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CHAPMAN AND CUTLER

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Theodore S. Chapman  
1877-1943  
Henry E. Cutler  
1879-1959

17270  
MAR 29 1991 8:30 AM

MAR 29 1991 8:30 AM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission  
Washington, D.C.

March 27, 1991

RECEIVED  
MAR 29 1991  
I.C.C. BUILDING  
GUARD DESK  
17270

MAR 29 1991 8:30 AM

INTERSTATE COMMERCE COMMISSION

Re: Southern Pacific Transportation Company

1-092A002

Gentlemen:

Enclosed for recordation under the provisions of 49 USC 11303(a) are the original and four counterparts of a Conditional Sale Agreement dated as of March 1, 1991 (the "Conditional Sale Agreement") and Agreement and Assignment dated as of March 1, 1991 (the "Assignment") relating thereto. Said Conditional Sale Agreement and Assignment are each primary documents.

A general description of the railroad equipment covered by each of the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Railroad under Conditional  
Sale Agreement:

Southern Pacific Transportation  
Company  
Southern Pacific Building  
One Market Plaza  
San Francisco, California 94105  
Attention: Treasurer

Builder-Vendor under  
Conditional Sale Agreement  
and Builder under  
Agreement and Assignment:

Morrison Knudsen Corporation  
720 Park Boulevard  
P.O. Box 73  
Boise, Idaho 83729  
Attention: Vice President  
Locomotive Division

Assignee under Agreement  
and Assignment:

The Bank of New York  
101 Barclay Street  
New York, New York 10007  
Attention: Corporate Trust Dept.

*Chapman and Cutler*

8:30 AM

B/30

New Member

-A

MAR 29 1991

CHAPMAN AND CUTLER

The undersigned has acted as special counsel in connection with the preparation of the enclosed documents and has knowledge of the matters set forth therein.

Please return the original and three copies of each enclosed document to Ross D. Taylor, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

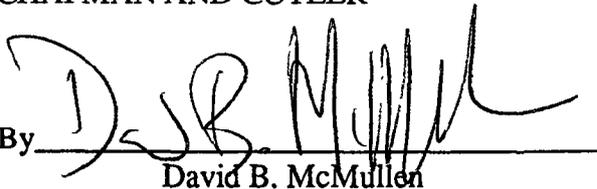
Also enclosed is a check in the amount of \$30.00 covering the required recording fee.

A short summary of each of the enclosed primary documents to appear in the Index follows:

Conditional Sale Agreement between Morrison Knudsen Corporation, as Builder, 720 Park Boulevard, P.O. Box 73, Boise, Idaho 83729 and Southern Pacific Transportation Company, as Railroad, Southern Pacific Building, One Market Plaza, San Francisco, California 94105, covering 45 Rebuilt GP40M-2 3000 H.P. Locomotives.

Very truly yours,

CHAPMAN AND CUTLER

By  \_\_\_\_\_  
David B. McMullen

DBM:svr  
Enclosures

17270

MAR 29 1991 -8 35 AM

INTERSTATE COMMERCE COMMISSION

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**AGREEMENT AND ASSIGNMENT**

Dated as of March 1, 1991

Between

**MORRISON KNUDSEN CORPORATION**

**Builder**

AND

**THE BANK OF NEW YORK,  
as Agent**

**Agent**

**45 Remanufactured General Motors GP40M-2 3000 H.P. Road Freight Locomotives**

**\$33,500,000 10.15% Conditional Sale Indebtedness due March 1, 2003**

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**ATTACHMENTS TO THE AGREEMENT AND ASSIGNMENT:**

Annex I - Forms of Opinions of Counsel

AGREEMENT AND ASSIGNMENT dated as of March 1, 1991 between MORRISON KNUDSEN CORPORATION, an Ohio corporation (the "*Builder*"), and THE BANK OF NEW YORK, a New York banking corporation, acting as Agent under a Finance Agreement dated as of March 1, 1991 (the "*Finance Agreement*") with Southern Pacific Transportation Company (the "*Railroad*") and the Investors listed in Schedule A thereto (the "*Investors*") (said Agent, so acting, together with its successors and assigns, being hereinafter called the "*Assignee*").

