

K-43555 Vol. 4-91 Page \_\_\_\_\_  
WATER SYSTEM AGREEMENT AND EASEMENT

This WATER SYSTEM AGREEMENT AND EASEMENT (this "Agreement") is made as of this 4<sup>th</sup> day of October, 1991, by and among CROWN PACIFIC LUMBER LIMITED PARTNERSHIP, an Oregon limited partnership ("CPL"), CROWN PACIFIC (OREGON) LIMITED PARTNERSHIP, an Oregon limited partnership ("CPO"), and ERNST BROTHERS CORPORATION, an Oregon corporation ("Ernst").

Recitals:

A. Ernst and Crown Pacific, Ltd. ("Crown") are the parties to that certain Assignment and Assumption Agreement, of even date herewith (the "Assignment and Assumption Agreement"), pursuant to which Crown Pacific assigned to Ernst certain of the rights of Crown Pacific pursuant to that certain Agreement for Sale of Gilchrist Timber Properties, dated as of May 8, 1991, between Crown Pacific and Gilchrist Timber Company ("GTC"), as amended (the "Gilchrist Agreement"), and Ernst accepted the assignment of such rights and assumed certain obligations in connection therewith. In consequence of the assignment of rights to Ernst pursuant to the Assignment and Assumption Agreement, Ernst has acquired from GTC those parcels of real property located in Klamath County, Oregon, described on the attached Exhibit A-1 (the "Ernst Properties") and those easement rights described on the attached Exhibit A-2 (the "Easement Rights"). Among the improvements located on the Ernst Properties are certain wells (the "Wells") and certain water lines and pipes (the "Town Lines") used to provide water to the unincorporated town of Gilchrist, Oregon.

B. CPL and CPO, pursuant to assignments of certain other rights of Crown Pacific pursuant to the Gilchrist Agreement, have acquired from GTC those parcels of real property located in Klamath County, Oregon described on the attached Exhibits B-1 and B-2 (the "CPL Property" and the "CPO Property," respectively; together, the "Crown Properties"), which are adjacent to the Ernst Properties. Among the improvements located on the CPL Property are certain water lines and pipes connecting to a sawmill and related improvements (respectively, the "Mill Lines" and the "Mill"). Among the improvements located on the CPO Property are a water reservoir (the "Reservoir") and certain water lines and pipes connecting to the Reservoir (the "Reservoir Lines").

C. For purposes of this Agreement, the Wells, the Town Lines, the Mill Lines, the Reservoir, the Reservoir Lines, and any other apparatus, equipment, or component used in connection with the provision of water to the Crown or Ernst Properties are collectively referred to as the "Water System".

Agreements:

NOW, THEREFORE, in consideration of the foregoing and the covenants of the parties contained in this Agreement, the parties hereby agree as follows:

1. Provision of Water to Crown Properties. Subject to the provisions of this Section 1, Ernst hereby agrees to provide a supply of water sufficient to satisfy the requirements of CPL and its successors and assigns for water for domestic use and for back-up fire suppression in connection with ownership and operation of the Mill and any other requirements for water for domestic use and for back-up fire suppression of CPL, CPO, and their respective successors and assigns that may arise from time to time in connection with ownership and operation of the Crown Properties, to the extent permitted by the certificates set forth on the attached Exhibit C (the "Certificates"). In the event the supply of water available from the Water System is at any time insufficient to satisfy the requirements of CPL, CPO, Ernst, and their respective successors and assigns in connection with the ownership and operation of the Crown and Ernst Properties, Ernst shall have the right to allocate such supply among these Properties substantially in proportion to the usage of water with respect to such Properties during the 12-month period preceding such insufficiency.

2. Provision of Water to Ernst Properties. Subject to the requirements of CPL, CPO, and their respective successors and assigns pursuant to Section 1, Ernst shall have the right to draw water from the Reservoir without charge to Ernst to provide water for the Ernst Properties, to the extent permitted by the Certificates.

3. Metering; Charges.

3.1 Metering. Ernst shall, within 60 days after the date of this Agreement, install a meter or meters at its cost and expense which will determine the volume of water supplied to CPL through the Water System.

