

## RIGHT OF WAY EASEMENT

(Buried Cable)

THIS EASEMENT is granted as of the 2ND day of OCTOBER, 1995, by WEYERHAEUSER COMPANY, a Washington corporation, herein called "Weyerhaeuser," to U S WEST COMMUNICATIONS, a Colorado corporation, herein called "Grantee," WITNESSETH:

I.

Weyerhaeuser, for and in consideration of the faithful observance and strict performance of the terms and conditions hereof, hereby grants to Grantee a right of way easement ten (10) feet in width for underground communication lines, hereinafter referred to as "line," upon, over, under and across portions of the following described lands owned by Weyerhaeuser in Klamath County, Oregon:

DescriptionSec - Twp - Rng. W.M.KLAMATH COUNTY

As delineated on the Subdivision Plat of  
First Addition to Klamath River Acres  
of Record in the Records of Klamath  
County, Oregon

25 39S 7E

As delineated on the Subdivision plats of  
Klamath River Acres and First Addition  
to Klamath River Acres of Record in the  
Records of Klamath County, Oregon

36 39S 7E

Govt. Lots 2 &amp; 3

28 39S 8E

Govt. Lots 5, 7, 8 & 9, portions of NE $\frac{1}{4}$ SW $\frac{1}{4}$   
and as delineated on the Subdivision plat  
of Klamath River Acres of Record in the  
Records of Klamath County, Oregon

31 39S 8E

Govt. Lots 7, 8, 9, 11 &amp; 12

32 39S 8E

Govt. Lots 1, 4, 5 & 6, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ 

33 39S 8E

Govt. Lots 8 & 9, NW $\frac{1}{4}$ NE $\frac{1}{4}$ 

5 40S 8E

Govt. Lots 3, 4, 5 &amp; 11

18 39S 9E

Said line being installed fifteen (15) feet Northerly of the Southerly right of way boundary of the existing gas transmission line right of way granted to Pacific Gas Transmission Company by Weyerhaeuser Company on April 28, 1995 and recorded on July 21, 1995 in the Klamath County, Oregon Deed

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8021 SW CAPITOL HILL RD  
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on page 18887 of Volume M95, as located substantially within the south half of the surfaced roadbed of the existing road approximately as delineated on the attached Exhibit A; EXCEPTING from the grant hereinabove made, those portions of the right of way lying within county road and state highway rights of way.

All of the above-described right of way as located entirely within the confines of said existing gas transmission line right of way is for the sole purpose of constructing, reconstructing, using, maintaining, repairing and removing buried fiber optic telephone cables with necessary precast concrete handhole vaults placed at appropriate intervals to be used for splicing purposes in connection with said line, and such underground conduits and other appliances, fixtures and appurtenances for communications purposes, together with adequate protection therefor; EXCEPT no precast concrete handhole vault as referenced herein shall be placed so as to obstruct any road grading or ditch maintenance work on existing roads.

Any additional ten (10) foot wide right of way required for such handhole vaults located outside of the limits of the herein described communication line rights of way is hereby granted; provided the Grantee further agrees that upon completion of the construction hereunder, Grantee shall provide a legal description detailing the "as built" plans for said ten (10) foot wide strips of land along with the "as constructed" location of the line, referred to hereinabove, and record same in the offices of the appropriate Recorder by referencing said legal description specifically to this instrument in a "Notice of Final Description," see "Attachment 1a" attached hereto and made a part hereof, and by specifically referencing said Notice of Final Description to this instrument, said Notice shall by that reference be considered an appendix to and made a part hereof.

## II.

This easement is granted subject to the following terms and conditions:

1. The rights of Grantee hereunder are subject to all matters of public record, to all leases, permits, licenses, easements, reservation, or any other rights, if any, affecting said lands, as recorded, whether temporary or perpetual, and to all matters which a prudent inspection of the premises would disclose. Weyerhaeuser makes no warranty with regard to condition of title or to the suitability of said lands for Grantee's intended use of same.

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RIGHT OF WAY DESK, RM 110  
8021 SW CAPITOL HILL RD  
PORTLAND, OR 97219

2. Weyerhaeuser, its grantees and lessees, shall have the right to use the right of way for any purpose other than the purpose for which this easement and right of way is granted, provided that such use shall not unreasonably interfere with Grantee's use of said right of way. Weyerhaeuser reserves its paramount right for the use of its land and the Grantee hereby acknowledges its rights are subservient to Weyerhaeuser's use of its land.

