

NLWJC - Kagan

Counsel - Box 001 - Folder 001

Timber-memos, emails, etc. [1]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	From Kathleen McGinty re: timber [partial] (1 page)	06/04/1996	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
OA/Box Number: 8247

FOLDER TITLE:

Timber - memos, emails, etc. [1]

2009-1006-F

ke686

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

FROM
Elong
Kagan

~~FFI~~ Files on:

1. Timber - memos
 2. NFRC v Glickman
 3. NFRC v Glickman II
 4. Timber - California sales
 5. Timber: Alternative Timber Settlement Discussions
 6. Timber - cancellation brief
 7. Timber - China Left
 8. Timber - Warner Creek
- ~~timber legislative materials~~

FROM
ELENA
KAGAN

ELENA KAGAN -
COUNSEL'S OFFICE

~~FF~~ Files on:

1. Timber - memos
 2. NFRC v Glickman
 3. NFRC v Glickman II
 4. Timber - California sales
 5. Timber: Alternative Timber Settlement Discussions
 6. Timber - cancellation brief
 7. Timber - China left
 8. Timber - Warner Creek
- ~~and related legislative materials~~

4 boxes P/u
from 130 OEDB
12/20/96

ENCLOSURES FILED OVERSIZE ATTACHMENTS

8247

NADA 5901

4 boxes filed 1/3/97
or

Timber mtg - Harold Kies - 2/23

Murray - doesn't want to suspend salvage.

He would be apt

(this is really doesn't mean much - not planning to offer new sales anyway because of weather).

Dix - generally supportive.

Furner - good, but not too much

Wyder - fairly positive

Lecan - repeat screen

Ask Belsbitt/Glick to look into salvage - report back in 10 days.

Ren - just say - need to start all

over again.

Hardt - why not instead of
surveillance -

just manage it right!
(strong rhetoric.)

envious wait even care: 30
days is bullshit.

OK: Repeal all

the w/ people on what to replace
it with.

OK: Murray, Furst, Popper

maybe Warden

Labour goes ballistic

Options

1. Partial repeal
 2. Total repeal
 3. Hard-line abstinence - as specified.
- This is our recommendation

by 5:00 - 6:00 pm

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

02-Sep-1996 08:28pm

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: Agenda for today's meeting

Despite earlier forecasts, the interagency salvage program review team will not be ready to brief us at Tuesday's meeting. We will commence at 2 pm as usual, but if anyone from your agency was planning on attending because of that part of the agenda, they should hold off until next week.

Please come prepared to discuss issues, including outstanding sales, related to the termination of Sc2001(k) on September 30th.

Thank you.

Distribution:

TO: Kris Balderston
TO: Ron Cogswell
TO: Martha Foley
TO: Thomas C. Jensen
TO: Elena Kagan
TO: Kathleen A. McGinty
TO: Christine L. Nolin
TO: Jennifer M. O'Connor
TO: Ruth D. Saunders
TO: Remote Addressee
TO: Remote Addressee
TO: FAX (9-482-6318, Doug Hall)
TO: FAX (95640070, Richard Sanderson)
TO: FAX (96902730, Mike Gippert)
TO: FAX (92083877, Bob Baum)
TO: FAX (9-524-4231, Jeremy Heep)
TO: FAX (92191792, Kris Clark)
TO: Remote Addressee
TO: FAX (9-720-4732, Jim Lyons)
TO: FAX (9-208-6916, Gerry Jackson)
TO: Remote Addressee
TO: FAX (9-5144-4231, Jeremy Heep)
TO: FAX (9-301-713-0658, Jason Patlis)
TO: Remote Addressee

EXECUTIVE OFFICE OF THE PRESIDENT

23-Aug-1996 01:04pm

TO: (See Below)

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: Agenda for September 3rd timber meeting

The interagency/EOP forest meetings will resume on Tuesday, September 3rd, in the CEQ conference room at 722 Jackson Place, N.W. The meeting will begin a presentation by the interagency salvage program review team on their report.

- A. INTERAGENCY SALVAGE PROGRAM REVIEW: Presentation and discussion, 2 - 3 p.m.

- B. USUAL BUSINESS 3 - 4:15
 - 1. Litigation report
 - Status of settlement on replacement timber
 - 2. Termination of 2001(k)
 - Land management agencies should come with information about the status of remaining sales that have been released but not fully harvested, and what the likely status of those sales will be on September 30th.
 - 3. New information analysis - update on REO work

Distribution:

TO: Kris Balderston
TO: Ron Cogswell
TO: Martha Foley
TO: Thomas C. Jensen
TO: Elena Kagan

8/13

DRAFT OUTLINE OF INTERAGENCY SALVAGE REVIEW TEAM REPORT

A) Table of Contents

B) Executive Summary

1) Observations Associated with the Review Objectives

- a) Determine how the agencies are complying with the MOA
- b) Determine MOA effectiveness
- c) Determine effectiveness of the streamlined consultation process
- d) Identify any additional actions to further enhance interagency collaboration

2) Key Conclusions, Findings, and Recommendations

C) Main Body of Report

1) Introduction

- a) Background/history
- b) Objectives and Approach
- c) Review of Methods
Field Review, questionnaire, etc.

2) Response to the Objectives

3) Conclusions, Findings, and Recommendations

4) Account of Individual MOA Items (Quote MOA Item)

a) Summary of Field Review Observations

b) Summary of Response to Questionnaire

1. Quote Question/sub-question
2. Summary of Response)

c) Findings And Recommendations

Appendices as Needed

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION
GENERAL LITIGATION SECTION
601 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

FAX NUMBER (202) 305-0506
CONFIRMATION NUMBER (202) 305-0460

PLEASE DELIVER TO:

To:	Dinah Bear	456-0753	
	Peter Coppelman	514-0557	
	Elena Kagan	456-1647	
	Jay McWhirter	690-2730	Tim Obst
	Karen Mouritsan	219-1792	
	Roger Nesbit	503-231-2166	

NUMBER OF PAGES:

DATE: August 2, 1996

FROM: Michelle Gilbert

MESSAGE: Attached is a draft response to NFRC's motion to continue the injunction as to the Horse Byars and Shady sale. I apologize for the short turn around but because the Judge set a hearing before the date on which a response would otherwise be due, we really need comments back by Monday, 10:30 a.m. We would like to file something by noon our time, so the Court will have an opportunity to review it, if it is so inclined, before the hearing on Tuesday at 9:30.

Please forward all comments to Ted Boling (phone: 514-2715; fax: 3305-0275) as I will not be in the office on Monday. You will note that we still need to fill in the facts relating to the Horse Byars sale and will do so upon receipt of the necessary declaration.

DRAFT
8-2-96

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Washington, D.C. 20044-0663
Telephone: (202) 305-0460

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL,)	
Plaintiff,)	
)	
v.)	Civil No. 95-6244-HO
)	(lead case)
)	Civil No. 95-6267-HO
)	(consolidated case)
)	
GLICKMAN and BABBITT,)	Federal Defendants'
Defendants,)	Opposition to NFRC's
)	Motion for Further
OREGON NAT. RES. COUNCIL, et al.)	Injunctive Relief as to
Defendants-Intervenors)	Two Timber Sales
)	
)	

Federal defendants hereby oppose plaintiff Northwest Forest Resource Council's (NFRC's) motion to enjoin federal defendants from "suspending, disrupting or interfering in any way with the operations or completion" of the Forest Service Horse Byars timber sale, through January 8, 1997, and the Bureau of Land Management Shady timber sale, through November 15, 1996. NFRC is

-2-

seeking to extend applicability of the "notwithstanding any other provision of law" in subsection 2001(k)(1) beyond September 30, 1996 to ensure that harvesting can continue regardless of whether the sales comply with applicable laws and standards and guidelines. As an initial matter, NFRC's request is premature. The agencies cannot at this time predict what will be the actual status of the two sales on September 30, 1996. For example, the purchaser for one of the sales has stated that under certain conditions they "may be able to finish the sale by September 30, 1996." Accordingly, there has been no finding to date that the two sales would not otherwise proceed after September 30, 1996. The sales will have to be assessed at that time to determine whether modifications or suspension would be appropriate in light of the sales' status on that date.

In addition, the relief sought would violate the fundamental principle that courts of equity cannot ignore statutory deadlines. Congress clearly expressed its intent that the "notwithstanding" provision apply only through September 30, 1996 and that the original terms of the contracts, including those which have imposed the seasonal restrictions complained of by plaintiff, continue in effect. Moreover, while the end date for application of the "notwithstanding" is firmly set, because the beginning date was tied to "the date of enactment," clearly Congress did not intend to provide a set number of days during

-3-

which such a provision would apply as much as a specific cut off date of application.

Further, even if the relief sought were otherwise available, NFRC has failed to establish that the balance of harms weighs in its favor so as to justify such an equitable remedy. NFRC has relied on the September 30, 1996 deadline in other proceedings to successfully defend against defendants' motion for stay. In addition, the facts relating to these sales simply do not justify granting such equitable relief. On the other hand, the agencies are entitled to rely on a date certain when applicability of the "notwithstanding" provision expires so as to allow the land managers to assess the impacts of harvesting of the released sales and move forward with their planning and management activities under governing law.

FACTS

A. The Shady Sale

Pursuant to this Court's October 17, 1995 order directing the award of timber sales offered during fiscal years 1990 to the date of the enactment of Public Law 104-19, on October 26, 1995, the Bureau of Land Management (BLM) directed the award of the Shady timber sale to Timber Products, Inc., which was subsequently approved on October 31, 1995. See Twenty-fourth Declaration of William Bradley attached hereto. The original volume of the sale is 7,635 MBF contained in 17 units, which for

-4-

purposes of this memorandum are separated into two groupings (Groups A and B) according to applicability of certain contract terms. Group A, consisting of 10 units, comprised of an original volume of 4,952 MBF. Id. These units are subject to original contract term Section 41(B)(7) which precludes all operations, except slash burning, between October 15th of one calendar year and June 1st of the following calendar year, both days inclusive. Id. This seasonal restriction was included in the timber sale contract to prevent adverse soil impacts.^{1/} As July 30, 1996, approximately 27 percent of the Group A remained to be cut and yarded, and it was then anticipated that the yarding would be completed in two to three weeks. Bradley Dec. at ¶ 6.

Group B consists of 7 units, comprised of an original volume of 2,683 MBF. Id. at ¶ 7. These units are subject to original contract term Section 41(b)(8) which precludes all operations from March 1st to September 30th of each year, both days inclusive. This seasonal restriction was included in the timber sale contract to prevent adverse impacts to two nesting pairs of northern spotted owls adjacent to the units. Id. Although the nest sites are located outside of the units, the sites are close

^{1/} Normally, fall rains begin in the general area of this sale around October 15th and the soil becomes too wet to operate on without causing significant adverse impacts. Because yarding operations are to be done with ground-based equipment (tractors), soil moisture is a critical item monitored to enforce the seasonal restriction. Bradley Dec. at ¶ 5.

-5-

enough to warrant application of the seasonal restriction under the contract terms. Id. BLM biologists have been monitoring both pairs of owls since May of 1996 and it is currently anticipated that the final owl status (confirmed non-nesting and dispersal of juveniles) will be determined by August 15, 1996, which may enable the seasonal restriction to be lifted. Id. This would allow the Purchaser to begin operations early on the Group B units. Id. There has not yet been any harvest operations conducted in the Group B units. Id.

The purchaser has been informed that if BLM enforces the spotted owl seasonal restriction applicable to the Group B units until September 30, 1996, the purchaser may have a sufficient time period in which to complete the harvest after September 30th and before the soil becomes too wet to log. Id. at ¶ 9. However, on October 1, 1996, the BLM will have to assess the situation on the sale under applicable laws and determine if harvest operations can continue. Id. It is not possible to make that determination now. Id. It is possible that the operations will have proceeded up to October 1, 1996 in such a manner (i.e., all cutting will have been completed) that harvest operations can continue under the terms of the contract in compliance with applicable laws. Id.

The Purchaser elected to begin operations on the contract in November 1995 by harvesting the Group A units, which are nearly

-6-

completed. Id. at ¶ 11. The Group A units were not subject to the spotted owl seasonal restrictions, as are the Group B units. Id. The BLM believes that it would have been a reasonable course of action for the purchaser, assuming they desired to complete operations by September 30, 1996, to have first operated the Group B units in the winter of 1995/1996. Id. The Group A units then could have been saved for summer 1996 operation because such units were not subject to the spotted owl seasonal restriction. Id. The purchaser also could have concurrently operated the Group A and B units in the winter of 1995/1996. Id.