3.2 Charges. CPL and Ernst shall seek in good faith to reach agreement within 30 days after the date of this Agreement regarding the basis and manner for assessing a charge for the water to be provided to CPL through the Water System, including a means for adjusting such charge in future years (the "Payment Basis"). CPL and Ernst intend that the Payment Basis be determined with reference to that portion of the costs incurred by Ernst in operating and maintaining the Water System, and establishing and maintaining a reasonable reserve fund with respect thereto, that are allocable to CPL based on the ratio that CPL's usage of water from the Water System bears to the usage of all users of the Water System (such standard for determining the Payment Basis, the "Payment Standard"). In the

event CPL and Ernst are unable to reach agreement with respect to a Payment Basis within this 30-day period, each shall submit to the other, within 10 days after the expiration of such period, a written statement setting forth its proposed Payment Basis and the names of two neutral and disinterested engineers or engineering firms qualified to determine an appropriate Payment Basis. CPL and Ernst shall meet at a mutually convenient time within 10 days after the later to be delivered of such submissions and, at that meeting, shall place the four submitted names in a vessel. Ernst shall select one of the names, at random, and the person or entity so chosen shall be the Arbitrator. The Arbitrator shall determine, within 10 days after its designation, which Payment Basis is more closely in conformance with the Payment Standard. The Arbitrator shall not have the power or authority to effect a compromise position between the Payment Basis of each of CPL and Ernst. The determination of the Arbitrator shall be given in writing and shall be binding upon CPL and Ernst. CPL shall thereafter be charged, and shall pay such charges, in accordance with the Payment Basis so determined. The fees and costs of the Arbitrator shall be borne equally between CPL and Ernst.

4. Maintenance and Repair. Ernst shall have the sole obligation to maintain, repair, and preserve in good condition the Water System (other than the Mill Lines, which shall be maintained and repaired by CPL) in a prompt, diligent, and regular manner at its cost and expense.

5. Grant of Easement.

5.1 Grant. CPL and CPO each hereby create, grant, and convey to Ernst a non-exclusive, irrevocable easement (the "Easement") over the Crown Properties for the use and benefit of Ernst and its employees, agents, and contractors for the sole purpose of providing access to and from, and for the operation, maintenance, repair, testing, and treatment of, the Water System, subject to the restrictions and covenants set forth in this Agreement. This Easement is granted as a benefit to the Ernst Properties owned by Ernst and its successors and assigns and as a burden of the Crown Properties owned by CPL, CPO, and their respective successors and assigns.

5.2 Restrictions. The Easement shall be used solely for the purposes described in Section 5.1. Ernst shall have no right to cut timber located on the Crown Properties or to build roads on such Properties without the prior written consent of CPL or CPO, as the case may be, which may be withheld in the sole discretion of either such party.

6. Compliance with Laws. Ernst agrees to comply with any and all laws, regulations, orders, rules, permits, certificates, and other governmental requirements relating to the operation, maintenance, repair, testing, and treatment of the Water System

and the provision of water therefrom, including, without limitation, performing any testing of the water supply provided from or through the Water System that may be required from time to time by the Oregon Department of Health Services or any other governmental agency.

7. Indemnification; Liability. Ernst hereby agrees to indemnify and hold harmless CPL, CPO, and their respective partners, employees, agents, successors, and assigns from and against any and all claims, losses, liabilities, or expenses, including attorneys' fees at trial or on any appeal or review, sustained or incurred by any such person or entity arising in connection with the provision of water from or through, or with the operation, maintenance, repair, testing, or treatment of, the Water System. Neither CPL nor CPO shall be liable to Ernst or its employees, agents, or contractors for any loss or damage arising out of the use of the Crown Properties pursuant to the Easement. CPL and Ernst agree that, provided Ernst uses its best efforts in the event of a fire occurring at the Mill to provide all water then available through the Water System to CPL for use against such fire, Ernst shall have no liability to CPL arising from the operation of the Water System with respect to such a fire.

8. Drainage of Pond. CPL agrees to provide at least 30 days' notice to Ernst in the event CPL elects to drain the pond currently located on the CPL Property (the "Pond") and to perform such drainage in accordance with all applicable laws and regulations. CPL agrees to refrain from draining the Pond for an extended period unless CPL is required to do so under applicable laws, regulations, or orders or unless significant operational requirements of CPL necessitate such extended period of drainage.