3. Grantee expressly releases Weyerhaeuser from any and all claims for damage to the improvements installed by Grantee pursuant to the rights granted herein arising from any operation of Weyerhaeuser on its said lands; provided, however, that in the conduct of any such operation, Weyerhaeuser shall use reasonable care to avoid causing such damage, it being expressly understood that this provision does not release Weyerhaeuser from any claim for damages caused by its negligence. Weyerhaeuser does not assume any liability for damages or injuries caused by or resulting from acts or omissions by other than Weyerhaeuser employees.

4. Grantee shall at all times have ingress to and egress from the line over and across Weyerhaeuser's land for the purposes of exercising all of the rights herein granted.

5. The Grantee shall:

a. Construct and install, and at all times maintain the line in accordance with the laws, rules and regulations of the United States of America and the State of Oregon, governing the construction of communication lines. Excavations made on the right of way shall be promptly refilled by Grantee, the earth shall be well tamped, the ground shall be left in the same or similar condition as before construction, reconstruction or repair of the line.

b. Design and build said line within the confines of any existing road rights of way to withstand load limits of a minimum of 200,000 pounds.

c. Without delay restore all roads and road drainage structures disturbed by the installation, replacement or removal of said line to the extent necessary to maintain the original cross section of the road, shoulders and drainage to a like condition as before the line was installed, replaced or removed. Grantee shall provide road restoration within a reasonable time frame, or as directed by Weyerhaeuser, following such disturbance, and which

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RIGHT OF WAY DESK, RM 110  
8021 SW CAPITOL HILL RD  
PORTLAND, OR 97219

shall include, but is not limited to, resurfacing, blading, shaping and compacting the road surface, shoulders and/or ditch line to provide a riding surface of said road upon which a truck may be safely driven at a speed designated by Weyerhaeuser's Land Use Manager at Klamath Falls, Oregon, or the Manager's designee.

6. The Grantee's installation made under the right of way herein described shall also be subject to the terms, conditions and specifications of Exhibit C, attached hereto and by this reference made a part hereof, and the Grantee further agrees to abide by the terms and conditions of the Consent to Common Use Agreement entered into by the Pacific Gas Transmission Company and U S WEST Communications, Inc. on July 24, 1995.

7. Grantee's use of any portion of Weyerhaeuser's existing road for the installation of said line shall at all times be subordinate to the rights of Weyerhaeuser and not in any way interfere with or impair the use of the existing road or other facilities of Weyerhaeuser, or in any way interfere with, obstruct or endanger road use.

8. Grantee may control on a continuing basis and by any prudent and reasonable means the establishment and growth of trees, brush or other vegetation which could, in the opinion of Grantee, reasonably constitute a danger or menace to the line. Grantee shall clear and dispose of all slashings created by Grantee on Weyerhaeuser lands as soon as may be practicable and in such manner and at such times as are provided by law and approved by Weyerhaeuser.

9. Grantee agrees to pay any damages which may arise to Weyerhaeuser's property from the construction, maintenance and operation of said line.

10. Grantee expressly agrees to protect, indemnify and save harmless Weyerhaeuser from and against any and all claims and liability for damages to property and injuries, including death, to persons arising out of Grantee's exercise of the rights and privileges herein granted, and to handle all such claims, defend suits which may be brought against Weyerhaeuser therein, pay all judgments rendered against Weyerhaeuser therein, and reimburse Weyerhaeuser for any reasonable expenditure which Weyerhaeuser may make on account thereof. Grantee further agrees to pay for any and all damage to Weyerhaeuser's property which results from Grantee's activities hereunder.

RETURN TO GRANTEE AT:  
RIGHT OF WAY DESK, RM 110  
8021 SW CAPITOL HILL RD  
PORTLAND, OR 97219

34370

11. Grantee shall pay all taxes and assessments of every kind which may hereafter be levied or become a lien against Weyerhaeuser's said land based on any assessment or valuation of Grantee's line.

12. It is understood and agreed that if, at any future time, the line interferes with Weyerhaeuser's use of its land, upon request by Weyerhaeuser, Grantee will, within ninety (90) days, change the location and installation of the line at its own expense and in such manner as to eliminate such interference.