B. The Horse Byars Sale

[explain delay in award, need to remark/problem with another sale overlaying old sale/ensure consistency with earlier hofer declaration re "impossible" sales]

ARGUMENT

I. PLAINTIFF'S MOTION TO EXTEND THE SEPTEMBER 30 DEADLINE IS PREMATURE

By its latest motion, NFRC seeks an order "prohibiting defendants from suspending or interfering with the completion" of the Horse Byars and Shady timber sales after September 30, 1996. NFRC's Memorandum at 1. Such a request is premature. While, as plaintiffs have admitted, under the statute the period of legal sufficiency expires September 30, 1996, a determination has not been made at this time as to whether any modifications or suspensions would be appropriate in light of the renewed

-7-

applicability of environmental laws. Rather, such a determination will have to be made after assessing the status of the sales on September 30. For example, as to the Horse Byars sale, while the purchaser claims that it "will be very difficult" to complete falling of the sale by September 30, it does not say that it would be impossible. See Declaration of Robert Freres at ¶ 8. Come September 30, the sale will have to be assessed in terms of its status regarding completion of actual falling and ability to proceed with yarding and hauling in light of applicable environmental laws. [check with FS -- see BLM statements re Shady]

As to the Shady sale, plaintiff admits that the complained-of seasonal restrictions may be lifted around August 15 and if so, while "it will be very difficult for Timber Products to complete logging on the sale by September 30, 1996," they do not say it will be impossible. NFRC's Memo. at 3. Indeed, the declaration supporting this statement says that "[i]f the seasonal restrictions are completely lifted at that time, we may be able to finish the sale by September 30, 1996, but doing so will put great strain on our logging crew." Declaration of Joseph Gonyea III at ¶ 8. If cutting is completed, the sale will have to be evaluated in that context to determine whether further operations can continue under the terms of the contract in compliance with applicable laws. See Bradley Dec. at ¶ 9.

-8-

Thus, not only is it premature to argue that the sales are going to be suspended on September 30, but it is premature to argue that, at least as to the Shady sale, the purchaser cannot complete the sale by September 30. Most importantly, because the relief that the purchasers are seeking is equitable in nature, nothing prevents them from seeking it at or around September 30 when the agencies have had the opportunity to assess how the sales should or should not proceed in light of the facts at that time.

II. IN ANY EVENT, NFRC IS NOT ENTITLED TO AN ORDER EXTENDING THE STATUTORY DEADLINE

It is well established that "[c]ourts of equity can no more disregard statutory ... requirements and provisions than can courts of law." See INS v. Pangilinan, 486 U.S. 877, 883 (1987) (citing Hedges v. Dixon County, 150 U.S. 182, 192 (1893)). In Pangilinan, the Supreme Court held that a court lacked the authority to order naturalization for certain persons after expiration of a statutory deadline. 486 U.S. at 882-883. The Court found that the explicit cutoff date for filing petitions for naturalization and subsequent legislation specifying new requirements for adjudging petitions made it clear that courts did not have the power to confer citizenship in violation of such limitations. Id. at 884-885.

Similarly, in Section 2001(k)(1), Congress has clearly expressed its intent that applicability of the phrase

-9-

"notwithstanding any other provision of law" in subsection 2001(k)(1) expires at the end of fiscal year 1996, or September 30, 1996. The relevant language of subsection 2001(k)(1) provides:

Notwithstanding any other provision of law, within 45 days after the date of enactment of this Act, the Secretary concerned shall act to award, release, and permit to be completed in fiscal years 1995 and 1996, with no change in originally advertised terms . . . [the relevant timber sale contracts].

Both NFRC and Scott Timber repeatedly have acknowledged that this language can only be read to mean that the "notwithstanding" provision applies only through September 30, 1996.^{2/} This, then, is not a disputed point.

This September 30, 1996 deadline for legal sufficiency as to subsection 2001(k)(1) sales is extremely significant. Unlike subsections 2001(b) and (d), which allow the Secretaries to consider environmental laws and effects in offering sales thereunder, subsection 2001(k) does not provide such discretion. Accordingly, it is all the more important that the Secretaries be able to rely on a date certain when the legal sufficiency period expires so that they can assess the impacts and continue with

^{2/} See NFRC's Reply Memorandum in Support of Motion to Compel Provision of Replacement Timber for Certain Sale Units at 3; Appellee's Opposition to Motion for Stay Pending Appeal at 8 (dated October 23, 1995, relevant pages attached hereto); Declaration of Peter Quast at ¶ 4, attached as Ex. A to Horngren Declaration in support of Scott Timber Co.'s May 10 Motion to Compel Release of Replacement Timber.

-10-

their planning and management of resources in accordance with their governing laws.^{3/}

Moreover, as to contracts offered under subsections 2001(d) and 2001(b), the statute expressly provides that the "terms and conditions of [the section] shall continue in effect with respect to" such timber sale contracts. See Subsection 2001(j). Noticeably, no such continuation of the provisions of 2001(k)(1), including the notwithstanding provision, is mentioned anywhere in the statute. Such an omission underscores the significance Congress attributed to the September 30, 1996 deadline with respect to subsection 2001(k)(1) sales. Under Pangilinan, such a significant statutory deadline cannot be extended through judicial decree.

Such a position is further supported by the statute's explicit mandate that 2001(k)(1) sales be released "with no change in originally advertised terms. . . ." As to the contracts at issue here, such terms explicitly state that seasonal restrictions shall apply to the harvest of such sales. See Twenty-fourth Declaration of William Bradley at ¶ ___; Declaration of James Shuler at ¶ ___. The agencies have simply followed those terms in administering the contracts. Id.

^{3/} While NFRC's current motion only refers to two sales, there is no guarantee that NFRC will not try to expand its request for relief in connection with other sales in the future, interfering further with the agencies' management activities.

-11-

Nothing in the statute indicates that Congress intended that these terms should not continue to apply. As the Ninth Circuit explained:

An implied repeal of the underlying statutory and regulatory provisions governing the timber sale contracting process may be found only if no other construction is possible. Here, S 2001(k)(1) itself incorporates other laws by referring to the "award" and "release" and "original contract terms" of timber sale contracts The agencies have regulations which tell them what these words mean and how to form such contracts. . . . Section 2001(k)(1) is not clearly repugnant, in words or purpose, to the contract regulations established under the agencies' organic acts.

See NFRC v. Glickman, No. 96-35106 (9th Cir. June 14, 1996).

Certainly, nothing in the statute suggest that application of such original terms, explicitly referred to in the same sentence as the "notwithstanding" language and September 30, 1996 deadline, could provide the basis for extending that deadline.

Cases cited by NFRC do not support their request to extend the statutory deadline. First, in relying on Reno v. Catholic Service, Inc., 509 U.S. 43 (1993), NFRC disregards two very important distinguishing points. While NFRC claims that the majority did not address the question of equitable relief, the majority did comment on potentially available relief. While noting that it need not reach the question of remedy, the majority opined as to a way in which relief could be granted, that did not require extension of the relevant 12-month period at issue there. The Court explained that because "there is no

-12-

statutory deadline for processing the [adjustment of immigration status] applications," and as an individual "applied" for an adjustment within the relevant 12-month period, "there is no reason to think that a District Court would lack the power to order such relief." 509 U.S. at 66.

Regarding the dissent upon which NFRC relies, NFRC's citations to Catholic omit reference to that portion of the case that distinguishes it from the present one. In distinguishing Pangilinan, the dissent notes that "the Reform Act does not itself contain a statutory deadline at all, leaving it largely to the Attorney General to delineate a 12-month period. 8 U.S.C. s 1255a(a)(1)(A). This delegation highlights the relative insignificance to Congress of the application cutoff date, as opposed to the length of the application period itself." Id. at 84 (emphasis added).

In contrast, the present case deals with an emergency measure, intended to provide short-term relief, with an explicit cut-off date of the legal sufficiency period to prevent indefinite interference with the agencies' normal management activities. Indeed, in the present case, the way in which subsection 2001(k) is crafted makes it clear that Congress considered the cut-off date significant, not the length of the period of applicability of the "notwithstanding" provision. While the end date is clear, FY 1996, or September 30, 1996, the

-13-

date upon which the "notwithstanding" term became applicable was fluid, as it was tied to the "date of enactment" of the law. Accordingly, Congress did not guarantee a specific number of days of "legal sufficiency" as claimed by NFRC, but did set a specific cut-off date. Thus, Catholic provides no support for NFRC's position.^{4/}

III. ASSUMING EQUITABLE RELIEF WERE AVAILABLE, THE
BALANCE OF HARMS DOES NOT WEIGH IN NFRC'S FAVOR

Moreover, even if extension of the deadline were available as a form of equitable relief, NFRC has failed to establish that the equities weigh in favor of such an extension. First, NFRC has relied on the existence of the September 30 deadline to support various positions throughout this litigation. For

^{4/} In Sierra Pacific Industries v. Lyng, 866 F.2d 1099 (9th Cir. 1989), the relevant issue was whether a statute provided a specific consequence for the agencies' failure to promulgate regulations by a statutorily set date, thereby justifying the court's imposition of a judicial sanction for the agency's delay. 866 F.2d at 1111. There, the agency regulations, which were promulgated after the intended date, released timber purchasers from contractual obligations upon the agency's receipt of the relevant application. Id. at 1112. To compensate for the delay in promulgating the regulations, the Court adjusted the date of release to reflect the period of the delay. Id. at 1110-111. The Ninth Circuit found that nothing in the statute prevented this form of equitable relief. Id. at 1112. Sierra Pacific thus involves an agency's power to act beyond a statutory deadline; it does not involve the issue of extension of a substantive provision of a statute beyond a specific deadline. Parents of Student W v. Puyallup School District, 31 F.3d 1489 (9th Cir. 1994), deals with a court's general equitable powers to fashion appropriate relief under the facts of a case; it does not address the current situation in which the relief requested requires extension of statutory deadline.

-14-

example, NFRC successfully defended against a stay of this Court's injunction mandating the release of such sales, in part by arguing that NFRC would suffer irreparable harm if a stay were granted as it would prevent logging by September 30, 1996. NFRC argued that Section 2001(k) was intended to "provide some short-term relief" and in order "to assure the sales could actually be logged, Congress gave the sales absolute legal sufficiency for the period through September 30, 1996 A stay from [the Ninth Circuit] will delay logging for months . . . directly frustrating the intent of the emergency timber sale program enacted by Congress." See Appellee's Opposition to Motion for Stay Pending Appeal at 8. Upon consideration of NFRC's argument, the Ninth Circuit denied the government's motion for a stay.^{5/}

Second, as to the Shady sale, NFRC has not demonstrated that work could not have been completed if the purchaser had proceeded in a more prudent fashion, in light of the well known September 30, 1996 deadline. See Bradley Dec. at ¶ _____. As to the Horse Byars sale [insert????]

^{5/} NFRC repeated these arguments in arguing that this Court should not extend a stay of its order directing release of sales withheld pursuant to the agencies' determination of "known to be nesting" under the Pacific Seabird Group Protocol. See NFRC's Supplemental Memorandum in Opposition to Defendants' Motion for Extension of January 25, 1996 Stay at 3 ("Congress gave the contract holders the absolute right 'notwithstanding any other provision of law' to complete these sales by September 30, 1996. Any further stay of the court's January 19 order will defeat the intent of Congress by making it impossible for the contract holders to complete operations by September 30").

-15-

On the other side of the equation, the agencies are entitled to know when the legal sufficiency period expires to allow them to assess impacts and continue with their forest management and planning process.

CONCLUSION

For the reasons stated herein, NFRC's motion for further injunctive relief as to two timber sales should be denied.

Dated this 25th day of July, 1996.

Respectfully submitted,

KRISTINE OLSON
United States Attorney
JAMES L. SUTHERLAND
Assistant United States Attorney

LOIS J. SCHIFFER
Assistant Attorney General

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Attorneys for Defendants

Of Counsel:

JAY MCWHIRTER
Office of the General Counsel

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

03-Aug-1996 02:02pm

TO: Jennifer M. O'Connor

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: alternative timber

On July 26, DOJ sent the National Forest Resouce Council (NFRC), which represents the purchasers with murrelet sales, a draft agreement regarding replacement timber. The agreement sets up a process for identifying and providing relacement timber; in doing so, it makes clear that all such timber must comply with environmental laws and with the Forest Plan's standards and guidelines.

On August 1, the NFRC responded that the purchasers "are favorably inclined to toward the settlement framework outlined in your draft agreement." The NFRC then went on, however, to provide five pages of detailed comments on the draft agreement. Among the most important of the complaints is the absence of a "drop-dead date" in the draft agreement for the provision of replacement timber.

There is obviously some way to go before this controversy gets wrapped up. But DOJ attorneys have a fair degree of confidence that a seetlement will in fact be reached.

I'll let you know of any significant developments. In the meantime, please tell me if you would like to see the draft agreement and NFRC response.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T .

24-Jul-1996 06:31pm

TO: (See Below)

FROM: Kathleen A. McGinty
Council on Environmental Quality

SUBJECT: RE: 9th Circuit confirms murrelet ruling

on the sales that will be withdrawn under the directive, it seems crazy to me not to get that info out there this week. larry craig is going to beat us up on it. we may as well get some positive benefit out of it -- namely defusing somewhat the protest this week.

Distribution:

TO: Dinah Bear

CC: T J Glauthier
CC: Martha Foley
CC: Barbara C. Chow
CC: Elena Kagan
CC: Jennifer M. O'Connor
CC: Ruth D. Saunders
CC: Christine L. Nolin
CC: Deborah L. Fine
CC: Brian J. Johnson
CC: Michelle Denton

EXECUTIVE OFFICE OF THE PRESIDENT

24-Jul-1996 07:40pm

TO: (See Below)

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: RE: 9th Circuit confirms murrelet ruling

as of know, the Secretary is not scheduled to be doing any forestry-oriented events between now and the hearing. USDA is supposed to get the list of sales that would be withdrawn from the Forest Service tomorrow, and Greg and Anne are thinking about possibilities for pro-active announcement and whether they think it's a good idea

Distribution:

TO: Kathleen A. McGinty

CC: T J Glauthier
CC: Martha Foley
CC: Barbara C. Chow
CC: Elena Kagan
CC: Jennifer M. O'Connor
CC: Ruth D. Saunders
CC: Christine L. Nolin
CC: Deborah L. Fine
CC: Brian J. Johnson
CC: Michelle Denton

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

24-Jul-1996 08:19pm

TO: (See Below)

FROM: Kathleen A. McGinty
 Council on Environmental Quality

SUBJECT: RE: 9th Circuit confirms murrelet ruling

this can and i think should be a low key event. not a major announcement and not from the secy. we just should get it out there -- even if it is just notices from ea forest that this is the effect on specific sales. we should not make this look political or, frankly, like it is being done at all because of the anniversary.