#### R E C I T A L S:

A. The Builder and the Railroad have entered into a Conditional Sale Agreement dated as of the date hereof (the "*CSA*") covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Railroad of the railroad equipment described in Schedule B to the CSA (said equipment being hereinafter called the "*Equipment*").

B. Pursuant to the Finance Agreement, the Assignee wishes to acquire certain rights of the Builder under the CSA.

C. Capitalized terms not otherwise defined herein shall have the meanings set forth in the CSA.

In consideration of the mutual agreements herein contained, the parties hereto hereby agree as follows:

#### SECTION 1. ASSIGNMENT.

The Builder hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under §4 hereof;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the CSA in respect of the Purchase Price of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) above, all the Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer the Builder hereby authorizes and empowers the Assignee, *in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney for the Builder hereby irrevocably constituted to ask, demand, sue for, collect and receive any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.*

## SECTION 2. AGREEMENTS OF THE BUILDER WITH RESPECT TO THE EQUIPMENT.

The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Railroad in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and each Investor and the Railroad that at the time of delivery of each unit of the Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA) and that the Builder will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all *subject, however*, to the provisions of the CSA and the rights of the Railroad thereunder. The Builder will not deliver any units of the Equipment to the Railroad under the CSA until the filings referred to in Article 19 of the CSA have been effected (the Builder and its counsel being entitled to rely on advice from special counsel for the Investors that such filings have been effected).

## SECTION 3. INDEMNIFICATION.

(a) The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all

expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

(b) To the extent set forth in Item 3 of Schedule A to the CSA, the Builder agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use by the Builder in or about the construction or reconstruction of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim.

(c) The Builder agrees that any amounts payable to it by the Railroad with respect to the Equipment, with the exception of amounts payable pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

#### **SECTION 4. CLOSING CONDITIONS.**

(a) On each Closing Date under the CSA with respect to a Group of the Equipment, subject to clause (b) below, the Assignee shall pay to the Builder an amount equal to a portion of the Purchase Price of the Equipment, less any amounts payable by the Railroad pursuant to Article 4(a) of the CSA, attributable to such Group as shown on the invoice therefor upon receipt of written notice from special counsel to the Investors that it has received, 5 days prior to such Closing Date, following documents in form and substance satisfactory to it:

(i) a bill of sale from the Builder to the Assignee transferring to the Assignee title to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA the

Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(ii) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the CSA;

(iii) an invoice of the Builder for the units of the Equipment in such Group for which settlement is then being made, certified as correct by the Railroad;

(iv) an opinion of Chapman and Cutler, who are acting as special counsel for the Investors, dated such Closing Date, substantially in the form set forth in Annex I hereto;

(v) an opinion of counsel for the Railroad, dated such Closing Date, substantially in the form set forth in Annex I hereto;

(vi) an opinion of counsel for the Builder, dated such Closing Date, substantially in the form set forth in Annex I hereto;

(vii) a certificate of an officer of the Railroad, dated such Closing Date, to the effect that (i) no event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, has occurred and is then continuing, (ii) the fair market value of the Equipment is equal to the CSA Indebtedness with respect to such Equipment, (iii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1986, as amended) and, to the best of his knowledge and belief, no other tax liens have been filed and are currently in effect which would adversely affect the title and security interest of the Assignee in the Equipment and (iv) no taxes, assessments or governmental charges or levies are delinquent nor are there any other claims or liens arising through the Railroad which would adversely affect the title and security interest of the Assignee in the Equipment; and

(viii) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to this §4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

(b) The obligation of the Assignee hereunder to make any payment provided for in this §4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for

in the CSA could constitute an event of default ("default"), shall have occurred and be continuing under the CSA. For purposes of this Agreement, the Assignee shall be deemed to have actual knowledge of such a default or event of default when one or more officers in the Corporate Trust Department of the Assignee responsible for monitoring this transaction has actual knowledge of such a default or an event of default or when the Assignee shall have received written notice of such a default or event of default in the manner and to the address provided in Section 9 of the Finance Agreement. In the event that the Assignee shall not make payment for any Group of the Equipment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

#### **SECTION 5. FURTHER ASSIGNMENT.**

The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder, including, without limitation, pursuant to an appointment of a successor agent under the Finance Agreement. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder and under the Finance Agreement.

