

ITEL

Itel Rail Corporation

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

RECORDATION NO. 8819-BB Filed 1425

DEC 3 1985 12:35 PM

INTERSTATE COMMERCE COMMISSION

November 14, 1985

No. **5-337A020**

Date DEC 3 1985

Fee \$ 10.00

I.C.C. Washington, D.C.

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

TOO HIGH TO
TI
DEC 3 12 28 PM '85
MOBILE

Dear Mr. Bayne:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Itel Rail Corporation for filing and recordation under the Lease Agreement dated as of April 20, 1977 between SSI Rail Corp., as predecessor in interest to Itel Rail Corporation, and McCloud River Railroad Company which was filed with the I.C.C. on May 11, 1977 and given I.C.C. Recordation No. 8819, four counterparts of the following document:

*think this
one will be
8819-BB*

Amendment No. 4 dated November 4, 1985 to the Lease Agreement dated April 20, 1977 between SSI Rail Corp. and McCloud River Railroad Company.

The names and addresses of the parties to the aforementioned are:

1. McCloud River Railroad Company (Lessee)
P.O. Drawer A
McCloud, CA 96057
2. Itel Rail Corporation (Lessor)
55 Francisco, 5th Floor
San Francisco, California 94133

*From among
the series*

The equipment covered by this Amendment is 143 70-ton, general purpose, XM boxcars bearing reporting marks MR 2000-2397 (n.s.), 97 70-ton, general purpose, XM boxcars bearing reporting marks MR 11000-11099, and 50 70-ton, general purpose, XM boxcars bearing reporting marks MR 7226-7275.

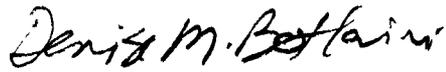
Also enclosed is a check in the amount of \$10.00 for the required recording fee.

Clayton [Signature]

Mr. James H. Bayne, Secretary
November 14, 1985
Page Two

Please stamp all counterparts of the enclosed Amendment with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts be returned to the bearer of this document.

Sincerely,



Denise M. Bottarini
Senior Legal Assistant

DMB/vdv/83

cc: Howard Chabner
Robert S. Clark
J. Michael Kelly
Ginny Hanger

Interstate Commerce Commission
Washington, D.C. 20423

12/3/85

OFFICE OF THE SECRETARY

Denise M. Bottarini
Senior Legal Assistant
IteI Rail Corp.
55 Francisco, St.
San Francisco, Calif. 94133

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 12/3/85 at 12:35pm , and assigned re-
recording number(s). 8819-BB

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

ASSIGNED TO FIRST SECURITY BANK
OF UTAH, N.A., TRUSTEE, UNDER
A LEASE ASSIGNMENT DATED
AS OF November 15, 1985
10/30/85

8819-BB

12:35

INTERSTATE COMMERCE COMMISSION

LESSOR'S INTEREST ASSIGNED TO
FIRST SECURITY BANK OF
UTAH, N.A., WITH RESPECT TO
CARS NUMBERED MR 7226-7275

AMENDMENT NO. 4

THIS AMENDMENT NO. 4 (the "Amendment") to that certain Lease Agreement dated as of April 20, 1977 ("Agreement") between SSI Rail Corp. and McCLOUD RIVER RAILROAD COMPANY ("Lessee") is made this 4th day of NOVEMBER, 1985 between ITEL RAIL CORPORATION, as successor in interest to SSI Rail Corp., ("Lessor") and Lessee.

