish one (1) multiple unit jumper cable with each unit.

16. The bad order Diesel engine crankshaft must be repaired or replaced to meet EMD Class D crankshaft specification or better.
17. The bad order truck transom must be straightened and truck pedestals trammed to EMD specifications, or truck replaced with a truck that meets such specification. (MKT has spare trucks that will fit these units.)
18. After batteries are installed and engines started, unit must be power tested to see that it loads, and does not have high voltage grounds.
19. MKT must have the right to inspect each unit during time work is being performed and/or after work is completed on each unit, and the right to accept or reject the unit(s) based on its sole judgement as to whether materials used were suitable and work was performed in a workman-like manner.