Distribution:

TO: Dinah Bear

CC: T J Glauthier
CC: Martha Foley
CC: Barbara C. Chow
CC: Elena Kagan
CC: Jennifer M. O'Connor
CC: Ruth D. Saunders
CC: Christine L. Nolin
CC: Deborah L. Fine
CC: Brian J. Johnson
CC: Michelle Denton

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Jul-1996 08:23pm

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: RE: 9th Circuit confirms murrelet ruling

FYI, tommorrow is "call-in day" to the WH and Congress urging repeal of the timber rider. Demonstrations are scheduled to be held over the weekend in Eugene, Portland, San Francisco and Seattle.

However, before thinking that all enviros are ungrateful wretches, you should know that we are getting some credit for the Secretary's recent salvage directive. For example, in a feature story on the rider talking about the various court cases and close vote on the Furse amendment, the writer states that, "The most effective blow came from the executive branch. . . . The secretary's directive had an immediate impact in Idaho, where on July 3 the Boise National Forest reclassified its proposed Deadwood Salvage Sales as non-emergency sales. This proposal to log in a roadless area must now go through the normal enviornmental review process. 'This is a major victory for the conservation community, wildlife and wildlands,' responded John McCarthy of the Idaho Conservation League.

Also, the exec. dir. of one of the regional coalitions told me today that he had to rewrite a draft press release and media advisory after some of his groups in the northern Rocky states objected to criticism of the President in light of the recent directive!

The directive is likely to have the most dramatic effect in the northern rocky states because of the high number of sales that were scheduled to be offered there in roadless areas. On the other hand, the impact of the directive in Calif. hasn't been announced yet. The criticism is mounting there. USDA is aware of this problem.

Distribution:

TO: Martha Foley

CC: Deborah L. Fine

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Jul-1996 11:22am

TO: (See Below)

FROM: Deborah L. Fine
 Domestic Policy Council

SUBJECT: RE: 9th Circuit confirms murrelet ruling

FYI, as you may already know, environmental activists who are upset over our policy on timber sales protested the President in San Francisco on Tuesday. And at a news conference a few hours before his arrival, activists denounced the Rescissions Act.

Distribution:

TO: Kathleen A. McGinty

CC: Dinah Bear
CC: T J Glauthier
CC: Martha Foley
CC: Barbara C. Chow
CC: Elena Kagan
CC: Jennifer M. O'Connor
CC: Ruth D. Saunders
CC: Christine L. Nolin
CC: Brian J. Johnson
CC: Michelle Denton

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Jul-1996 11:39am

TO: (See Below)

FROM: Martha Foley
 Office of the Chief of Staff

SUBJECT: RE: 9th Circuit confirms murrelet ruling

I'm sure they will do much better on this issue with President Dole.

Distribution:

TO: Deborah L. Fine

CC: Kathleen A. McGinty
CC: Dinah Bear
CC: T J Glauthier
CC: Barbara C. Chow
CC: Elena Kagan
CC: Jennifer M. O'Connor
CC: Ruth D. Saunders
CC: Christine L. Nolin
CC: Brian J. Johnson
CC: Michelle Denton

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

26-Jul-1996 07:37am

TO: (See Below)

FROM: Martha Foley
 Office of the Chief of Staff

SUBJECT: RE: 9th Circuit confirms murrelet ruling

What do you mean the impact in California hasn't been announced yet?

Distribution:

TO: Dinah Bear

CC: Deborah L. Fine
CC: Kathleen A. McGinty
CC: T J Glauthier
CC: Barbara C. Chow
CC: Elena Kagan
CC: Jennifer M. O'Connor
CC: Ruth D. Saunders
CC: Christine L. Nolin
CC: Brian J. Johnson
CC: Michelle Denton

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

26-Jul-1996 09:56am

TO: (See Below)

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: RE: 9th Circuit confirms murrelet ruling

To my knowledge, ^{known} of the individual forests in California have announced the withdrawal of any particular sales. There is a list with about 100 mbf. mbf sales that will be withdrawn, but there is also some internal dissension amongst the FS in Calif. (or so it seems) and the Secretary's office is tryng to figure out how to handle this. No final decisions have been made yet - there are questions on at least a couple of groups of sales.

Distribution:

TO: Martha Foley

CC: Deborah L. Fine
CC: Kathleen A. McGinty
CC: T J Glauthier
CC: Barbara C. Chow
CC: Elena Kagan
CC: Jennifer M. O'Connor
CC: Ruth D. Saunders
CC: Christine L. Nolin
CC: Brian J. Johnson
CC: Michelle Denton

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

24-Jul-1996 11:41am

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: 9th Circuit confirms murrelet ruling

Yesterday, the Ninth Circuit Court of Appeals denied the industry plaintiffs (Northwest Forest Resources Council) petition for rehearing in the decision dealing with how the land management agencies determine how marbled murrelets are "nesting". We doubt the plaintiffs will go to the Supreme Court on this; it's probably the end of the road for them on the legal front.

This leaves the issue of replacement timber of like kind, value and volume as the remaining big issue related to the implementation of Section 2001(k) (the old growth sales). USDA has sent a directive to the Forest Service instructing them to begin the process of identifying and offering replacement timber sales that are in compliance with all environmental laws, and to use the remaining unadvertised FY 1996 Northwest Forest Plan timber as the first source for that. There are rumblings that the purchasers won't take forest plan timber because it puts them at odds with other timber companies who want to bid on that timber. Industry has approached USDA about opening discussions on the replacement timber; there will be a meeting later this week with representatives of USDA and Justice and industry reps. to explore a possible settlement (this should stay close hold for now).

On another but related timber front, various environmental groups will be noting the year anniversary of the signing of the timber rider this week with demonstrations, etc., in the Pacific Northwest. USDA is getting information Thursday on how many salvage sales scheduled to be offered under the rider will be withdrawn as the result of the Secretary's recent directive; however, they are debating whether to release that information immediately or whether to wait for an August 1st Senate Energy and Resources hearing at which Senator Craig will criticize the directive.

Distribution:

TO: T J Glauthier
TO: Martha Foley

Timber meeting 2-15-96 at DOT

1. High bidder sales —

- voiding all but John Lodgepole
- as to JL: we already allowed cutting improperly.

22% cut

Part of Klamath litig.

PK: OK - now we have 2 reasons to cancel.

LS: sth should be like other Y.

take this back + tell us.

2. Replacement Timber —

Have to go back to list of

What can we do in 60 days?

Start planning to offer in 96 - how much?

where is it in terms of env. revs?

Present et al plan —

here's the SA timber - just have to obj
to admin appeal - then, give it away.

Have to go back to Hoyer this wk.

3. Klamath —

Misrep to ct re price harvesting.

What now?

Consent to stipulation not to harvest until
whic given to Klamath.

Need declarative - what happened here
Procedures to follow to make sure this
doesn't happen again.

4. Warner Creek —

2+3 still being considered.

Must make sure - being reviewed sewage
directive.

EXECUTIVE OFFICE OF THE PRESIDENT

26-Jun-1996 06:22pm

TO: (See Below)

FROM: Christine L. Nolin
Office of Mgmt and Budget, NRDSUBJECT: CLEARANCE OF USDA SALVAGE TIMBER DIRECTIVE

This is the final draft of USDA's directive on the emergency salvage timber program. Please provide your comments to me via fax (395-4941) or voice-mail (395-3040) by noon tomorrow (6/27).

USDA will also have a press release and q & a's available sometime early tomorrow.

Distribution:

TO: Deborah L. Fine 67028
TO: Shelley N. Fidler 66224
TO: Jennifer M. O'Connor
→ TO: Elena KaganTO: Ray Martinez 67929
TO: Martha Foley 66796CC: T J Glauthier
CC: Alecia WardPeter Coppelman 514-0557
Nancy Hayes 208-5242

June 26, 1996

MEMORANDUM FROM THE SECRETARY

TO: Jack Ward Thomas, Chief
Forest Service

SUBJECT: Revised Direction for Emergency Timber Salvage Sales Conducted Under Section 2001(b) of P.L. 104-19

The unique and unprecedented provisions of the emergency salvage program authorized in P.L. 104-19 impose an equally unprecedented responsibility upon us to administer the program in a manner that sustains the public's confidence in our stewardship of the national forests. While I believe the program has generally been successful due to the dedication of Forest Service employees, I have some concerns which have given rise to the following changes in policy for the program as we continue our review of it.

We must ensure these sales are proceeding in full compliance with the intent and direction provided in the Interagency Memorandum of Agreement on Timber Salvage Related Activities Under Public Law 104-19 and associated interagency guidelines (MOA). Pursuant to President Clinton's direction, I wanted the MOA to ensure that sales prepared under the emergency salvage program meet the same environmental standards as if they were prepared absent this legislation and to strengthen our efforts to prepare sales that comply with existing environmental statutes and withstand normal forms of review and appeal.

Over the next two months, the interagency salvage program review which was required by the MOA will be examining how all agencies working on the emergency salvage program are complying with the MOA and other program guidelines. Until we have had the opportunity to analyze the results of this review, the FS should implement the following interim direction, which responds to my concerns about the emergency salvage program, on proposed sales which have not yet been advertised:

1. No salvage sales in inventoried roadless areas should be advertised using authorities in section 2001 (b) of P.L. 104-19.
2. Give priority to selecting salvage sales and alternatives in decision documents that minimize new road construction or reconstruction, to the maximum extent practicable.
3. Each unit of a sale prepared under section 2001(b) should have an identifiable component of trees qualifying under at least one of the following categories: diseased, insect-infested, dead, damaged, or downed trees; or trees imminently susceptible to insect attack or fire.

Memorandum from the Secretary
Emergency Timber Salvage Program
June 26, 1996

4. Any part of a sale in preparation that was identified to the public, through a scoping notice, environmental assessment, decision notice, or other manner, prior to the enactment of P.L. 104-19, as a sale other than a salvage sale may not be advertised as a section 2001(b) salvage sale, unless each unit of the sale complies with this directive.
5. Any sale or part thereof in preparation prior or subsequent to enactment of P.L. 104-19 which was identified to the public through a scoping notice, environmental assessment, decision notice, or other manner, as a sale other than a salvage sale, and subsequently withdrawn, may not be advertised as a section 2001(b) salvage sale.
6. Because the definition of what constitutes a salvage sale in 2001(a)(3) is broad and vague, apply the following additional definitional guidelines in the sale planning process to ensure that the trees to be harvested are only those in excess of watershed, soil, wildlife, fisheries, or other resource needs and the proposed harvest is consistent with the MOA:
 - a. **Imminently susceptible to insect attack:** Trees "imminently susceptible to insect attack" are trees located in areas that have a high risk of incurring an insect attack (as determined by a risk rating system as appropriate) and a resulting change in stand structure or character in 3 years or less.
 - b. **Imminently susceptible to fire:** Trees "imminently susceptible to fire" are trees located in areas with high fuel loading, where there is a high fire risk rating for the specific habitat type, and near local communities or occupied structures.
 - c. **Associated trees or trees lacking the characteristics of a healthy and viable ecosystem for the purpose of ecosystem improvement or rehabilitation** are hereby referred to as "associated trees" for the purposes of this directive. "Associated trees" are trees that must be removed only to the extent necessary to provide access, ensure safety, or to improve the forest stand conditions in the sale unit area. In each salvage sale prepared under section 2001 (b), the cutting of associated trees, which are primarily healthy green trees, must be subordinate to the objective of salvaging "diseased or insect-infested trees, dead, damaged or down trees, or trees affected by fire or imminently susceptible to fire or insect attack". The combined Environmental Assessment/Biological Evaluation must clearly document how harvesting associated trees will contribute to the project.
7. To ensure that the public is well informed of planned emergency sale activities, clearly describe each proposed section 2001(b) salvage sale and its purpose in scoping notices and subsequent

Memorandum from the Secretary
Emergency Timber Salvage Program
June 28, 1996

public documents using the following guidelines:

a. Specifically identify the primary purpose of a proposed sale as one or more of the following:

(1) to salvage disease or insect infested, dead, damaged, or down trees;

(2) to reduce imminent susceptibility to insect attack that is expected to produce tree damage or loss at an unacceptable level; or

(3) to reduce imminent susceptibility to fire through the reduction of high fuel loading and high fire risk, which should be documented to demonstrate why other treatments would be insufficient or ineffective to reduce high fuel loading and high fire risk.

b. Disclose the estimated volume and percent of dead versus green volume in each proposed emergency sale with clear explanation and rationale for harvesting the green volume.

c. Increase efforts to describe and explain proposed emergency sales to the public and encourage public comment.

8. After following the above direction, if there are sales for which significant public concern remains or sales which have a component of associated green trees greater than 25 percent, I request that you review them to ensure compliance with this directive and the MOA before they are advertised for sale.

9. Review all advertised emergency salvage sales for which bids have not been opened and take appropriate action to ensure they meet the requirements of this directive.