9. Remedies. In the event one of the parties fails to perform its obligations under this Agreement, the other party shall be entitled to require specific performance of such obligation, to obtain appropriate injunctive relief, to cure the default of such obligation and to recover the cost thereof from the party breaching such obligation, or to pursue any other remedy available at law or in equity. Without limitation of the foregoing, in the event Ernst fails to comply with the maintenance and repair requirements of Section 4 or the legal compliance requirements of Section 6 and fails to cure such non-compliance within 20 days after notice from either CPL or CPO, CPL or CPO shall have the right to revoke the Easement and to perform, or cause to be performed, the maintenance and repair of the Water System, and/or to undertake any measures required to cause the compliance of the Water System with the requirements described in Section 6, and to collect the cost thereof from Ernst upon demand. Ernst hereby creates, grants, and conveys to CPL and CPO, effective upon the revocation of the Easement, a non-exclusive easement for the use and benefit of CPL, CPO, and

their respective employees, agents, and contractors for the purpose of providing access to and from, and for the operation, maintenance, repair, treatment, or testing of, the Water System. Ernst also hereby assigns the Easement Rights to CPL, CPO, and their respective successors and assigns, effective upon the revocation of the Easement. This easement and assignment are granted as a benefit to the Crown Properties owned by CPL, CPO, and their respective successors and assigns and as a burden of the Ernst Properties owned by Ernst and its successors and assigns.

10. Covenants and Easements To Run With Land. Each covenant or easement made or granted pursuant to this Agreement shall run with the land as to all property benefitted or burdened by such covenant and easement, including any partition or division of such property. The rights, covenants, and obligations contained in this Agreement shall bind, burden, and benefit CPL, CPO, and Ernst and their respective successors, assigns, lessees, mortgagees, and beneficiaries under any deed of trust.

11. General Provisions.

11.1 Notices. All notices or communications of any kind which may be required or permitted to be given under the terms of this Agreement shall be in writing and may be served by hand delivery; by delivery to Federal Express (or comparable overnight delivery service maintaining records of receipt), delivery charges prepaid; or by mailing a copy thereof by certified or registered mail, postage prepaid with return receipt requested, in each case, addressed to the parties at their respective addresses set forth below:

If to CPL or CPO: c/o Crown Pacific, Ltd.  
121 S.W. Morrison  
Portland, Oregon 97204  
Attn: Roger L. Krage

If to Ernst: P.O. Box 637  
Gilchrist, Oregon 97737

All notices and communications which are served by hand delivery shall be effective upon delivery. All notices and communications which are served by Federal Express shall be effective upon the next following business day. All notices and communications which are served by mail shall be effective at the expiration of the third day after the date of mailing. The addresses to which notices or communications shall be delivered or mailed may be changed from time to time by giving written notice to the other parties as provided in this Section 11.1.

11.2 Counterparts: Facsimiles. This Agreement may be executed in counterparts, each of which shall be deemed an

original, and the counterparts shall together constitute one and the same agreement. This Agreement may also be executed by the transmission by facsimile of an executed counterpart signature page or pages, and any executed counterpart signature page or pages transmitted in this manner shall be considered valid and enforceable for all purposes.

11.3 Captions. The headings and captions contained in this Agreement are inserted solely for convenience of reference and are not a part of or intended to govern, limit, or aid in the construction of any term or provision.

11.4 Amendment. This Agreement may be modified or amended only upon the execution of a written instrument by all of the parties; provided, however, that the Easement may be revoked by CPL or CPO as provided in Section 9.

11.5 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11.6 Integration. This Agreement, together with the exhibits hereto, contains the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements among them with respect to such subject matter.

11.7 Further Instruments. Each of the parties hereto shall execute, acknowledge, and deliver any documents or instruments necessary to carry out the purposes of this Agreement.

11.8 Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless in writing executed by the party to be bound. No delay or omission in the exercise of any power, remedy, or right under this Agreement by a party shall impair or affect the right of such party thereafter to exercise the same.

11.9 Attorneys' Fees. In the event a suit or action is instituted to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover such amount as the court may adjudge reasonable as attorneys' fees at trial or on any appeal or review, in addition to all other amounts provided by law.

11.10 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Oregon.

IN WITNESS WHEREOF, the parties have executed this Water Rights Agreement and Easement as of the date first set forth above.