#### **SECTION 6. REPRESENTATIONS AND AGREEMENTS OF THE BUILDER.**

The Builder hereby:

(a) represents and warrants to the Assignee that (i) the CSA and this Assignment were duly authorized, executed and delivered by the Builder for a valid consideration, (ii) assuming the due authorization, execution and delivery thereof by the other parties thereto, the CSA and the Assignment constitute legal, valid and binding agreements of the Builder, enforceable against the Builder in accordance with the respective terms thereof, and (iii) the CSA is now in force without amendment thereof.

(b) agrees that it will from time to time and at all times, at the request of the Assignee, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

**SECTION 7. GOVERNING LAW.**

The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

**SECTION 8. HEADINGS AND TABLE OF CONTENTS.**

The headings of the Sections of this Agreement and the Table of Contents are inserted for convenience of reference only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

**SECTION 9. COUNTERPARTS.**

*This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof. This Agreement shall be effective upon delivery of fully executed counterparts hereof to Chapman and Cutler, at their offices in Chicago, Illinois.*

**SECTION 10. AMENDMENTS.**

This Agreement may, from time to time and at any time, be amended or supplemented by an instrument or instruments in writing executed by the parties hereto.

IN WITNESS WHEREOF, each of the parties hereto, pursuant to due corporate authority, has caused this instrument to be duly executed in its corporate name by its officers, thereunto duly authorized, all as of the date first above written, and each of the undersigned signatories hereto declares pursuant to 28 U.S.C. §1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

MORRISON KNUDSEN CORPORATION

By  \_\_\_\_\_  
Its

Executed on March 25, 1991

THE BANK OF NEW YORK, as Agent

By \_\_\_\_\_  
Its:

Executed on March \_\_\_\_, 1991

IN WITNESS WHEREOF, each of the parties hereto, pursuant to due corporate authority, has caused this instrument to be duly executed in its corporate name by its officers, thereunto duly authorized, all as of the date first above written, and each of the undersigned signatories hereto declares pursuant to 28 U.S.C. §1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

MORRISON KNUDSEN CORPORATION

By \_\_\_\_\_  
Its

Executed on March \_\_\_\_\_, 1991

THE BANK OF NEW YORK, as Agent

By  \_\_\_\_\_  
Its: ASSISTANT VICE PRESIDENT

Executed on March 22, 1991



STATE OF )  
 ) SS  
COUNTY OF )

On this \_\_\_\_\_ day of March, 1991, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of MORRISON KNUDSEN CORPORATION, that said instrument was signed 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.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires:

STATE OF NEW YORK )  
 ) SS  
COUNTY OF NEW YORK )

On this 22<sup>nd</sup> day of March, 1991, before me personally appeared T. A. BURRELL, to me personally known, who being by me duly sworn, says that he is the ASSISTANT VICE PRESIDENT of THE BANK OF NEW YORK, that said instrument was signed 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.

  
\_\_\_\_\_  
Notary Public

ROBERT SCHNECK  
Notary Public, State of New York  
No 4746935  
Qualified in Nassau County  
Certificate filed in New York County  
Commission Expires May 31, 1991

[NOTARIAL SEAL]

My commission expires: 5-31-91

## ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

SOUTHERN PACIFIC TRANSPORTATION COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of March 1, 1991.

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY

By   
Its Treasurer

**DESCRIPTION OF CLOSING OPINION OF SPECIAL  
COUNSEL FOR THE INVESTORS**

\_\_\_\_\_, 1991

John Hancock Mutual Life  
Insurance Company  
Boston, Massachusetts

John Hancock Variable Life  
Insurance Company  
Boston, Massachusetts

Mellon Bank, N.A., as  
Trustee for AT&T Master  
Pension Trust  
Pittsburgh, Pennsylvania