13. Any independent contractor or subcontractor engaged by Grantee to perform services relating to the rights held by Grantee shall, as between the parties hereto, be deemed to be the agent of Grantee.

14. The Easement and rights hereby granted shall continue and be in force for such time as Grantee shall maintain and use the line; provided, however, that whenever Grantee shall have ceased to use the line for a period of five (5) years, all rights and interests of Grantee hereunder shall cease and terminate without notice and shall revert to the owner of said lands, but Grantee shall, nevertheless, remain liable for all claims and damages arising hereunder.

15. This Easement and all of the rights and obligations hereunder shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

IN WITNESS WHEREOF, Weyerhaeuser has executed and Grantee has accepted this Easement, as of the day and year first above written.

Accepted by:

U S WEST COMMUNICATIONS

WEYERHAEUSER COMPANY

By: *J. Beckman*  
Title: AREA MANAGER - FIELD ENGRS.

By: *D.W. Webb*  
Forest Land Use Manager

Attest: *Camela M. Redman*  
Assistant Secretary

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8021 SW CAPITOL HILL RD  
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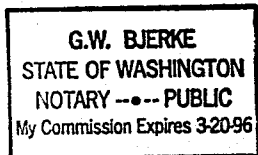


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STATE OF WASHINGTON )  
COUNTY OF KING ) ss.

On this 2nd day of October, 1995, before me personally appeared D. W. Wilbur and Pamela M. Redmon, to me known to be the Forest Land Use Manager and Assistant Secretary, respectively, of WEYERHAEUSER COMPANY, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



G.W. Bjerke  
Notary Public in and for the State of  
Washington.  
My Appointment expires: March 20, 1996

STATE OF Oregon )  
COUNTY OF Multnomah ) ss.

On this 13<sup>th</sup> day of October, 1995, before me personally appeared John Bachmeier, to me known to be the Area Manager of U.S. WEST COMMUNICATIONS, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

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8021 SW CAPITOL HILL RD  
PORTLAND, OR 97219