R E C I T A L S :

- A. Lessor and Lessee are parties to the Agreement pursuant to which five hundred (500) boxcars described therein (the "Boxcars") have been leased by Lessor to Lessee.
- B. The Boxcars bearing the reporting marks MR 2002; MR 2001; MR 2041; MR 2146; MR 2227; MR 2295; MR 2394; MR 11084; SNCT 1069 and SNCT 1074 were destroyed on April 25, 1985; February 1, 1978; August 4, 1979; March 28, 1979; December 15, 1977; November 3, 1978; September 13, 1980; September 30, 1985; September 17, 1984 and February 19, 1985, respectively.
- C. Lessee, with the consent of Lessor, entered into the following subleases: (i) the Sublease Agreement dated January 24, 1980 ("CPLT Sublease") between Lessee and Camino, Placerville and Lake Tahoe Railroad Company ("CPLT") with respect to fifty (50) Boxcars bearing the reporting marks CPLT 7850-7899; (ii) the Sublease Agreement dated February 6, 1980 ("SNCT Sublease") between Lessee and Seattle and North Coast Railroad Company ("SNCT") with respect to one hundred (100) Boxcars bearing the reporting marks SNCT 1000-1099, which were remarked to MR 11000-11099; and (iii) the Sublease Agreement dated August 29, 1980 ("SERA Sublease") between Lessee and Sierra Railroad Company ("SERA") with respect to one hundred (100) Boxcars bearing the reporting marks SERA 4500-4599.
- D. Pursuant to the letter dated February 22, 1985 from Lessee to SNCT, Lessee terminated the SNCT Sublease and the assignment pool on SNCT's lines described in Amendment No. 3 dated September 30, 1982 to the Agreement.
- E. Lessor and Lessee mutually desire to terminate all fifty (50) Boxcars from the CPLT Sublease, to remark each such Boxcar to bear MR reporting marks and to change the lease rental with respect to each such Boxcar.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties hereto agree to amend the Agreement as follows:

1. All terms defined in the Agreement shall have the meanings defined therein when used in this Amendment.

2. Equipment Schedules No. 3, No. 4 and No. 5 to the Agreement are hereby deleted in their entirety and replaced respectively by Equipment Schedules No. 3.A, ~~No. 4.A~~ and No. 5.B attached hereto.

3. Equipment Schedule No. 7 attached hereto is hereby added to the Agreement. *DELETE PER TELEPHONE CONVERSATION of 1/4/85-PAZ*

4. Lessee shall terminate all fifty (50) Boxcars bearing the reporting marks CPLT 7850-7849 from the CPLT Sublease and shall remark such Boxcars, at Lessor's expense, to the reporting marks MR 7226-7275. *SHOULD READ-7899 PAZ 1/4/85*

5. Subsection 2.C. shall be added to the Agreement as follows:

"C. Either party may terminate the Agreement with respect to any or all Boxcars on Equipment Schedule No. 7 upon not less than thirty (30) days' prior written notice to the other party."

6. With respect to the Boxcars on Equipment Schedule No. 7 only, Section 6 of the Agreement shall be replaced by the following:

"6. Lease Rental

A. Definitions

(i) "Revenues" is defined as the total revenues earned and due from other railroad companies for the use or handling of the Boxcars, 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 of Lessee; minus all incentives paid to, and all reclaim or relief allowed to, other railroad companies by Lessor. Upon any such abatement, reduction or offset, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.

(ii) The "Utilization Rate" of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that Revenues were earned on the Boxcars commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Boxcars were on lease to Lessee, commencing from the Initial Loading.

B. Each Boxcar shall become subject to the rental calculation under Subsection 6.C. upon the remark of such Boxcar to bear MR reporting marks.