Timber sales that do not meet this direction may continue to be prepared under authorities other than the emergency salvage program authorized in section 2001(b) of P.L. 104-19.

FS implementation of this directive and participation in the Interagency Review will be standing agenda items for our weekly meetings.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

27-Jun-1996 10:45am

TO: (See Below)

FROM: Mark A. Weatherly
 Office of Mgmt and Budget, NRD

SUBJECT: Process for USDA's draft Timber Salvage Directive

USDA sees this announcement of the salvage directive as being made next Monday or Tuesday. They are not inclined to have it made while the Secretary is out West today and tomorrow, and they realize the press announcement and Q&A's will need some interagency vetting. Their preference is that the Secretary make the announcement. We may get a draft of their press release and Q&A's at the end of today, and will send it around for comment when we do.

I raised the issue of coordination with Democrats in Congress working on salvage bills. Anne Kennedy and Jim Lyons met last Friday with staff from Furse, Daschle, Wyden, Murray, Fazio, and Miller's office. They believe the directive now under review met their concerns, such as no more than 25% green timber component without further review.

Let us know by early afternoon if you have any comments on the draft directive, or other questions.

Distribution:

TO: T J Glauthier
TO: Ron Cogswell
TO: Christine L. Nolin
TO: Megan A. Ryan
TO: Dinah Bear
TO: Deborah L. Fine
TO: Ray Martinez
TO: Kris Balderston
TO: Alecia Ward

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

27-Jun-1996 11:17am

TO: (See Below)

FROM: Ray Martinez
 Office of Political Affairs

SUBJECT: RE: Process for USDA's draft Timber Salvage Directive

While I have no comments on the specifics of the directive, my concerns remain general:

(1) When we last met in T.J.'s office, I was looking for a rough percentage of how much timber, yet to be cut, would be affected by this directive. In other words, whether accurately or not, could the press say that, as a result of this directive, the administration is cutting back on it's goal of 4.3 billion board feet of timber by what%? Dinah had informed me that the percentage was roughly 15 - 20%. Does that still hold in light of the changes made to the directive over the past few days?

(2) I'm still unclear as to why we would not want to take advantage of our key surrogates on this issue -- Babbitt, Glickman, McGinty -- being out in the Northwest and "spinning" this to the administration's advantage. If we wait until next week, won't we have less control over what the regional press will say/write about this issue? Haven't we been working, over the past several weeks, towards making this announcement specifically when Sec. Glickman was to be in the Northwest?

(3) Finally, I just want to be sure that we have touched base with all relevant groups and people -- congressional (which it sounds like we have already done), labor and to a certain extent, constituencies. For example, have we considered quietly speaking to someone over at the Sierra Club to see what reaction they will have to this directive?

Those are my initial concerns.

Thanks.

Distribution:

TO: Mark A. Weatherly

CC: T J Glauthier
 Ron Cogswell
 Christine L. Nolin
 Megan A. Ryan
 Dinah Bear

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

27-Jun-1996 11:50am

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: RE: Process for USDA's draft Timber Salvage Directive

Ray - a few comments on your points:

1) The substance of the drafts really hasn't changed since our last meeting and wouldn't affect what I understood to be a 15-25% estimate of the impact of the remaining salvage program under the rider. But I don't think we have any further info. on the effects in various reasons. I did pass that request along.

2) For reasons I don't claim to fully understand, it was in fact not USDA's intent to release while the Secretary was in the Pac NW; au contraire, they always expressed interest in getting it out before or after. The reason I heard expressed relating to not wanting to take publicity away from the signing ceremony for Plum Creek Habitat Conservation Plan and other activities on the Secretary's agenda.

3) On vetting - there are a few items I need to check on or verify today, both in terms of Cong. staff and the labor call Jennifer wanted made.

On the enviro front, we have vetted it with NRDC and the Sierra Club Legal Defense Fund. Their view is that it does not represent the kind of significant policy changes that their community seeks in the salvage program. Their first (rather unrealistic) suggestion was that it be sent out as an internal guidance only, since it seemed to them to reflect the kind of message the President sent out almost a year ago and would essentially be an admission that the FS hadn't followed that directive. Their second thought (along with some suggestions for word changes) was that it best be characterized as incremental step in the right direction - management control - but that to get the enviros excited and saying really positive things about this, something would have to be added in the way of a real policy shift (like no new roads.) USDA is not comfortable with adding that component.

I do think the directive will do some on-the-ground good and actually stop some sales that haven't been offered yet but would be very controversial in, for example, California. But I don't

think the enviros will be issuing press releases praising the President for this directive.

Distribution:

TO: Ray Martinez
CC: Mark A. Weatherly
CC: T J Glauthier
CC: Ron Cogswell
CC: Christine L. Nolin
CC: Megan A. Ryan
CC: Deborah L. Fine
CC: Kris Balderston
CC: Alecia Ward

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

27-Jun-1996 12:04pm

TO: (See Below)

FROM: Deborah L. Fine
 Domestic Policy Council

SUBJECT: RE: Process for USDA's draft Timber Salvage Directive

I have no new questions or comments on this directive beyond what Ray has said and beyond the questions I originally posed -- including a reassessment of what hits we might be taking.

Thanks very much for your help. I'll look forward to the q's and the press statement.

Distribution:

TO: Mark A. Weatherly

CC: T J Glauthier
 Ron Cogswell
 Christine L. Nolin
 Megan A. Ryan
 Dinah Bear
 Ray Martinez
 Kris Balderston
 Alecia Ward

EXECUTIVE OFFICE OF THE PRESIDENT

28-Jun-1996 12:17pm

TO: (See Below)

FROM: Mark A. Weatherly
Office of Mgmt and Budget, NRD

SUBJECT: USDA timber salvage directive - press release and Q&A's

We will shortly be faxing you USDA's draft press release and Q&A's on the salvage directive. Based on our initial comments, USDA is revising the package and we hope to have a re-draft to send out by 1. One way or the other, we'll send out the package by 1:30.

Because we're aiming to tee up this announcement for Monday - or Tuesday at the latest, we're asking for comments back by c.o.b. today if at all possible. Please let us know if this isn't possible. Thanks.

Distribution:

TO: Dinah Bear
TO: Deborah L. Fine
TO: Kris Balderston
TO: Ray Martinez
TO: Elena Kagan

CC: Christine L. Nolin

EXECUTIVE OFFICE OF THE PRESIDENT

28-Jun-1996 01:40pm

TO: (See Below)

FROM: Christine L. Nolin
Office of Mgmt and Budget, NRD *395-3040*
*395-4941 fox*SUBJECT: Salvage Directive Press Release and Q&As

Attached are drafts of a press release and questions & answers regarding the salvage directive.

Please review and respond to me with any changes or comments by COB today. Thanks very much.

Distribution:

TO: T J Glauthier
TO: Deborah L. Fine
TO: Ray Martinez
TO: Jennifer M. O'Connor
TO: Elena Kagan
TO: Martha Foley
TO: Kris BalderstonCC: Ron Cogswell
CC: Mark A. Weatherly
CC: Ruth D. Saunders
CC: Megan A. Ryan

Tom Amontree (202) 720-4623
Jim Petterson (202) 720-4623

**AGRICULTURE SECRETARY GLICKMAN ANNOUNCES NEW ~~SALVAGE~~
~~LOGGING~~ GUIDELINES FOR EMERGENCY TIMBER SALVAGE PROGRAM**

New Policies Designed to Bolster Public Confidence in Stewardship of Public Lands

Washington, D.C., June XX, 1996—Agriculture Secretary Dan Glickman today issued a directive designed to address some public concerns raised about the way the USDA Forest Service has implemented Congress' salvage logging rider.

Glickman's directive is aimed at ensuring that timber sales offered under the emergency salvage logging rider, which exempts all such sales from public appeals, full judicial review, and environmental laws, are truly emergency in nature to warrant such unprecedented exemptions. Glickman also is seeking to ensure that President Clinton's directive to implement the salvage rider in accordance with all environmental laws, unless expressly prohibited by the rider, is being followed.

In a memorandum to Forest Service Chief Jack Ward Thomas, Glickman wrote: "The unique and unprecedented discretion allowed under the salvage program authorized in P.L. 104-19 imposes an equally unprecedented responsibility upon the Forest Service to administer the program in a manner which does not erode the public's confidence in our stewardship of the national forests."

To help preserve and enhance the public's confidence, Glickman directed the Forest Service to make changes in the salvage logging program to increase public knowledge and involvement in decision making; prohibit the use of the salvage rider to prepare salvage sales in pristine inventoried roadless areas; minimize new road building under the rider; clarify when healthy or green trees can be included in a salvage timber sale; and to more clearly define terms used to describe stands of trees such as "imminently susceptible to insect attack" or "imminently susceptible to fire."

"I want to be very clear," Glickman said. "The Forest Service's many talented professionals are doing the best they can trying to steer through the minefield created by the salvage rider. However, the broad discretion contained in the salvage rider, coupled with its suspending environmental laws and locking the public out of the decision making process, has created an atmosphere where distrust is far too prevalent."

AS PART OF THE ADMINISTRATION'S CONTINUING OVERSIGHT OF

In further response to questions about the implementation of the salvage rider, the Forest Service has initiated, along with other cooperating agencies, an Interagency Salvage Program Review. This review will examine the agencies' compliance with President Clinton's directive to follow environmental laws when preparing timber sales under the salvage rider and the Memorandum of Agreement that guides the implementation of the rider. The review team will report its findings to the President by August.

Other sales
in go
forward
p. 2)

POLICY EMERGENCY

EMERGENCY

"Until we have had a chance to study the review team's report, my interim directive instructs the Forest Service to redouble its efforts to comply with the spirit and intent of the President's directive, especially with regard to listening to and involving the public and providing more information and justification about proposed salvage sales before offering them for sale."

Move to p. 1

Any proposed timber sale that does not qualify as ^{EMERGENCY} salvage under Glickman's directive may still move forward under normal timber program guidelines for preparing and offering ^{green} timber sales.

"My directive is not designed to discourage the Forest Service from offering for sale legitimate green or salvage timber sales," Glickman said. "It is designed to give guidance on the kind of sales that should be offered under a rider that eliminates environmental safeguards and the public's ~~use~~ right to question government decisions. The government has got to be careful and responsible in the use of this unprecedented power. The salvage rider only should be used where emergency conditions warrant its use. Those places include areas where trees are dead or their value is rapidly declining due to insect or disease and where the threat of fire to people and property is real."

The new salvage guidelines will not affect the Forest Service's ability to meet the salvage timber targets Glickman committed to last year when Congress insisted on attaching the salvage rider to legislation providing assistance to victims of the Oklahoma City bombing. Based on preliminary Forest Service estimates, the final number of board feet of salvage timber expected to be offered by the rider's December 31 expiration date are well within the program goal of 4.5 billion board feet, plus or minus 25 percent.

#

Timber Salvage Q & A

Q. Why are you issuing this salvage directive to the Forest Service?

A. Public concerns have been raised about whether the types of sales being offered for sale under the salvage rider are appropriate and in compliance with the spirit and intent of the President's directive to implement this program in the most environmentally sound way as possible, and in compliance with the Memorandum of Agreement issued to the field on how to implement the President's directive.

In response to these concerns and pursuant to the MOA, the President asked the Forest Service and the other agencies involved in implementing the salvage program to review it to evaluate the agencies' compliance with his directive and the MOA. This review and the review team's recommendations will be made available for the administration to review by August.

Until the Forest Service and I have had a chance to review the team's recommendations, this interim directive will provide more guidance to the hard-working FS employees who are hearing the same public complaints. This interim directive is to clarify direction under the MOA to ensure that the sales offered under the salvage program are truly emergency and redouble our efforts to comply with the intent of the President's directive.

Q. Will there be more changes to the salvage program in the future?

By August, the Interagency Salvage Program Review will issue a report with findings and possibly recommendations on improving the salvage program. Until I have had a chance to review this report with the Chief, I do not know if further changes will be made.

Q. What do you hope to accomplish by implementing this directive?

A. We want to ensure that timber sales offered under the emergency salvage logging rider, which exempts all such sales from public appeals, full judicial review and environmental laws, are truly emergency in nature to warrant such unprecedented exemptions. We also are seeking to ensure that President Clinton's directive to implement the salvage rider in accordance with all environmental laws, unless expressly prohibited by the rider, is being followed.

Q. What strides have you taken to ensure you achieve your goals?

A. I have asked the Forest Service to make changes in the salvage logging program to increase public knowledge and involvement in decision making; prohibit the use of the salvage rider to prepare salvage sales in pristine inventoried roadless areas; minimize new road building under the rider; clarify when healthy or green trees can be included in a salvage timber sale; and to more clearly define terms used to describe stands of trees such as "imminently susceptible to insect attack" or "imminently susceptible to fire."

Q. How long do you anticipate this directive will apply?

A. The directive was designed to serve as interim guidance until the Forest Service has analyzed the results of the Interagency Salvage Program Review and determined what, if any, further modifications in sales need to be made.

Q. What is the Interagency Salvage Program Review?

A. The Interagency Salvage Program Review process will allow the agencies involved -- USDA Forest Service; the Department of Commerce's National Marine Fisheries Services; EPA; and the Department of the Interior's Fish and Wildlife Service and Bureau of Land Management -- to fully comply with President Clinton's directive to follow environmental laws when preparing timber sales under the salvage order and to follow the 11 specific guidelines contained in the interagency MOA. The review team will report its findings to the President by August.