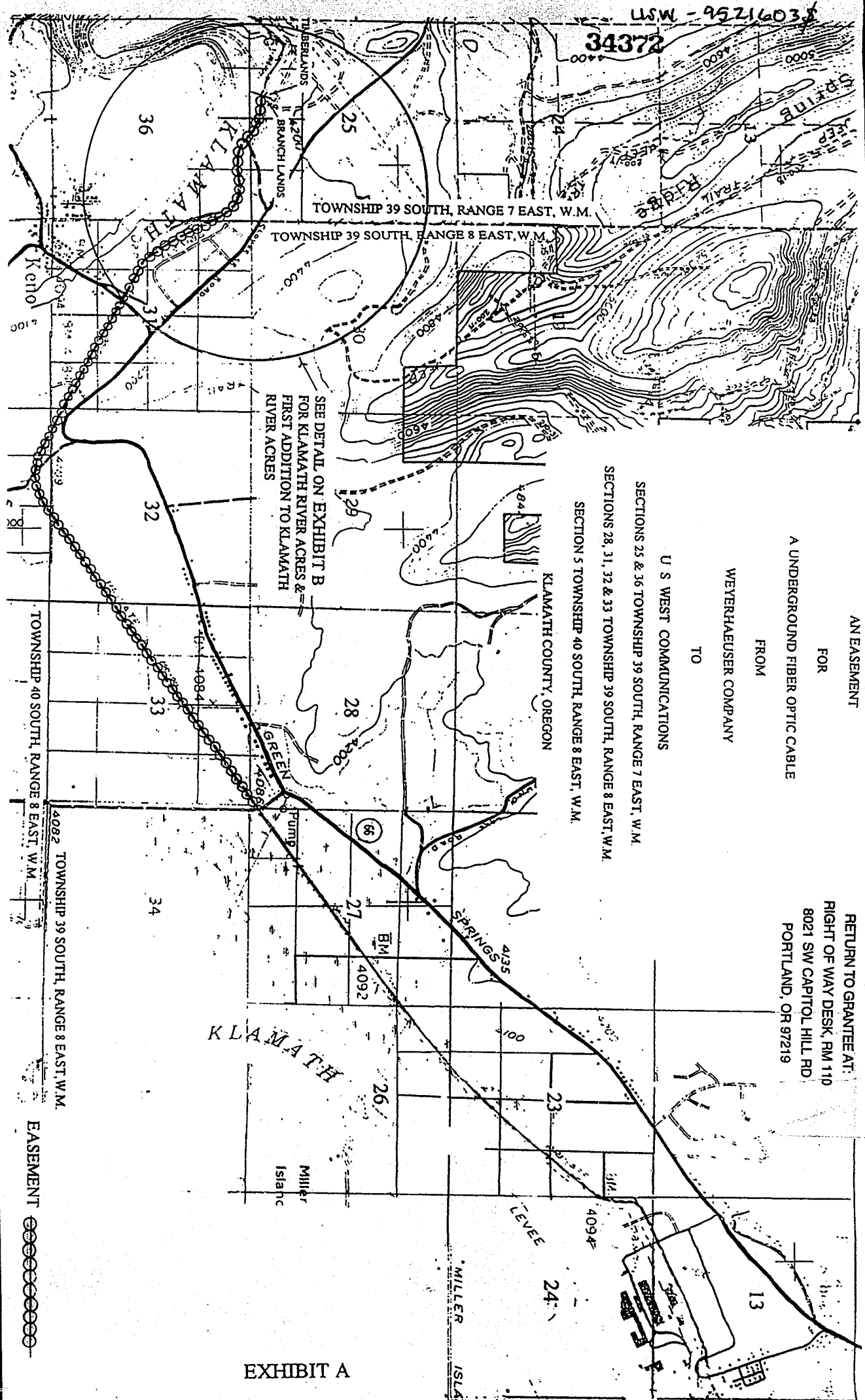


Karen L. Day  
Notary Public in and for the State of  
My Appointment expires: 10/27/98



USM - 95216038

34372



AN EASEMENT

FOR

A UNDERGROUND FIBER OPTIC CABLE

FROM

WEYERHAEUSER COMPANY

TO

U S WEST COMMUNICATIONS

SECTIONS 25 & 36 TOWNSHIP 39 SOUTH, RANGE 7 EAST, W.M.

SECTIONS 28, 31, 32 & 33 TOWNSHIP 39 SOUTH, RANGE 8 EAST, W.M.

SECTION 5 TOWNSHIP 40 SOUTH, RANGE 8 EAST, W.M.

KLAMATH COUNTY, OREGON

RETURN TO GRANTEE AT:

RIGHT OF WAY DESK, RM 110

8021 SW CAPITOL HILL RD

PORTLAND, OR 97219

SEE DETAIL ON EXHIBIT B  
FOR KLAMATH RIVER ACRES &  
FIRST ADDITION TO KLAMATH  
RIVER ACRES

EXHIBIT A

EASEMENT









**EXHIBIT C****SPECIFICATIONS FOR THE PLACEMENT OF A COMMUNICATION LINE  
UNDERGROUND AND UNDER EXISTING ROADS**

1. Appropriate action shall be taken to preserve the structural integrity of the existing roadbed and to provide for the safe use of the same.
2. Coordinate installation, maintenance, repair or removal of the line with any party who has secured prior road access rights so as not to unreasonably interfere with such prior rights.
3. No installation, maintenance, repair or removal work of any kind shall be performed without the prior consent and approval of Weyerhaeuser's Land Use Manager at Klamath Falls, Oregon, or the Manager's designee. The Land Use Manager or designee shall be notified at least 24 hours prior to any installation, maintenance, repair or removal work which is to be performed under the road grade. Said Land Use Manager may be contacted at (503) 885-3250 or such other number as may be designated from time to time.

However, nothing contained herein shall prevent the Grantee or entity authorized to perform repair work from responding to an emergency relating to the facilities within the right of way. Provided, that in the event emergency repair to or replacement of the line is required, the Grantee or authorized entity shall immediately notify said Manager or designee of the location of said repair or replacement work, and the Grantee or authorized entity shall also notify said Manager or designee when emergency repairs or replacement have been completed.