C. Lessee agrees to pay the following rent to Lessor for the use of the Boxcars:

- D. The calculations required in Subsection 7.C shall be made within five (5) months after the end of each calendar year ("Final Calculations"). However, to enable Lessor to meet its financial commitments, Lessor shall, prior to making such calculations, retain the Revenues and other payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under Subsection 7.C., Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amount due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.
- E. If, subsequent to the Initial Loading, any Boxcar remains on Lessee's railroad lines for more than seven (7) consecutive days, excluding those days such Boxcar is undergoing servicing, repair or alteration as provided for in Section 5 unless such servicing, repair or alteration was occasioned by the fault of Lessee, Lessor may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Boxcar and take possession of such Boxcar on Lessee's railroad tracks. If any such Boxcar has remained on Lessee's railroad tracks for more than seven (7) consecutive days because Lessee has not given preference to the Boxcars as specified in Subsection 3.B., Lessee shall be liable for and remit to Lessor an amount equal to the Revenues which would have been generated if such Boxcar had been in the physical possession and use of another railroad for the entire period during which such Boxcar is on Lessee's railroad line.
- F. In the event damage beyond repair or destruction of a Boxcar has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Boxcar will be removed from the rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rules 7 and 8. Lessor may, at its expense, replace any destroyed Boxcar with similar equipment upon prior written notice from Lessor to Lessee.
- G. If any Boxcar, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Boxcar, Lessee shall notify Lessor within

sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Lessee fails to notify Lessor within sixty (60) days of the Damage Date, Lessor has the right to engage an independent appraiser to inspect such Boxcar to determine the extent of such damage. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Boxcar within thirty (30) days of receipt of an invoice from Lessor.

H. Any agreement between Lessee and any other party with respect to the Boxcars ("Third Party Agreement(s)") shall be void without Lessor's prior written approval if such Third Party Agreement affects the Revenues earned by the Boxcars, provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

I. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Boxcars, provided, however, that this shall not affect their respective obligations under this Section 7.

7. The words "If any Boxcar is terminated pursuant to subsections 6C or 6E or section 8..." in the last sentence of Section 9 of the Agreement are replaced by the words "If any Boxcar is terminated pursuant to Subsections 2.C., 6.C., 6.E. or Section 8...".

8. Except as expressly modified by this Amendment, all terms and provisions shall remain in full force and effect with respect to all of the Boxcars subject to the Agreement.

9. This Amendment may be executed by the parties hereto in any number of counterparts and all counterparts taken together shall be deemed to constitute on in the same instrument.

ITEL RAIL CORPORATION

By: 

Title: President

Date: 11-13-85

McCLOUD RIVER RAILROAD COMPANY

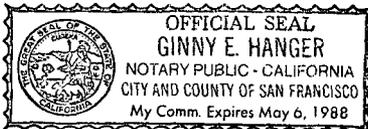
By: 

Title: PRESIDENT

Date: 11-4-85

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

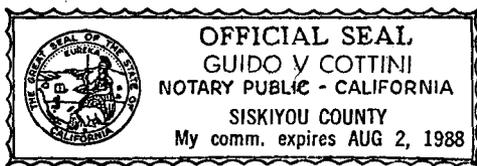
On this 13th day of November, 1985, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Amendment No. 4 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Ginny E. Hanger
Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF SISKIYOU)

On this 4th day of November, 1985, before me personally appeared Paul A. Zalec, to me personally known, who being by me duly sworn says that such person is President of McCloud River Railroad Company, that the foregoing Amendment No. 4 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.



Guido V. Cottini
Notary Public

EQUIPMENT SCHEDULE NO. 3.A

IteI Rail Corporation hereby leases the following Boxcars to McCloud River Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of April 20, 1977.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
XM	70-ton General Purpose Boxcars	MR 2000, 2003, 2005, 2009, 2013, 2014, 2016, 2019, 2022, 2023, 2024, 2025, 2026, 2027, 2030, 2033, 2034, 2035, 2038, 2039, 2042, 2048, 2049, 2053, 2055, 2056, 2058, 2062, 2064, 2066, 2069, 2074, 2080, 2083, 2084, 2085, 2086, 2087, 2088, 2095, 2096, 2097, 2098, 2101, 2103, 2111, 2112, 2115, 2116, 2124, 2128, 2138, 2151, 2153, 2164, 2171, 2172, 2180, 2184, 2191, 2198, 2200, 2203, 2204, 2205, 2209, 2210, 2212, 2213, 2221, 2223, 2228, 2229, 2230, 2231, 2232, 2234, 2235, 2236, 2240, 2241, 2242, 2243, 2244, 2249, 2251, 2252, 2254, 2262, 2265, 2269, 2270, 2271, 2272, 2274, 2275, (continued)	50'6"	9'6"	10'7"	8' Double Sliding	143