Q. Are you changing the definition of salvage sales contained in Section 2001 K of the Rescissions Act?

A. No, we're simply refining the definition of salvage sales to reflect concerns about harvesting trees in environmentally-sensitive areas gleaned through public input and the experience the Forest Service has to date in implementing the timber provisions under the Rescissions Act.

Q. How much salvage volume is currently being made available to prospective buyers?

A. The total salvage volume has been decreasing in recent years. However, the percent of salvage volume of the total timber offer volume has been increasing. In the 1980's, salvage sales comprised less than 20 percent of the total volume offered for sale, whereas since 1990 salvage volume has consistently been over 25 percent of the total volume offered for sale. In FY 90 almost 2.9 billion board feet (BBF) of salvage was offered for sale. In that year Region 5 offered .8 BBF and Region 6 offered .9 BBF.

Today, the total timber sales program for these regions is less than their respective salvage sale programs of FY 90. The factors affecting the total timber sale program, such as

threatened and endangered species, is also affecting the salvage sale program. In addition, the smaller green timber program is providing less access and, thereby, reducing the lands available for salvage.

Q. Are salvage sales the same as 318 sales?

A. Salvage sales are not the same as 318 sales which are green sales in Oregon and Washington that were prepared and offered prior to the completion of the President's Northwest Forest Plan in 1994.

The term "318" refers to Section 318 of the 1990 Interior Appropriations Act, which specified levels of Forest Service and Bureau of Land Management timber volumes to be offered in the States of Washington and Oregon for fiscal year 1990. Court interpretation of the Rescission Act has expanded the definition to include all sales offered and awarded since 1989 in Oregon and Washington.

Q. What is the relationship of salvage to forest health?

A. Salvaging dead and dying trees can enhance forest health in many ways, depending on the site-specific situation. Salvaging may reduce fuel loading, thereby decreasing the potential for future catastrophic fires. Removing trees that are highly susceptible to insects or diseases reduces the probability of a future outbreak. Salvaging large, damaged areas sometimes provides an opportunity to restore the area to a more desirable species mix.

However, not all salvage opportunities will contribute to improving forest health. Often, the purpose of a salvage operation is to recover damaged timber before it deteriorates to the point of being unmerchantable.

Q. Will there be opportunities to log (salvage) timber burned in the fires last summer?

A. Yes, timber will be harvested in support of local and regional economies only if it can be safely removed, is needed to restore the burned area or utilizes wood before it deteriorates or is further damaged. For instance, trees may need to be removed to prepare the site for planting. Historically, 50 percent of burned timber is not salvageable.

Q. What is the impact of this directive on our fire suppression efforts?

A. We do not anticipate that the directive will limit out fire pre-suppression activities. The directive does not apply to areas with high fuel loading, areas with high fire risk rating and are near local communities or occupied structures. Therefore the directive would not limit the removal of sub-canopy vegetation and other potential fuels that typically cause intense, devastating "crown" fires which threaten people and property.

Q. What is the estimated impact that the directive will have on achieving salvage sale volume targets?

A. It was understood at the time Secretary Glickman provided his estimate to Speaker Gingrich of a 4.5 bbf Salvage Program (plus or minus 25 percent) that this was simply our best projection of what could be achieved. That number was not, and is not, a mandate. Nor can it be.

The volume of dead and dying trees is very dynamic. It changes with changing environmental conditions. Thus the programmed levels of harvest change with the conditions.

There remains approximately 2.3 bbf from the original program projection of 4.5 bbf plus or minus 25%.

definition of 'associated green trees' -- used in statute that allows green trees to be harvested as part of a salvage sale. Restricting while legitimately seeing need to harvest green trees- insect or fire suppression limiting the harvest of associated green trees to those only needed to provide access ensure public safety or protect other forest resources.

Background Chronology

Implementing the Timber Provisions of the 1995 Rescissions Act

- July 27, 1995** President Clinton signs Rescissions Act and releases statement on his intentions for implementation.
- August 8, 1995** MOA between five agencies signed. MOA provides broad implementation direction for salvage sale provisions in the Rescissions Act.
- August 18, 1995** Forest Service delivers directive to the field offices to implement provisions. The directive emphasizes the importance of interagency cooperation, environmental standards, and expeditious implementation.
- April 1996** President Clinton signs continuing resolution that funded the Forest Service and directed the Secretary and the Chief to take a hard look at the salvage program. This was initiated to address complaints by several stakeholders.
- May 1996** In response to the President's direction, the Secretary asked Chief Thomas to move forward with an interagency review of the MOA signed in August 1995 and field implementation of the August 1995 directive.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

28-Jun-1996 06:05pm

TO: (See Below)

FROM: Deborah L. Fine
 Domestic Policy Council

SUBJECT: RE: Salvage Directive Press Release and Q&As

Thanks. I have a couple of comments. I don't think any of them are critical, but are worth considering.

1. While I think it is important to make the point that we are responding to peoples' concerns, I also think the sub-heading -- "New Policies Designed to Bolster Public Confidence in Stewardship of Public Lands" -- might be strengthened if it made a statement that says something about what we are doing that would build public confidence. (i.e. something conveying action: policies designed to "ensure compliance with President's Directive" or "ensure compliance with Environmental Laws" or "ensure that sales are truly emergency".)

2. In terms of the q and a:

-- It might be a good idea to add a sentence to the fire q about what proactive steps Admin is taking to prevent fires.

-- You might want to include a sentence that responds to any q's on the Furse or KENNEDY amendments, asking what our position is and why we did or did not fight for them when they were being considered.

3. In terms of response to this announcement -- I am assuming no one will sing our praises because no one will be completely satisfied.

Who will hit us hard on this?

Also, I know that some of the more moderate enviros had said their response would most likely be along the lines of "This is a step in the right direction. This is the right thing to do." Has anyone asked them to do that publicly in response? It might be worthwhile.

Thanks for your work on this.

4. When Sec. Glickman announces -- will it be via press release?
Or is he doing a press conference?

Thanks so much.

Distribution:

TO: Christine L. Nolin

CC: T J Glauthier
CC: Ray Martinez
CC: Jennifer M. O'Connor
CC: Elena Kagan
CC: Martha Foley
CC: Kris Balderston
CC: Dinah Bear
CC: FAX (9514-0557, Peter Coppelman)
CC: Ron Cogswell
CC: Mark A. Weatherly
CC: Ruth D. Saunders
CC: Megan A. Ryan
CC: Alecia Ward

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

01-Jul-1996 06:54pm

TO: (See Below)

FROM: Ruth D. Saunders
 Office of Mgmt and Budget, NRD

SUBJECT: RE: Salvage Directive Press Release and Q&As

USDA has given us the final drafts of the directive, press release, and q&a's. They have incorporated all of the comments various reviewers provided late last week and this morning. We are not planning to send the material out for another round of review.

USDA plans to release the directive, and associated material tomorrow afternoon (there is no press conference planned).

Dinah Bear is confirming the details on the communications end, and reviewing the full package with Katie this evening. If anyone has any last minute comments or concerns make them known this evening or tomorrow morning at the latest.

Distribution:

TO: Deborah L. Fine

CC: Christine L. Nolin
CC: T J Glauthier
CC: Ray Martinez
CC: Jennifer M. O'Connor
CC: Elena Kagan
CC: Martha Foley
CC: Kris Balderston
CC: Dinah Bear
CC: FAX (9514-0557, Peter Coppelman)
CC: Ron Cogswell
CC: Mark A. Weatherly
CC: Megan A. Ryan
CC: Alecia Ward

Council on Environmental Quality

Executive Office of the President

722 Jackson Place, NW

Washington, DC 20503

Phone: (202) 395-7421

Fax: (202) 456-0753

FAX TRANSMISSION COVER SHEET

Date: 6/25/96
 To: Elena Kagan
 Fax: 456-1647
 Re: Directive -
 Sender: DINAH BEAR

YOU SHOULD RECEIVE ~~4~~⁵ PAGE(S), INCLUDING THIS COVER SHEET.

(Pie chart is Forest Service version of what's left after murrelet decision.)

27th - NMS/RS mtg
Wallowa - Whitman

USDA Forest Service Section 2001 (k) Sales (435 mmbf)

(updated based on June 14 harvest information)

High Bidder Sales (51 mmbf)

43 mmbf not awarded - obliterated gone

8 mmbf awarded - Replacement?

Original or Replacement Timber
Released, Awaiting Harvest - 54 mmbf

Released, Environmentally

Sensitive - 5 mmbf
Wallowa - Whitman
- Tanya RD Salgo
- Tomhorse ~~Park~~ ~~HF~~

Enjoined by Dwyer
Deleted w/ 9th Cir. Ruling
30 mmbf

Eastside
Pachish Felled (estimate)
55 mmbf

15 mmbf Enjoined
(Eastside)

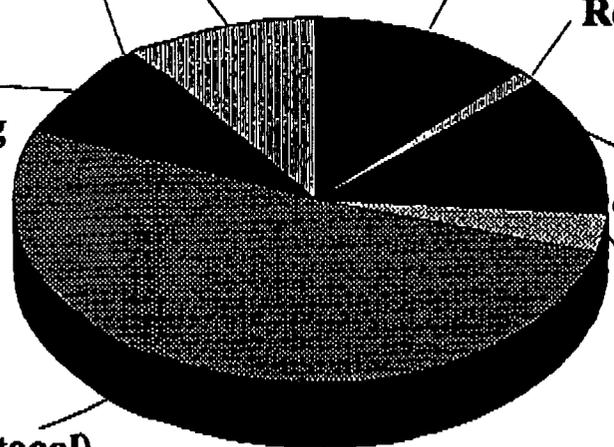
T&E Nesting (Protocol)
225 mmbf

(Quakenbush
Gatensong - interest 4M
Tip
Tip Top
purchaser NOT interested)

78 mmbf

Roadless in fact
↓

Violates one of Eastside screen
(historic range of variability age class)



1:00 pm 6/24/96 DRAFT

rick4.doc

MEMORANDUM FROM THE SECRETARY

TO: Jack Ward Thomas, Chief
Forest Service

SUBJECT: Direction Regarding Timber Sales Under the Salvage Provisions of
Section 2001(b) of P.L. 104-19

The unique and unprecedented discretion allowed under the salvage program authorized in P.L. 104-19 imposes an equally unprecedented responsibility upon the Forest Service (FS) to administer the program in a manner which does not erode the public's confidence in our stewardship of the national forests.

First, we must ensure these sales are proceeding in full compliance with the intent and direction provided in the Interagency Memorandum of Agreement on Timber Salvage Related Activities Under Public Law 104-19 and associated interagency guidelines (MOA). Pursuant to President Clinton's direction to me, I wanted the MOA to ensure that the sales prepared under the salvage rider meet the same environmental standards as if they were prepared absent the rider. The provisions in the statute which suspend all environmental laws and deny the public the ability to appeal salvage sales should not be used to prepare sales that would not comply with these laws and withstand these normal forms of appeal. As I have stated publicly, the salvage rider is to be used to harvest dead, dying, diseased trees and trees seriously threatened by fire or damaging insect infestation, it should not be used as an excuse or ruse to harvest healthy trees. In short, the FS should rise above the minimal and vague standards in P.L. 104-19 and apply the best and highest standards of conservation leadership.

During Congressional debate on the salvage timber rider and based on very preliminary figures, I informed Congress that the Department could possibly offer for sale 4.5 billion board feet of salvage timber over the 18 month life of the bill, plus or minus twenty-five percent due to the uncertain and varying conditions in the forests. While meeting this goal is important, it should not override the President's directive to offer salvage sales in the most environmentally-sound way possible.

Over the next two months, the interagency salvage program review which was required by the MOA will be examining how all of the agencies working on the salvage program are complying with the MOA and other program guidelines. Until we have had the opportunity to analyze the results of this review, the Forest Service should implement the following interim direction, which responds to my concerns about our salvage program, on proposed sales which have not yet been advertised:

1. No salvage sales in inventoried roadless areas should be advertised using authorities in section 2001 (b) of P.L. 104-19.

1:00 pm 6/26/96 ***DRAFT***

rick4.doc

2. Given that the rescission rider expires in less than six months, priority should be given to selecting sales and alternatives in decision documents that minimize new road construction or reconstruction, to the extent practicable.
3. Each unit of a salvage sale prepared under Section 2001(b) should have an identifiable component of trees qualifying under at least one of the following categories: diseased, insect-infested, dead, damaged, and downed trees; or trees imminently susceptible to insect attack or fire.
4. Any part of a "sale in preparation" (section 2001(b)(3) which was identified to the public, prior to the enactment of P.L. 104-19, as a sale other than a salvage sale may not be advertised as a section 2001(b) salvage sale. The identification of the sale to the public could have occurred through a scoping notice, environmental assessment, decision notice, or some other manner.
5. Any sale or part of a sale in preparation prior or subsequent to enactment of P.L. 104-19 which was identified to the public as a sale other than a salvage sale, and subsequently withdrawn, may not be advertised as a section 2001(b) salvage sale. The identification of the sale to the public could have occurred through a scoping notice, environmental assessment, decision notice, or some other manner.
6. Because the definition of what constitutes a salvage sale in 2001(a)(3) is extremely broad and vague, the following guidelines are provided. Apply these guidelines in the sale planning process to ensure that the trees to be harvested are only those in excess of watershed, soil, wildlife, fisheries, or other resource needs and the proposed harvest is consistent with the MOA.
 - a. Imminently susceptible to insect attack: Trees "imminently susceptible to insect attack" are trees that are located in areas that have a high risk of incurring an insect attack (as determined by a risk rating system as appropriate) and a resulting change in stand structure or character in 1 to 3 years.
 - b. Imminently susceptible to fire: Trees "imminently susceptible to fire" are trees located in areas with high fuel loading; where there is a high fire risk rating for the specific habitat type; and near local communities or occupied structures.
 - c. Associated trees or trees lacking the characteristics of a healthy and viable ecosystem for the purpose of ecosystem improvement or rehabilitation are hereby referred to as "associated trees" for the purposes of this directive: "Associated trees" are trees that must be removed only to the extent necessary to provide access, ensure safety, or to protect the forest stand in the sale unit. In each salvage sale prepared under section 2001

1:00 pm 6/26/96 **DRAFT**

rick4.doc

(b), the cutting of associated trees, which are primarily healthy green trees, must be subordinate to the objective of salvaging "diseased- or insect-infested trees, dead, damaged or down trees, or trees affected by fire or imminently susceptible to fire or insect attack". The combined Environmental Assessment/Biological Evaluation must clearly document how harvesting associated trees will contribute to the project.