4. (a) At all times during the installation of or maintenance, replacement, repair and removal to the line crossing under the road, a watchman shall be employed and furnished by the Grantee or entity performing the work to flag all traffic and adequately warn such traffic that work is being performed under the road.  
 (b) At all time during the installation of or maintenance, replacement, repair and removal to the crossing under the road, warning flags shall be placed alongside the road at a distance of 500 feet on each side of the installation/repair site. Said warning flags shall be removed upon the completion of the installation or repair work.
5. The top of the line shall be buried at a sufficient depth below the riding surface and/or ditch line of the existing roadways that meets US Department of Transportation Standards for safely accommodating load limits of a minimum of 200,000 pounds (but in no event shall the prescribed depth be less than 36") and, if necessary, the Grantee shall provide at its own expense a road surface overlay to assure the prescribed depth meets said standards over the top of the line. Except the line may be buried at a minimum depth of thirty-six (36) inches below the surface of the ground located in portions of Section 13, Township 39 South, Range 8 East, W.M., and Section 18, Township 39 South, Range 9 East, W.M., as shown on Exhibits A and B.
6. A minimum clearance of twelve (12) inches must be maintained between the culverts, the gas pipeline and the line unless otherwise required by the U S WEST Communications and Pacific Gas Transmission Company's Consent to Common Use Agreement, with a minimum crossing depth of twelve (12) inches under culverts being maintained for installing, replacing or repairing the line. Installation of the line over the top of any culvert is prohibited if the highest point on any such existing culvert is buried less than eight (8) feet deep.

Installation of the line over the top of any culvert buried at depths in excess of eight (8) feet will be permitted provided that when Weyerhaeuser gives reasonable notice that replacement of such culvert is necessary with a culvert furnished by Weyerhaeuser, the Grantee shall, without delay and at its own expense coordinate with Pacific Gas Transmission Company the appropriate replacement of such culverts so as to maintain a like condition as before the drainage culvert was removed. Said expense by the Grantee in excess of \$4,000.00 per culvert replacement shall be borne equally by the Grantee, Pacific Gas Transmission Company and Weyerhaeuser on the then agreed upon cost of such replacement.

RETURN TO GRANTEE AT:  
 RIGHT OF WAY DESK, RM 110  
 8021 SW CAPITOL HILL RD  
 PORTLAND, OR 97219

34376

7. All line splices shall be protected by using handhole vaults. Unvaulted line splices are prohibited.
8. Each handhole splicing vault shall be located outside of the ditch line of the existing road so as not to obstruct road grading and ditch maintenance work.
9. The line shall be marked by intervisible markers placed no more than 500 feet apart and at all road crossings.
10. Where laws or orders of appropriate authority prescribe a higher degree of protection than specified herein, then the higher degree of protection so prescribed shall be deemed a part of the specification set forth in this Exhibit.
10. All costs made necessary by any installation, maintenance, repair or removal of said underground line shall be borne by the Grantee or entity authorized to perform such work.

**SPECIFICATIONS FOR PLACEMENT OF A  
COMMUNICATION LINE UNDER IRRIGATION CANALS OF  
WEYERHAEUSER COMPANY**

Grantee agrees to bore under Weyerhaeuser's irrigation canal for its line or use such other method of installation as may be mutually agreed upon between Weyerhaeuser and Grantee so as to cause the least possible interference with the existing canal or flow of water therein.

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RIGHT OF WAY DESK, RM 110  
8021 SW CAPITOL HILL RD  
PORTLAND, OR 97219

WHEN RECORDED, RETURN TO

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 8021 SW CAPITOL HILL RD  
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**NOTICE OF FINAL DESCRIPTION**

This document is in fulfillment of those conditions set forth in that certain grant of communications systems easement from WEYERHAEUSER COMPANY as Grantor to U S WEST COMMUNICATIONS, a Colorado corporation, as Grantee, dated and recorded under the records of Klamath County, Oregon Deed Records at page \_\_\_\_\_ of Volume \_\_\_\_\_.

Pursuant to those rights conveyed to Grantee by said easement, Grantee does hereby further define the center line location of that ten (10) foot wide strip of land referred to in said easement as follows:

Nothing herein contained shall, or shall be construed to, modify in any way or terminate any of the covenants, terms, conditions or provisions under and by virtue of said Easement in the land therein described.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

U S WEST COMMUNICATIONS,  
 a Colorado corporation

STATE OF OREGON, ss.  
 County of Klamath

Filed for record at request of:

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

U. S. West Comm.  
 on this 18th day of Dec A.D., 19 95  
 at 11:39 o'clock A M. and duly recorded  
 in Vol. M95 of Deeds Page 34366.

Bernetha G. Letsch County Clerk

By *Bernetha G. Letsch*  
 Deputy.

Fee, \$65.00

"Attachment 1a"