CPL:

CROWN PACIFIC LUMBER LIMITED  
PARTNERSHIP, an Oregon limited  
partnership

By: CROWN PACIFIC, LTD., its  
General Partner

By:

Roger L. Krage  
Roger L. Krage, Secretary

CPO:

CROWN PACIFIC (OREGON) LIMITED  
PARTNERSHIP, an Oregon limited  
partnership

By: CROWN PACIFIC, LTD., its  
General Partner

By:

Roger L. Krage  
Roger L. Krage, Secretary

Ernst:

ERNST BROTHERS CORPORATION, an  
Oregon corporation

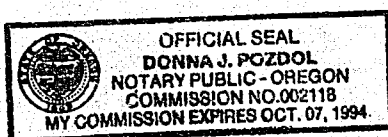
By:

Its:

Warner H. Ernst, President  
PRESIDENT

STATE OF OREGON           )  
                                  ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me on this 2nd day of October, 1991 by Roger L. Krage, who is the Secretary of Crown Pacific, Ltd., an Oregon corporation, on behalf of the corporation in its capacity as General Partner of Crown Pacific Lumber Limited Partnership.

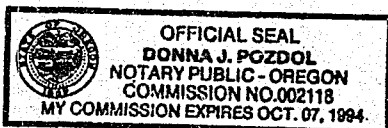


Donna J. Pozdol  
Notary Public for Oregon

My Commission Expires: 10/07/94

STATE OF OREGON                    )  
   ) ss.  
 County of Multnomah            )

The foregoing instrument was acknowledged before me on this 2nd day of October, 1991 by Roger L. Krage, who is the Secretary of Crown Pacific, Ltd., an Oregon corporation, on behalf of the corporation in its capacity as General Partner of Crown Pacific (Oregon) Limited Partnership.



Donna J. Pozdol  
 Notary Public for Oregon  
 My Commission Expires: 10/07/94

STATE OF OREGON                    )  
   ) ss.  
 County of Multnomah            )

The foregoing instrument was acknowledged before me on this 1st day of October, 1991, by Wayne G. Ernst, who is the President of Ernst Brothers Corporation, an Oregon corporation, on behalf of the corporation.

C. B. Cyff  
 Notary Public for Oregon  
 My Commission Expires: 10/25/91

W139/08/0039-07/07



## EXHIBIT A-1

Ernst Properties

The following described real property situated in Klamath County, Oregon:

Tract 1: Parcel 1 of Minor Partition Plat No. 52-91, records of Klamath County, Oregon;

Tract 2: Parcel 1 of Major Partition Plat No. 53-91, records of Klamath County, Oregon;

Tract 3: A tract of land, reserved and excepted to Gilchrist Timber Company, by the deed to Klamath County School District recorded in Klamath County Deed Records, Vol. M76, page 11148, as more particularly described therein, including a well, well house and a tract 25 feet in diameter surrounding the well house.

## EXHIBIT A-2

Easement Rights

1. An easement for certain water lines and pipes reserved by Gilchrist Timber Company in a deed to the Klamath County School District recorded in the Klamath County Deed Records Vol. M76, page 11148 as follows:

"That certain tract of land on which the well and well house are located plus a tract of land 25 feet in diameter around such well house, together with the perpetual, full and exclusive right to the use of the well, the water produced by such well, the well house and all water mains, hydrants and sewer system, together with the further right to enter upon and cross the property conveyed for the purpose of using and maintaining said well, well house, hydrants and mains, and sewer system."

2. An easement for a water pipeline reserved by Gilchrist Timber Company in a deed to the Roman Catholic Bishop of the Diocese of Baker recorded in the Klamath County Deed Records Vol. M78, page 26694 as follows:

"RESERVING, however, unto the Grantor, its successors and assigns, an easement over, upon, under and through the above-described real property for ingress to and egress from a water pipeline presently existing on said property, together with the rights to maintain, repair, remove, improve and replace said water pipeline and any and all connections, valves and other parts or apparatus necessary or useful in connection therewith."

**EXHIBIT B-1****CPL Property****PROPERTY DESCRIPTION FOR GILCHRIST SAWMILL TRACT**

A tract of land situated in Sections 19 and 30, Township 24 South, Range 9 East, Willamette Meridian, Klamath County, Oregon, being further described as follows:

Beginning at a 1 1/2 inch aluminum cap stamped "Oman OR702" set as part of Klamath County Survey Number 2135 marking the center-west one-sixteenth corner of said Section 30; thence North 89°59'25" West, 129.61 feet to a 5/8 inch iron rod with yellow plastic cap stamped "W&H Pacific"; thence North 00°43'48" East, 581.98 feet; thence North 00°57'00" West, 659.67 feet; thence North 08°53'31" East, 173.46 feet; thence North 22°47'34" East, 125.21 feet; thence North 31°09'33" East, 170.48 feet; thence North 42°06'48" East, 126.95 feet; thence North 54°08'16" East, 335.07 feet; thence North 48°40'02" East, 137.86 feet; thence North 31°02'30" East, 120.80 feet; thence North 16°51'52" East 315.06 feet; thence North 08°33'43" East, 156.39 feet; thence North 29°47'20" West, 90.21 feet; thence North 04°26'16" West, 256.63 feet; thence North 29°31'40" West, 637.26 feet; thence North 68°17'15" West, 1448.58 feet; thence North 15°15'50" East, 537.11 feet; thence South 67°44'01" East, 1104.72 feet; thence North 07°59'49" West, 1010.20 feet; thence North 12°06'48" West, 1596.12 feet; thence North 69°05'03" East, 88.90 feet; thence South 35°31'34" East, 66.26 feet; thence South 43°11'08" East, 131.62 feet; thence South 47°07'55" East, 622.90 feet; thence South 48°21'34" East 691.87 feet; thence South 81°01'10" East, 47.07 feet; thence North 65°28'44" East, 110.88 feet; thence South 89°01'46" East, 106.04 feet; thence South 72°05'48" East, 657.54 feet; thence South 63°19'12" East, 80.79 feet; thence South 38°30'07" East, 111.93 feet; thence South 24°05'42" East, 481.01 feet; thence South 26°01'19" East, 194.21 feet; thence South 20°56'51" East, 148.78 feet; thence South 15°58'19" East, 262.21 feet; thence South 74°22'21" East, 66.62 feet to an angle point on the westerly line of Parcel 1 as defined by Partition Plat Number MP 53-91 previous to recording with Klamath County Records; thence along said westerly line of said Parcel 1 the following courses;

thence North  $81^{\circ}33'08''$  East, 333.88 feet; thence South  $15^{\circ}00'41''$  West, 678.21 feet; thence North  $74^{\circ}59'19''$  West, 618.42 feet; thence South  $01^{\circ}04'00''$  East, 1296.70 feet; thence North  $89^{\circ}56'12''$  East, 216.77 feet; thence South  $15^{\circ}00'41''$  West, 80.47 feet; thence South  $74^{\circ}59'19''$  East, 30.00 feet; thence South  $15^{\circ}00'41''$  West, 1335.95 feet to a point of spiral curvature; thence along the arc of a 2 degree railroad spiral curve offset 50 feet from centerline of said railroad curve, the long chord of which bears South  $15^{\circ}02'54''$  West, 41.47 feet to a point on the South line of said Parcel 1; thence leaving said westerly and southerly lines of Parcel 1 along the arc of a 2 degree railroad spiral curve offset 50 feet from centerline of said railroad curve, the long chord of which bears South  $15^{\circ}42'07''$  West, 116.98 feet to a point of spiral to curvature; thence along the arc of a 2814.79 foot radius railroad curve to the right, through a central angle of  $24^{\circ}00'37''$ , the long chord of which bears South  $27^{\circ}09'13''$  West, 1017.53 feet to a point of curvature to spiral, said point being 50 feet westerly of the centerline of said railroad curve; thence along the arc of a 2 degree railroad spiral curve offset 50 feet from centerline of said railroad curve, the long chord of which bears South  $38^{\circ}24'35''$  West, 158.49 feet; thence South  $39^{\circ}01'18''$  West, 130.72 feet; thence North  $50^{\circ}58'42''$  West, 23.93 feet; thence South  $39^{\circ}00'19''$  West, 0.90 feet to a point on the east-west centerline of Section 30 as defined by Klamath County Survey Number 2135; thence along said centerline of Section 30 as defined by said Survey Number 2135, North  $89^{\circ}59'30''$  West, 1062.09 feet to the point of beginning.

Bearings are based on Klamath County Partition Plat Number MP 53-91.

23357

EXHIBIT B-2

CPO Property

Parcel 2 of Minor Partition Plat No. 52-91, records of Klamath  
County, Oregon.

KC7C

## EXHIBIT C

Water Rights Certificates

1. Certificate No. U-112 as recorded in Oregon State Record of Water Right Certificates, Volume 11, Page 12508.
2. Certificate No. U-116 as recorded in Oregon State Record of Water Right Certificates, Volume 11, Page 13433.
3. Certificate No. U-360 as recorded in Oregon State Record of Water Right Certificates, Volume 17, Page 24582.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co. the 4th day  
of Oct. A.D., 19 91 at 2:47 o'clock P M., and duly recorded in Vol. M91,  
of Deeds on Page 20345.

FEE \$93.00

Evelyn Biehn, County Clerk

By Pauline Mulendore