7. To ensure that the public is well informed of planned sale activities, clearly describe each proposed section 2001(b) salvage sale and its purpose in scoping notices and subsequent public documents. Use the following guidelines.
 - a. Specifically identify the primary purpose(s) of a proposed sale as one or more of the following:
 - (1) to salvage disease- or insect-infested, dead, damaged, or down trees;
 - (2) to reduce imminent susceptibility to insect attack that is expected to produce tree damage or loss at an unacceptable level; or,
 - (3) to reduce imminent susceptibility to fire through the reduction of high fuel loading and high fire risk. The Forest Service should document reasons why other treatments would be insufficient or ineffective to reduce high fuel loading and high fire risk.
 - b. Disclose the estimated volume and percent of dead versus green volume in each proposed sale. Provide a clear explanation and rationale for harvesting the green volume.
 - c. Increase efforts to describe and explain proposed sales to the public and encourage public comment. Give greater attention and consideration to public comments received during the planning process.
8. After following the above direction, if there are sales for which significant public concern remains or sales which have a component of associated green trees greater than 25 percent, I request that you review them to ensure compliance with this directive and the MOA before they are advertised for sale.
9. The Forest Service should review all advertised sales for which the bid bonds have not been opened and take appropriate action to ensure they meet the requirements of this directive.

Timber sales that do not meet this direction may continue to be prepared under authorities other than section 2001(b) of P.L. 104-19. FS implementation of this directive and participation in the Interagency Review will be standing agenda items for our weekly meetings.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Jun-1996 10:10pm

TO: Ray Martinez

FROM: T J Glauthier
Office of Mgmt and Budget, NRES

CC: Deborah L. Fine
CC: Dinah Bear
CC: Shelley N. Fidler
CC: Kris Balderston

SUBJECT: RE: follow up on timber

Ray, I agree with you that we are in our best position to help get the right type of press coverage if Glickman, Babbitt and McGinty are all in the region at or immediately after the announcement.

As you've seen from later emails today, we are working to get the guidelines out tomorrow. We would like to have it a day before the HCP announcement on Thursday, so we don't step on our own story there.

Glickman was reviewing the material himself late today. We expect to have it around for review first thing tomorrow.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Jun-1996 03:47pm

TO: Deborah L. Fine

FROM: Ruth D. Saunders
 Office of Mgmt and Budget, NRD

CC: Dinah Bear
CC: Shelley N. Fidler
CC: Ray Martinez

SUBJECT: RE: update on timber

No draft yet...USDA promised to have it to us in the morning. I'll get it out to everyone on the distribution list when we receive it (including Martha). We should get everything at once -- including the q and a's. Sorry for the delay.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Jun-1996 09:43am

TO: Ray Martinez

FROM: Dinah Bear
 Council on Environmental Quality

CC: Deborah L. Fine
CC: Shelley N. Fidler
CC: Kris Balderston
CC: T J Glauthier

SUBJECT: RE: follow up on timber

Well, yes. (Yes to everything you state.)

I believe TJ is going to talk to Greg Frazier about the state of play this am. I have a call into Anne and will ask her to send the Qs and As around asap, and try to make sure that they cover all the issues you raised, Debbie. I also have a call into Jim and hopefully, he will have made the call to the Carpenters Union this am. In terms of the directive, my own sense is that we have answers to most of these and other obvious questions, but may be dealing with internal USDA/FS concerns about doing this.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Jun-1996 09:01am

TO: Deborah L. Fine

FROM: Ray Martinez
 Office of Political Affairs

CC: Dinah Bear
CC: Shelley N. Fidler
CC: Kris Balderston
CC: T J Glauthier

SUBJECT: RE: follow up on timber

Hasn't Secretary Glickman known all along that we were aiming to have this directive released before he goes out to the Pacific Northwest this week? Why didn't we know beforehand of his desire to not release anything that will step on his already-planned message?

I'm not advocating that we rush forward with an announcement for the sake of doing so, but I agree that with both Secretaries and Katie out in the region, this may be the best time to go forward so that we (the administration) can control the "spin" of the directive.

I'm just suddenly confused as to why the timing is an issue with the Secretary when we have been working towards this for several weeks now...

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Jun-1996 08:28am

TO: Dinah Bear

FROM: Deborah L. Fine
 Domestic Policy Council

CC: Shelley N. Fidler
CC: Kris Balderston
CC: T J Glauthier
CC: Ray Martinez

SUBJECT: RE: follow up on timber

Is there no way they will announce the directive after today --
i.e. late tomorrow or Thursday. I agree that having people out
there to answer questions about it, etc, would be really helpful.

When the q and a go around, can you guys make sure we get a draft
to look at? Thanks very much.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

24-Jun-1996 08:26pm

TO: Deborah L. Fine

FROM: Dinah Bear
 Council on Environmental Quality

CC: Shelley N. Fidler
CC: Kris Balderston
CC: T J Glauthier
CC: Ray Martinez

SUBJECT: RE: follow up on timber

I just talked to Anne Kennedy, and it appears that they won't be ready to go tomorrow - the Secretary wants to discuss this with the Chief tomorrow, and then he doesn't want it released when he's out in the Pacific Northwest for the rest of the week (for fear it will draw news away from the issues he wants to focus on while he's there.) So it looks like it will be put off next week.

Obviously, that does give people more time to get answers, although as I mentioned to Ray tonight, the Forest Service is very decentralized, and getting anything much more precise than a range of 15-25% will be very difficult. However, I'll see if they can give a better sense of regional impacts. California would clearly be one of the major areas of impact, however.

USDA is working on a draft press release and Qs and As that they will send around tomorrow. I think those will be helpful in flushing out how to explain the directive. Jim will call the labor contact tomorrow.

While this does give everyone more time to get answers, I have to say that it also means there will probably be more sales released that people will be very unhappy about. Also, from a Pac NW point of view, it's rather a shame that we've got both Glickman and Babbit, as well as Katie out in the Pac. NW without a positive timber message (other than the case we just won.) However, unless things change again in the am over at USDA (which is not impossible) the track now seems to be for next Monday or Tuesday.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

24-Jun-1996 07:20pm

TO: Shelley N. Fidler
TO: Dinah Bear
TO: Kris Balderston
TO: T J Glauthier
TO: Ray Martinez

FROM: Deborah L. Fine
 Domestic Policy Council

SUBJECT: follow up on timber

As follow up to this afternoons meeting, I have a few comments.
Please let me know what you think.

1. Given where we are right now in terms of our ability to answer questions that we can be sure we will be asked, I agree with Ray that we are not ready to make an announcement tomorrow.

2. I know we have consulted with some enviros and Congressional staff. Jen O is doing consultations with labor. Are there other key stakeholders we need to approach?

3. Questions that come to mind and that were raised at today's meetings seem to range from:

--What approximate percentages of trees will be impacted, in what regions?

--How will this affect our stated timber goal and how do we explain that?

(And how best to talk about both of the above.)

--Will this aggravate fires?

--What are we doing to counter/innoculate communities against fires?

--Where will we get hit on this and by whom?

--When we characterize this as a step in the right direction, do we have a sense of what steps might follow?

--Do we need to outline a specific response to questions on the

Kennedy and Furse Amendments and why we did or did not move on them?

These are just a few. It seems that it would be useful to put together some q and a's for people so that we are all clear on what we are saying.

I don't think working through these should slow us down -- but we should just make sure we're ready to go on this. Is next week okay in terms of other things going on?

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

17-Jun-1996 01:02pm

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: Forest meeting

The regular interagency/EOP foresty meeting will be held at 2:00 p.m. this Tuesday at the CEQ conference room at 722 Jackson Place.

The agenda will include:

1. Current issues
2. Litigation report ****Yeah!!!!
3. Remaining 2001(k) sales following Friday's Ninth Circuit ruling in NFRC v. Glickman:

Please be prepared to discuss the status of remaining sales that have not been harvested - i.e., what sales, if any, have yet to be released; what sales have been releasd but not harvested; what sales have been identified as environmentally senstiive; for what sales, if any, are negotiations taking place for modifications; whether any of these units lack adequate murrelet surveys.

4. Process for replacement timber under k(3)
5. New information analysis
6. Salvage sales
 - a. Secretarial directive
 - b. Interagency salvage program review
7. Other business

Distribution:

TO: Thomas C. Jensen
TO: FAX (9-720-4732, Jim Lyons)

Dinali Bear 6-25-96

Salvage - draft #48.

Supposed to be new draft - throw away.

JWT - fits about scope of directive - (not ^{no old growth} no new roads)

Not get a lot of praise from enviros - just implementing
directive set out last August.

Affect about 15-20% of sales remaining (No
more specific re areas). Cut back on sales in Calif.

Incremental step in mangrove program. Murphy report
directive. Not a policy shift.

Two provisions re roads -

a) no sales in inventoried roadless areas

b) priority to minimizing new road construction

This will do some ~~of~~ good on the ground
ratio - ^{will get} not much more cut off by.

More dramatic - stop cutting any old-growth trees
old growth policy - via Exec Order?

Another opportunity - remaining sales - some of them have
problems. The rest of the (gro scope side)

60 per 318's (east side)

also west side - fish problems.

Definitely some enviros care about

Brand or this, which would be most likely.

Assumed enormous importance in entire
community.

[Mtg Tues July 2.]

Tomorrow?

Get latest version / O+A / press release

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION
GENERAL LITIGATION SECTION
601 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

FAX NUMBER (202) 305-0506
CONFIRMATION NUMBER (202) 305-0460

PLEASE DELIVER TO:

To:

Don Barry	208-4684
Bob Baum	208-3877
David Geyer	
Dinah Bear	456-0753
Brian Burke	720-4732
Mark Gaede	720-4732
Mike Gippert	690-2730
Tim Obst	
Jay McWhirter	
Nancy Hayes	219-1792
Elena Kagan	456-1647
Karen Mouritsen	219-1792
Chris Nolan	395-4941
Bob Ziobro	482-0318

NUMBER OF PAGES:

DATE: June 18, 1996

FROM: Michelle Gilbert

MESSAGE: Attached is an outline of issues that we would like to address at today's CEQ meeting in light of the Ninth Circuit's ruling.

2001(K) NEXT STEPS**I. HIGH BIDDER SALES**

Should high bidder sales be cancelled in light of Ninth Circuit's opinion?

Forest Service

Allen, Banty Slvg, Horn Slvg, Eagle Ridge Houselog (all need contract modifications to conform to Pacfish/Eastside screens; two are identified as "high" priority for replacement; need to confirm status of harvesting);

John and John Lodgepole (sales subject to ONRC appeal; confirm that sales would otherwise have proceeded without 2001(k); treaty rights issue remains in Klamath action);

other high bidder sales were not awarded as no other bidder wanted sales.

BLM

[what BLM sales fell in this category?]

Ollala Wildcat, Twin Horse (sales originally rejected by high bidder after delays; after Hogan's ruling on high bidder issue, original high bidder sought to "reinstate" its original bid and requested award of sale; sales ultimately were awarded to original high bidder in response to Hogan's order; confirm re Twin Horse; does fact that sales were awarded to high bidder, rather than second high bidder, in response to Hogan's order affect applicability of Ninth Circuit's reasoning to these two sales? what are resource issues in connection with these sales?).

Potential contract liability? Effectiveness of caveats in award letters? Suspend prior to any termination?

II. REPLACEMENT TIMBER

Action required of agencies:

Forest Service

Now that universe of (k)(2) sales has been identified (with possible additions based on new surveys, see below), directive requiring commencement of process to

provide replacement timber may be issued; delays would prompt court action.

What should be substance of directive: i.e., identity of sale units for which (k)(3) timber is needed; direction to meet with purchasers and start process as outlined in previous memos.

Completion of surveys: What is status of surveying of previously unsurveyed murrelet habitat? What additional surveying is required in light of (k)(2) victory?

BLM

Confirm status of new surveys.

III. TERMINATION OF ACTION BEFORE HOGAN

Is additional action before Hogan required?

What form would it take?

We have treated judgment as final for purposes of appeal; should we seek entry of judgment?

We should begin preparing for dealing with attorneys' fees issues in connection with geographic scope claim.

Possibility of making point that all matters raised in the complaints have been decided in connection with motion requesting termination of compliance reports, especially if we have complied with everything that was before the court on (k)(1); we could consider attaching directive re immediate commencement of replacement timber.

What additional compliance in connection with (k)(1) sales is required? Is additional action regarding any remaining problematic sales contemplated?