Re:                    Conditional Sale Agreement dated as of  
                          March 1, 1991 between Morrison  
                          Knudsen Corporation and Southern  
                          Pacific Transportation Company;

and

\$33,500,000 Principal Amount 10.15%  
Certificates of Interest, dated  
March \_\_\_\_, 1991, issued by The Bank of  
New York, as agent and assignee under  
the related Agreement and Assignment  
dated as of March 1, 1991

Gentlemen:

We have acted as your special counsel in connection with the transaction contemplated under the Finance Agreement dated as of March 1, 1991 (the "*Finance Agreement*") among John Hancock Mutual Life Insurance Company, John Hancock Variable Life Insurance Company and Mellon Bank, N.A., as Trustee for AT&T Master Pension Trust, as investors (the "*Investors*"), Southern Pacific Transportation Company (the "*Railroad*") and The Bank of New York, as agent and assignee (the "*Assignee*") under the Agreement and Assignment

ANNEX I  
(to Agreement and Assignment)

dated as of March 1, 1991 (the "Assignment") between Morrison Knudsen Corporation, as builder (the "Builder"), and the Assignee, pursuant to the provisions of which Assignment the Builder has assigned all of its right, title and interest in and to the Conditional Sale Agreement dated as of March 1, 1991 (the "Conditional Sale Agreement") between the Builder and the Railroad and in and to the railroad equipment described in Schedule B to the Conditional Sale Agreement (collectively the "Equipment" and individually an "Item of Equipment").

By execution of the Certificate of Acceptance referred to in paragraph (c) below, the Railroad has acknowledged that \_\_\_\_\_ GP40M-2 3000 H.P. locomotives bearing the Railroad's Road Numbers \_\_\_\_\_ to \_\_\_\_\_, both inclusive, have been delivered to and accepted by the Railroad under the Conditional Sale Agreement (said Items of Equipment being hereinafter referred to as the "Group").

In connection with the issuance of the above-captioned Certificates of Interest on \_\_\_\_\_, 1991 and the settlement on the date hereof for the Items of Equipment in the Group, we have examined the following:

- (a) Executed counterparts of the Finance Agreement, the Conditional Sale Agreement, the Assignment, the Certificates of Interest and that certain Letter Agreement dated the date hereof (the "Letter Agreement") of the Railroad for the benefit of the Agent and the Investors;
- (b) Certificates of the Secretary of the Builder and the Secretary of the Assignee with respect to corporate authorization and signatures of signing officers;
- (c) Certificate of Acceptance from the Railroad covering the Items of Equipment in the Group, responsive to §4(a)(ii) of the Assignment;
- (d) Invoice from the Builder to the Railroad for the Items of Equipment in the Group, certified as correct by the Railroad, responsive to §4(a)(iii) of the Assignment
- (e) Bill of Sale from the Builder to the Assignee, responsive to §4(a)(i) of the Assignment;
- (f) Officer's Certificate of the Railroad responsive to §4(a)(vii) of the Assignment;
- (g) Opinion of counsel for the Builder, dated the date hereof, responsive to §4(a)(vi) of the Assignment;
- (h) Opinion of counsel for the Railroad, dated the date hereof, responsive to §4(a)(v) of the Assignment; and

(i) Such other documents, things and matters of law as we have deemed pertinent in connection with the rendition of this opinion, including such documentation as we have considered appropriate to confirm that the Conditional Sale Agreement and the Assignment have been filed and recorded in all public offices wherein such filing or recording is necessary to protect the rights of the Assignee in the United States of America.

In rendering the opinion set forth in paragraph 6 below, we have relied as to title to the Items of Equipment in the Group upon the title warranty in the Bill of Sale referred to in clause (e) above, and upon the opinions referred to in clauses (g) and (h) above.

Based on the foregoing and in reliance on the matters referred to in the foregoing paragraph to the extent therein stated, we are of the opinion that:

1. The Finance Agreement, assuming due authorization, execution and delivery by the Assignee and you, has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable against the Railroad and the Agent in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and the availability of equitable remedies and the Certificates of Interest, assuming due authorization, execution and delivery by the Assignee, are legal, valid and binding obligations of the Assignee, enforceable against the Assignee in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and the availability of equitable remedies.