EQUIPMENT SCHEDULE NO. 3.A
(continued)

IteI Rail Corporation hereby leases the following Boxcars to McCloud River Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of April 20, 1977.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
XM	70-ton General Purpose Boxcars	MR 2276, 2277, 2280, 2284, 2285, 2288, 2290, 2292, 2293, 2296, 2300, 2301, 2304, 2305, 2307, 2312, 2313, 2314, 2315, 2317, 2319, 2320, 2322, 2324, 2333, 2335, 2337, 2338, 2341, 2342, 2343, 2347, 2348, 2353, 2356, 2357, 2361, 2368, 2372, 2374, 2376, 2378, 2388, 2389, 2391, 2396, 2397	50'6"	9'6"	10'7"	8' Double Sliding	

ITEL RAIL CORPORATION

By: *JD Hayes*
 Title: President
 Date: 11-13-85

McCLOUD RIVER RAILROAD COMPANY

By: *Paul A. Zale*
 Title: PRESIDENT
 Date: 11-4-85

EQUIPMENT SCHEDULE NO. 4.A

Itel Rail Corporation hereby leases the following Boxcars to McCloud River Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of April 20, 1977.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
XM	70-ton General Purpose Boxcars	CPLT 7850-7851, 7853-7855, 7857-7859, 7861-7862, 7864-7872, 7874-7877, 7879,7882, 7885,7887, 7890-7897, 7899	50'6"	9'6"	10'7"	8' Double Sliding	36

*Voiced
Per telephone conversation
with GAA 11/4/85
PAZ*

ITEL RAIL CORPORATION

McCLOUD RIVER RAILROAD COMPANY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

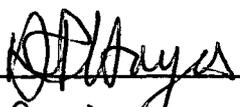
Date: _____

EQUIPMENT SCHEDULE NO. 5.B

Itel Rail Corporation hereby leases the following Boxcars to McCloud River Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of April 20, 1977.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
XM	70-ton General Purpose Boxcars	MR 11000-11068, 11070-11073, 11075-11083, 11085-11099	50'6"	9'6"	10'7"	8' Double Sliding	97

ITEL RAIL CORPORATION

By: 

Title: President

Date: 11-13-85

McCLOUD RIVER RAILROAD COMPANY

By: 

Title: PRESIDENT

Date: 11-4-85

EQUIPMENT SCHEDULE NO. 7

Itel Rail Corporation hereby leases the following Boxcars to McCloud River Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of April 20, 1977.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
XM	70-ton General Purpose Boxcars	MR 7226-7275	50'6"	9'6"	10'7"	8' Double Sliding	50

ITEL RAIL CORPORATION

By: *AD Hayes*

Title: President

Date: 11-13-85

McCLOUD RIVER RAILROAD COMPANY

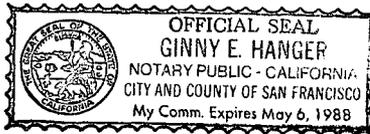
By: *Paul A. Zales*

Title: PRESIDENT

Date: 11-4-85

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

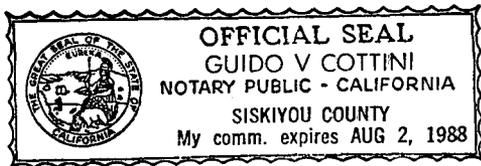
On this 13th day of November, 1985, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Equipment Schedules No. 3.A, ~~No. 4.A~~, No. 5.B and No. 7 were signed on behalf of said 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.



Ginny E. Hanger
Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF SISKIYOU)

On this 4th day of November, 1985, before me personally appeared Paul A. Zalec, to me personally known, who being by me duly sworn says that such person is President of McCloud River Railroad Company, that the foregoing Equipment Schedules No. 3.A, ~~No. 4.A~~, No. 5.B and No. 7 were 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.



Guido V. Cottini
Notary Public