V. FILING BEFORE DWYER

We should proceed with notice of filing of Ninth Circuit opinion.

Eds: RETRANSMITTING to fix category code
GOP Senator Blasts White House Logging Politics
Eds: Also moved on general news wire.

By SCOTT SONNER
Associated Press Writer

WASHINGTON (AP) - The Republican chairman of a Senate forest panel contended Monday that high-ranking Clinton administration officials have been interfering with logging decisions better left to Forest Service experts.

"We have people who are making political judgment calls, not scientific judgment calls," Idaho Sen. Larry Craig said in an interview.

"It appears to me the administration thinks it can change the mission of the Forest Service administratively by employing heavy-handed techniques that eliminate commercial use in favor of sketchy, ecosystem management," he said.

In one case, he said, Forest Service Chief Jack Ward Thomas threatened to resign rather than carry out White House orders to fire agency employees.

Craig told The Associated Press he received information that Thomas threatened to quit recently after being ordered to sack workers at Forest Service headquarters in Washington.

He said the workers had confirmed for Craig that the government would face a liability of as much as \$1.6 billion if it canceled timber sale contracts in old-growth forests in the Pacific Northwest.

Thomas could not be reached, but Agriculture Department spokesman Jim Petterson denied Craig's allegation. "Nobody ordered anybody fired," he said.

He said the Clinton administration was not pleased about the letter because the \$1.6 billion figure was never confirmed and does not reflect the agency's position.

Craig, chairman of the Senate Energy and Natural Resources subcommittee on forests, outlined his problems in a letter to Agriculture Secretary Dan Glickman. He said he will try to change logging laws to help insulate the Forest Service from citizen lawsuits as well as meddling by the White House.

"The Clinton administration has involved itself in more of the Forest Service's detailed decisions than any other administration," Craig wrote. "It strongly appears that White House staff has been inserted into the agency's line decision-making process."

In regard to the broader criticisms, Petterson said:

"There is no question this administration has made natural resource issues a priority partly because of, quite frankly, the neglect of previous administrations ..., (but) there is no micromanagement."

TERMINATION OF ACTION BEFORE HOGAN

We can move to terminate the entire action now before Judge Hogan and ask that the case be closed and no further reports be filed.

Pros:

- Ends possibility of new claims being raised and ongoing judicial review of agencies' actions under Rescissions Act.
- Lessens court's ability to overscrutinize the details of land agencies' compliance.
- Lessens chances of contempt and other motions.
- Allows us to proceed with our interpretation of (k) (3) without awaiting court decision.

Cons:

- Risks that we proceed with our interpretation of (k) (3) and later learn we are incorrect.

Alternatively, we can await a decision from Judge Hogan on whether or not (k) (3) sales must comply with all environmental laws.

Pros:

- Allows us to await the court's views on (k) (3) to let us have the "game rules" before offering replacement timber.
- May limit potential contempt motions because reports provide mechanism for raising issues.

Cons:

- May involve Judge Hogan in issues we would rather he not decide.
- Could allow judicial scrutiny to continue.

Motions currently pending.
Can't really wipe slate
clear.
So - don't provoke him by
trying.

EXECUTIVE OFFICE OF THE PRESIDENT

17-Jun-1996 08:26am

TO: (See Below)

FROM: T J Glauthier
Office of Mgmt and Budget, NRES

SUBJECT: RE: WE WON!!

Great news! There is justice in the system after all!

This is also some vindication for the extra effort the WH made the FS and other agencies go through last summer to be sure they had a strong substantive case for each of the sales they did hold back as "known to be nesting".

Now, our challenge is virtually all a "management" one--managing the salvage program on the one hand, and now this large volume of replacement timber awards that will be needed in light of the court decision. And in light of the discussions of a trip next week, guess we'd better get some meetings going early this week--Katie, do you have something already underway?

Distribution:

- TO: Dinah Bear
- CC: Kathleen A. McGinty
- CC: Ron Klain
- CC: Elena Kagan
- CC: Martha Foley
- CC: Jennifer M. O'Connor
- CC: Barbara C. Chow
- CC: Brian J. Johnson
- CC: Thomas C. Jensen
- CC: Christine L. Nolin
- CC: Ruth D. Saunders
- CC: Ray Martinez
- CC: Deborah L. Fine
- CC: Shelley N. Fidler

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

17-Jun-1996 08:37am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: RE: WE WON!!

TJ and Co:

Over the weekend I noticed numerous reports on enviro and industry internet sites that the Administration is planning a "major timber announcement" in the "next several weeks."

Clearly, word's out on the street and expectations are running high. The enviros' postings indicate that several organizations will be escalating their "repeal the rider" campaign directed at the WH. The industry postings seemed focused on pushing the forest health legislation.

I also noted that Ron Wyden's House successor, Earl Blumenauer, apparently has signed on to Furse's repeal bill.

Tom

Distribution:

- TO: T J Glauthier
- CC: Dinah Bear
- CC: Kathleen A. McGinty
- CC: Ron Klain
- CC: Elena Kagan
- CC: Martha Foley
- CC: Jennifer M. O'Connor
- CC: Barbara C. Chow
- CC: Brian J. Johnson
- CC: Christine L. Nolin
- CC: Ruth D. Saunders
- CC: Ray Martinez
- CC: Deborah L. Fine
- CC: Shelley N. Fidler

EXECUTIVE OFFICE OF THE PRESIDENT

15-Jun-1996 12:59pm

TO: Jennifer M. O'Connor
FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: RE: WE WON!!

Remaining problems under the rider include (but are not necessarily limited to):

a) offering replacement timber for the 225 mbf that fall under the "known to be nesting" category (2001(k)(2)). Our position is that the replacement timber must comply with environmental law; industry thinks otherwise. This likely will be litigated.

Further, it will require additional work to figure out precisely where those replacement sales will come from (and recall that they have to be of "like kind and volume". The Forest Service very much wants to avoid offering timber from this year's sales (because it will irritate other purchaser). Those sales are, of course, the sales most likely to already be in compliance with env. law.

b) I believe we have a few (k)(1) sales where environmental modifications are still an issue, but I need to confirm that.

c) Salvage side: important problems have emerged over the past few weeks, as USDA as taken a closer look at salvage. Several hundred new salvage sales are due to be released in California this summer, some of which will be highly controversila. As you know, the Secretary's office is working on developing a directive to try to control the volume of green trees being offered under salvage and to stay out of roadless areas. There is considerable resistance to that. There is also an interagency review of the salvage program being launched.

On the litigation front in salvage, the cae of most significance involves a challenge from the Klamath tribes, raising Indian treaty violations.

d) Analysis of impacts to the President's Forest Plan: getting the murrelet decision means that the agencies have a better understanding of what the environmental baseline will be a result of the timber rider. The regional env. office set up under the

Plan will coordinate an effort to analyze the ecological effects of the rider to determine whether a supplement to the Plan EIS and reinitiation of consultation under Section 7 of the Endangered Species Act is necessary. We can certainly expect litigation from environmentalists regarding the continued validity of sales under the Plan once the rider expires at the end of this year.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

14-Jun-1996 04:32pm

TO: Dinah Bear

FROM: Jennifer M. O'Connor
 Office of The Chief of Staff

SUBJECT: RE: WE WON!!

Yes! What does this mean in terms of outstanding problems -- what are our remaining problems now?

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

14-Jun-1996 06:47pm

TO: (See Below)

FROM: Kathleen A. McGinty
 Council on Environmental Quality

SUBJECT: RE: WE WON!!

ok. so, since we asked for this about 6 months ago, i bet usda is all ready to go with the replacement timber.....

Distribution:

- TO: Dinah Bear
- CC: T J Glauthier
- CC: Ron Klain
- CC: Elena Kagan
- CC: Martha Foley
- CC: Jennifer M. O'Connor
- CC: Barbara C. Chow
- CC: Brian J. Johnson
- CC: Thomas C. Jensen
- CC: Christine L. Nolin
- CC: Ruth D. Saunders
- CC: Ray Martinez
- CC: Deborah L. Fine
- CC: Shelley N. Fidler



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

June 14, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY *McGinty for*

CC: LEON PANETTA

RE: CEQ WEEKLY REPORT

FERC ORDER

Today, I announced the successful resolution of the Environmental Protection Agency's referral of the Federal Energy Regulatory Commission open access rule. As a result of this review, Americans will enjoy both cleaner air and up to \$5.4 billion a year in lower energy bills. This has been quite dicey but I think we threaded the needle successfully. I will keep you apprised of reactions. Attached is a copy of the statement I released today.

TIMBER RIDER CASE

In an upbeat turn of events, we won our appeal from three of Judge Hogan's rulings that had endorsed extremist interpretations of the portion of the timber rider requiring us to release old growth sales in Oregon and Washington. The most important part of the decision allows us to withhold from harvest 77 sales that contain nesting threatened and endangered birds. Additionally, the Ninth Circuit supported our view that 4 sales that had been enjoined by a court prior to the rider's passage (and that include vitally important fish spawning areas) do not have to be released.

We will have to offer replacement timber for the sales that now will not be harvested because of nesting birds (this involves approximately 255 million board feet). Our position is that the replacement sales will be offered under the regular environmental laws. Industry will no doubt litigate that issue, also. However, saving the sales containing nesting birds is an extremely important victory for us. Among other things, possible release of these sales were the single most serious threat to the continued legal viability of the Forest Plan. Their release was also likely to lead to a significant increase in civil disobedience over the summer.

On that front, in a front page story The Oregonian reported on June 9th that forest interests continue to struggle with the salvage logging rider and old growth timber on federal lands. Protests continue to occur at logging sites and are growing.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

For Immediate Release

June 14, 1996

STATEMENT BY KATHLEEN A. MCGINTY

Today I announced the successful resolution of the Environmental Protection Agency's referral of the Federal Energy Regulatory Commission open access rule to the Council on Environmental Quality. As a result of this review, Americans will enjoy both cleaner air and up to \$5.4 billion a year in lower energy bills.

In response to the EPA referral, FERC made important commitments to future actions to protect clean air. When combined with the Administration's efforts to achieve clean air through cooperation with the states and under the authorities of the Clean Air Act, these commitments will provide the environmental safeguards that people want and deserve. The Administration will also pursue the use of innovative approaches such as emission cap-and-trade programs in achieving these goals.

The successful resolution of this referral shows the value of the National Environmental Policy Act in bringing together federal agencies and the public in order to make sensible decisions about environmental protection.

* * *

Note: Ms. McGinty made the determination earlier today with a letter to EPA Administrator Carol M. Browner and FERC Chair Elizabeth A. Moler. The letter is attached.

Forest interests continue tussle on salvage law

Environmental groups want old-growth protections, but industry says harvests will have little impact

By BRIAN T. MEEHAN

of The Oregonian staff 6-9-96 A-1

As the Pacific Northwest slips toward summer, the so-called salvage logging rider has rkindled a firestorm about old-growth timber on federal forest.

Industry says it is a blip in the Northwest's prodigious history of timber harvest. Environmentalists call it a final assault on the region's last giant tree.

The rider, a congressional attachment to the 1995 Reconciliation Bill, continues to play out in contentious ways

In old-growth stands on the west of the Cascade Mountains and bug-scarred pine forests on the east.

Authorities have arrested more than 500 demonstrators at 10 protests, ranging from the Portland regional headquarters of the U.S. Forest Service to logging sites at Enola Hill and Tube West. Protesters have chained themselves to road gates and pickups.

Civil disobedience seminars are being held in Eugene. And the summer promises more protests as logging picks up.

"The public is frustrated because we

are seeing uncut forests they thought were protected being cut down," said Mark Hubbard of the Oregon Natural Resources Council. "Public sentiment is so much against this rider."

The view shifts dramatically within the wood products industry, which is skeptical that President Clinton's Northwest forest plan will live up to its promises of stable timber harvests.

Industry leaders say environmental-

CLINTON'S



Please turn to
TIMBER, Page A19

Timber: Industry says protests are not in proportion with volume

Continued from Page One
lets are using a relatively small amount of timber to revive their political movement.

"The reaction from the environmental community is way out of proportion to the actual volume," said Jim Gelsinger of the Northwest Forestry Association.

The rub for environmentalists is Congress' attempt to make these sales, which include more than 500 million board feet of old-growth timber, bulletproof.

The recession bill, which Clinton signed last July, exempts many timber sales from environmental laws, public comment and agency appeals. It authorizes three kinds of sales:

■ Salvage in forests damaged by insects or fire.

■ Sales previously authorized by Section 318 of a 1990 appropriations act. Court rulings later expanded this category to include other unsold sales in Western Oregon and Washington.

■ Sales authorized under the Northwest forest plan, the administration's strategy for managing federal timberlands west of the Cascades. It grew from the prolonged fight about protecting old-growth habitat for the northern spotted owl.

The salvage logging rider directed the U.S. Forest Service and Bureau of Land Management to release 4.5 billion board feet of damaged timber nationwide by next year.

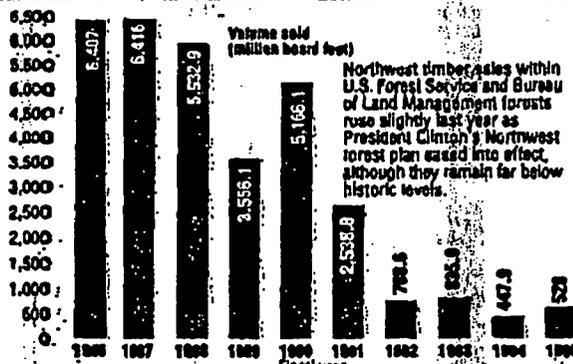
Federal timber managers bristle at the "logging without laws" charge leveled by environmentalists. Forest managers say salvage sales meet environmental standards, such as streamside buffers to protect salmon.