2. The Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and the availability of equitable remedies.

3. The Assignment has been duly authorized, executed and delivered by the Builder, and, assuming due authorization, execution and delivery by the Assignee, is a legal, valid and binding instrument enforceable against the Builder in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and the availability of equitable remedies.

4. The Letter Agreement has been duly authorized, executed and delivered by the Railroad and is a legal, valid and binding instrument enforceable against the Railroad in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and the availability of equitable remedies.

5. The Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by the Assignment.

6. The Assignee has title to the Items of Equipment in the Group and such Items of Equipment, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement).

7. The Assignee is entitled to the benefits of 11 U.S.C. §1168 in the event of the filing of a petition for the reorganization of the Railroad under Title 11 of the United States Code.

8. No approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement, the Assignment or the Letter Agreement.

9. The Conditional Sale Agreement and the Assignment have been filed with the Interstate Commerce Commission and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia.

10. Registration of the Conditional Sale Agreement, the Assignment or the Certificates of Interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended.

The opinions referred to in clauses (g) and (h) above are satisfactory in form and scope, and you and we are justified in relying thereon.

Respectfully submitted,

**DESCRIPTION OF CLOSING OPINION OF  
COUNSEL FOR THE RAILROAD**

\_\_\_\_\_, 1991

Each of the Investors listed on  
Schedule A of the Finance Agreement  
dated as of March 1, 1991 among  
Southern Pacific Transportation Company,  
The Bank of New York and each of the  
Investors

The Bank of New York as Agent for each  
of the Investors

Dear Sirs:

I have acted as counsel for Southern Pacific Transportation Company, a Delaware corporation (the "*Company*"), in connection with the Conditional Sale Agreement dated as of March 1, 1991 (the "*CSA*"), between the Company and Morrison Knudsen Corporation (the "*Builder*"), the Agreement and Assignment dated as of March 1, 1991 (the "*Assignment*"), between the Builder and The Bank of New York (the "*Agent*"), the Finance Agreement, dated as of March 1, 1991 (the "*Finance Agreement*"), among the Company, the Agent and each of the Investors, respectively and the Letter Agreement, dated the date hereof (the "*Letter Agreement*") of the Company for the benefit of the Agent and the Investors. This opinion is being delivered pursuant to §4(a)(v) of the Assignment. All terms used herein that are defined in the CSA, the Assignment or the Finance Agreement have the respective meanings specified therein.

In this connection, I have examined such certificates of public officials, certificates of officers of the Company and copies certified to my satisfaction of corporate documents and records of the Company and of other documents deemed relevant and necessary as a basis for my opinion hereinafter set forth. I have relied upon such certificates of public officials and of officers of the Company with respect to the accuracy of material factual matters contained therein which were not independently established. In giving the following opinion, I have relied on the bill of sale and opinion of counsel to the Builder to confirm that the Group being settled for on the date hereof and the title thereto has been delivered by the Builder to the Company free and clear of all claims, liens, security interests and other encumbrances, except as to claims, liens, security interests and other encumbrances arising from, through or under the Company. I have also assumed: (1) the due authorization, execution and delivery of the documents by all parties thereto other than the Company, and that all such instruments constitute legal, valid and binding obligations of such parties, and that such parties have all necessary power and authority to enter into and perform the transactions contemplated thereby; and (2) the genuineness of all signatures (except the

signatures of the officers of the Company), the authenticity of all documents submitted to me as originals and the conformity to original documents of documents submitted to me as photocopies.

Based on the foregoing, it is my opinion that:

1. The Company is a duly organized and existing corporation in good standing under the laws of the State of Delaware and has the power and authority to own its properties and to carry on its business as now conducted and to enter into and perform the Finance Agreement, the CSA and the Letter Agreement.

2. The Finance Agreement, the CSA and the Letter Agreement have been duly authorized, executed and delivered by the Company and the execution, delivery and performance thereof by the Company do not conflict with the certificate of incorporation or by-laws of the Company or any other instrument binding on it or its property.

3. The Finance Agreement, assuming due authorization, execution and delivery by the Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable against the Company in accordance with its terms.

4. The CSA has been duly authorized, executed and delivered by the Company and is a legal, valid and binding instrument enforceable against the Company in accordance with its terms.

5. The Letter Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding instrument enforceable against the Company in accordance with its terms.

6. The Assignee has title to the units of the Equipment in the Group being settled for on the date hereof and such units, at the time of delivery of title thereto to the Assignee under the Assignment, were free from all claims, liens, security interests and other encumbrances (other than those created by the CSA).

7. The Assignee is entitled to the benefits of 11 U.S.C. §1168 in the event of the filing of a petition for the reorganization of the Company under Title 11 of the United States Code.

8. No approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA, the Assignment or the Letter Agreement.

9. The CSA and the Assignment have been filed with the Interstate Commerce Commission, and no other filing or recordation is necessary for the

protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia.

The opinions expressed in paragraphs 3, 4 and 5 above are subject to the following limitations, qualifications and exceptions:

(a) Limitations imposed upon enforceability by bankruptcy, insolvency, reorganization, moratorium or other similar laws or court decisions now or hereafter in effect relating to the rights of creditors generally; and

(b) Limitations imposed by law or equitable principles upon enforceability and upon the availability of injunctive relief or other equitable remedies, regardless of whether such enforcement is considered in a proceeding in equity or at law.

I am a member of the Bar of California and do not purport to be an expert in, or to render any opinion concerning the laws of any other jurisdiction other than the United States of America, and the general corporation laws of Delaware. In rendering this opinion, you have permitted me to assume, and I have assumed that New York law is similar to the law of California.

Very truly yours,

**DESCRIPTION OF CLOSING OPINION OF COUNSEL  
FOR THE BUILDER**

\_\_\_\_\_, 1991

To the Parties Listed on the  
Attached Schedule

Re:                   Southern Pacific Transportation Company  
                          \$33,500,000 10.15% Conditional Sale  
                          Indebtedness due March 1, 2003;  
                          45 Remanufactured General Motors  
                          GP40M-2 3000 H.P. Road Freight Locomotives

Gentlemen:

As Associate General Counsel for Morrison Knudsen Corporation, an Ohio corporation (the "*Builder*"), I have examined counterparts of (i) the Conditional Sale Agreement dated as of March 1, 1991 (the "*CSA*") between the Builder and Southern Pacific Transportation Company (the "*Railroad*"); (ii) the Agreement and Assignment dated as of March 1, 1991 (the "*Assignment*") between the Builder and The Bank of New York, as Agent (the "*Assignee*"); (iii) the Bill of Sale dated the date hereof (the "*Bill of Sale*") from the Builder to the Assignee transferring to the Assignee the security title of the Builder in the units of railroad equipment (the "*Equipment*") described therein; and (iv) such other documents as I have deemed necessary to render the opinion set forth below.

Based on the foregoing, I am of the opinion that:

1. The Builder is a duly organized and existing corporation in good standing under the laws of the State of Ohio and has the power and authority to own its properties and to carry on its business as now conducted and enter into and perform the CSA and the Assignment.

2. The CSA has been duly authorized, executed and delivered by the Builder and assuming due authorization, execution and delivery by the Railroad, is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, except as such terms may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally and by the availability of equitable remedies.

3. The Assignment has been duly authorized, executed and delivered by the Builder and assuming due authorization, execution and delivery by the Assignee, is a

legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, except as such terms may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally and by the availability of equitable remedies.

4. The Assignee is vested with all the rights, titles, interests, powers and privileges of the Builder purported to be assigned to the Assignee by the Builder by the Assignment.

5. The Assignee has title to the Equipment and each unit of the Equipment, at the time of delivery thereof to the Railroad under the CSA, was free from all claims, liens, security interests and other encumbrances (other than those created by the CSA).

## **SCHEDULE OF ADDRESSEES**

**John Hancock Mutual Life Insurance Company  
Boston, Massachusetts**

**John Hancock Variable Life Insurance Company  
Boston, Massachusetts**

**Mellon Bank, N.A., as Trustee  
for AT&T Master Pension Trust  
Pittsburgh, Pennsylvania**

**The Bank of New York  
New York, New York**

**Southern Pacific Transportation Company  
San Francisco, California**