Bob Williams, the Forest Service's interim regional forester, said the only relief the agency received for salvage sales was from administrative appeals.

"In terms of the quality of the work being done on the ground, the quality of the sale being offered ... it's all the same," Williams said.

But the Section 318 sales, more than 150 of them, are another matter.

FEDERAL TIMBER SALES



Source: U.S. Forest Service and Bureau of Land Management

These sales were designed before the forest plan strengthened environmental safeguards. Many violate current standards. Streamside buffers are narrower, and the logging method is clear-cutting, a practice the forest plan virtually abandoned. Most 318 sales were suspended because of environmental concerns.

Congress nonetheless ordered the agencies to release the 318 sales unless they were occupied by threatened birds. And if a sale harbors marbled murrelets, a threatened seabird that nests in coastal old growth, the agencies must replace it with timber of equal quality, which is increasingly rare in the Northwest.

The industry views the 318 sales as a bridge to when Clinton's forest plan reaches full wood production. Last year, the region produced about 50 percent of the plan's annual goal of 1 billion board feet.

The 318 sales are a throwback to the 1980s, when a single old-growth log often filled a log truck. Old-growth timber production today is a shadow of what it was as recently as 1988, when 5.4 billion board feet of timber came off the region's national forests.

Changing public values attached more importance to the vital ecological niche provided by old-growth forests. The debate about the spotted owl focused national attention on the region's vanishing giant trees.

The argument culminated April 2, 1993, when Clinton convened a forest conference in Portland. This effort led to the Northwest forest plan, which protected most of the remaining federal old growth. Or so environmentalists thought.

"I think the rider is special-interest legislation at its worst," said Todd Truse of the Sierra Club Legal Defense Fund.

Northwest timber sales within U.S. Forest Service and Bureau of Land Management forests rose slightly last year as President Clinton's Northwest forest plan eased into effect, although they remain far below historic levels.

The rider jump-started the market for old-growth timber, but the massive 1990 Section 318 program, which originally authorized the cutting of 7.7 billion board feet of timber, Forest advisory boards, made up of environmental and industry representatives, reviewed the 318 sales on the 13 wastelands forests that harbor northern spotted owls.

All but a fraction of the 318 old growth has been cut. Logging of most of the uncut volume, about 536 million board feet, was suspended because of litigation and environmental concerns.

"Clearly we would prefer not to harvest them because we had suspended them for what we considered to be good reasons," the Forest Service's Williams said.

The rareness of old-growth makes these sales valuable.

The industry says the 318 sales will help mills survive until the forest plan reaches its timber-producing goals. Agency officials have been negotiating with 318 purchasers to amend the old sales to reduce environmental impacts. On some sales, stream buffers have been widened; sensitive acres have been swapped out.

"The bulk of this harvest will have little impact," said Allyn Ford, executive vice president of Roseburg Forest Products. "The agencies have gone out of their way to make these sales environmentally friendly."

Napping exceptions won't go away on the Siuslaw National Forest, a stronghold for the threatened marbled murrelet on the central coast.

The Siuslaw counts 33 Section 318 sales that have been hung up in a court fight about the future of the robin-sized seabird, which is listed as threatened in Oregon, Washington and California under the U.S. Endangered Species Act.

Murrelets nest high in old-growth trees as far as 60 miles from the sea. The U.S. Fish and Wildlife Service says murrelet declines have been driven by nesting habitat loss.

The wildlife service issued a jeopardy ruling on the 32 Siuslaw sales, which make up 40 percent of the remaining Section 318 timber volume. This ruling, issued under the Endangered Species Act, suggests cutting these stands might speed the secretive seabird toward extinction.

The sales have been frozen pending litigation on methods used to verify the presence of murrelets. Meanwhile, the salvage rider requires the government to replace timber withdrawn from sale because of murrelets.

The timber industry argues that before a sale is withdrawn, hard evidence of the bird, such as eggshell fragments, should be required. Federal biologists respond that locating a nest high in the canopy is rare. Biologists have relied on visual sightings to document murrelets.

In January, U.S. District Judge Michael Hogan in Eugene ruled that biologists must observe nesting behavior, such as murrelets flying under the old-growth canopy. Only then could the sales be withdrawn.

The government appealed Hogan's ruling to the 9th Circuit Court of Appeals. The appellate court's ruling, which is expected this summer, holds profound implications for the murrelet and the Siuslaw. If all the Siuslaw 318 sales are released, the forest would generate more than seven years' worth of timber production in a single season.

"The Siuslaw is the heart of marbled murrelet habitat in Oregon," said Paul Hanson, a Fish and Wildlife Service biologist. "It doesn't mean the murrelet will go extinct, but we will increase the chances it will go extinct."

Pinning replacement timber on the Siuslaw for stands occupied by murrelets is a daunting task. Two catastrophic fires burned 1.28 million acres on the central coast in 1849 and 1851, and true old growth is scarce.

Environmentalists say the Siuslaw provides vital habitat not only for murrelets but also for ambattled coho salmon and steelhead. They fear the salvage rider could undercut the president's forest plan.

"The environmental community is looking closely at what the rider

is doing to government's ability to implement that forest plan," said Truse of the Sierra Club Legal Defense Fund. "We are concerned it has pulled the rug out from under that plan."



Maria Cino
Executive Director

CANDIDATE ALERT
MAY 17, 1996

**TO: HOUSE REPUBLICAN CANDIDATES
STATE REPUBLICAN PARTIES**

FROM: BILL PAXON

**RE: REPUBLICAN'S STATEMENT OF ENVIRONMENTAL
PRINCIPLES**

Attached is the Republican's Statement of Environmental Principles, developed and distributed this week by The Speaker's Task Force on the Environment and ratified by the House Republican Conference.

The Republican goal is simple: We must replace the outdated approaches of the past with common-sense, flexible and effective approaches that build on consensus, private property ownership, free enterprise, local control, sound scientific evidence and the latest technology.

Ever since Republicans swept Democrats out of power in 1994, there has been a concerted effort by the Clinton-Gore-Babbitt-Browner operation to blatantly and willfully lie about the Republican record on the environment. These lies have been given momentum by the liberal-leaning environmental lobby who have an aggressive strategy to distort the Republican agenda at every turn. As Mark Twain once said, "A lie can make its way half-way around the world before the truth can get its boots on."

Republicans should be very proud of our legislative accomplishments on the environment and our unified and continued pursuit of a cleaner, safer and healthier environment for all Americans. You can use your candidacy as a vehicle for addressing our country's environmental challenges head-on.

Suggested Activities:

- Hold a press conference and issue a press release on the importance of a cleaner, safer, healthier environment for future generations. Ask families and children to appear with you at your press conference. Remember, Republicans are saving the environment for them.

(More)

Republican's Statement of Environmental Principles/Page 2

- Call local newspaper editors and talk radio hosts. Offer to discuss with them why this new approach to a cleaner, safer and healthier environment is so important and how this Republican Congress is truly committed to replacing the outdated approaches of the past.
- Offer to speak with small business coalitions, private property owners, local officials, as well as environmental groups. Write a column in their local newsletter focusing on this new approach for the 21st Century.
- Host an environmental clean-up at a visible site and invite the press to attend – clean up debris at a river that has sustained flood damage, or pick up bottles and cans at a local park.
- Visit a local factory that has instituted new clean-up procedures, or visit a local high-tech company that is on the cutting edge of environmental technology. Ask to speak to the employees during lunch and invite the press to attend.
- Designate a local environmental hero, perhaps a student in a local high school who has instituted a recycling program, or a local hardware store that will dispose of environmentally hazardous material free-of-charge.
- Organize a letters to the editor program. Many newspaper readers turn to the letters section as a reliable source of opinion and commentary – especially if the writer is someone of local prominence like a former mayor or civic leader.

FOR ADDITIONAL INFORMATION AND TALKING POINTS, PLEASE CONTACT THE COMMUNICATIONS DIVISION AT (202) 479-7070.

Attachment

A NEW ENVIRONMENTALISM

A Cleaner, Safer, Healthier Environment

*Vision Statement and Principles
as developed by
The Speaker's Task Force on the Environment
and ratified by the House Republican Conference*

The goal of Republican environmental policy is to create a cleaner, safer, healthier environment for all Americans and to pass on to our children and grandchildren a better environment than we have today. To achieve that goal, we must move beyond the outdated approaches of the past. We will offer common sense, flexible and effective approaches that build on consensus, private property ownership, free enterprise, local control, sound scientific evidence and the latest technology.

We base our views on the following principles:

1. Americans should be assured that their air and water is clean and safe, that they have access to outdoor public recreation areas, and that our historic and wilderness areas will be protected.
2. Regulations should improve the environment by setting common sense standards without dictating the precise technologies for meeting those standards. The development and use of innovative technologies should be encouraged.
3. Environmental decisions should be based on the most advanced, sound scientific evidence. Research to foster solutions to environmental problems should be encouraged.
4. Federal policy should, where appropriate, be based on incentives for individuals, state and local governments, and businesses to protect the environment, rather than setting down inflexible laws.
5. To ensure better environmental protection, states and localities should play a greater role in setting and enforcing environmental standards for their communities. "One size fits all" approaches fail to meet our environmental goals because needs vary from region to region.
6. Private property owners should be assured greater certainty regarding the use of their property. They should also be assured due process to challenge any adverse decisions and when their property rights are in question.
7. Environmental decisions should be consensus-based, made in consultation with the people whose homes, businesses and communities are directly affected. Our focus should be on accomplishing environmental goals in a cooperative manner, rather than through wasteful litigation.

EXECUTIVE OFFICE OF THE PRESIDENT

09-Jun-1996 08:00pm

TO: (See Below)

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: Meeting Agenda

This week's forest interagency/EOP meeting will be held as usual at 2:00 pm in the CEQ conference room at 722 Jackson Place, N.W. Tom Jensen will be chairing the meeting.

Agenda:

1. Current issues
2. Litigation report
3. Murrelet surveys
4. Salvage sales
 - a. Secretarial directive
 - b. Interagency salvage program review
5. Other business

Distribution:

TO: Thomas C. Jensen
TO: FAX (9-720-4732, Jim Lyons)
TO: FAX (9-482-6318, Doug Hall)
TO: Kathleen A. McGinty
TO: Ron Cogswell
TO: Mark A. Weatherly
TO: Christine L. Nolin
TO: Elena Kagan
TO: Martha Foley
TO: Kris Balderston
TO: Jennifer M. O'Connor
TO: Remote Addressee
TO: FAX (94821041, Bob Ziobro)

Timber meeting 6-11-96

Nancy T. 1. B.M. Weyerhaeuser 7m old growth

KI sale

They want to turn it in -

for new growth in

OK?

bidding credit

more z'able?

answer by end of June -

MS: say yes - figure out a way legally defensible

if challenged - so, low

2. Hilley said back away from Forest Health

Caught us by surprise.

Much progress being made w/ Craig, have this new order.

3. Litigation Report

Only new - notified of in Gabon (ED-Wal) - That

5th Cir has denied our ^{US} hearing

Discussion re law out on Fed lands -

Funding for local/sheriffs etc? (being demanded)

4. Mammoth survey

Cost costs as King costs? Grey - no legal authority.

What's being surveyed?

5. Salvage sales

End Day - USDA pledge

In process of documenting directive

goal - announce rec'd initiative by end of wk.

But this will
be permanent -
even after rule
expires.

Nancy J: just
say for
duration of act?

BLM/FS met - discussed ways of

narrowing def of "salvage" -

incorp. This into directive.

What of trees falling w/in stat def

That doesn't fall w/in our def

End of day - internal USDA doc -

available for review

Once new directive is in place, what does that
do to salvage review?

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

05-Jun-1996 09:12pm

TO: Martha Foley

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: rehrg. petition re geographic scope

Martha - Katie mentioned to me your conversation earlier today about not filing a petition for rehearing for the geographic scope (sales versus area) decision. As you know, none of the agencies and none of the enviros recommended fighting this further.

One of the important reasons there's not a lot of interest in continuing to fight this is that virtually all of the sales went out the door this past winter when we lost the motion for stay. There are arguably one or two sales that could be caught up if we lose the murrelet or previously enjoined sale decisions and some of those sales are in the broader area, but not very much volume.

I can assure you, however, that any lack of feverent attention or interest in fighting this on the part of the enviros will be more than compensated by the reaction regarding the murrelet sale decision. I keep having to assure people on an almost daily basis that the reason we haven't appealed or cancelled contracts or whatever for these sales is that WE ARE STILL WAITING FOR THE DECISION. There are lots of stories and discussions about the situation turning really nasty if the murrelet trees start being logged. But the other issue - geographic sales - is considered past history by now.

Hope this helps w/context.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

05-Jun-1996 11:07am

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: RE: Briefing on Sierra Nevada Ecosystem Project

The meeting is in the first floor conference room in the CEQ townhouse at 722 Jackson Place.

My own view is that SNEP is an opportunity to begin anew in addressing forestry issues in California. At least from a green perspective, the Forest Service has been going off-track in offering sales that even consensus industry/enviro groups said shouldn't go forward. It was about to go off-track big time last week by dramatically changing the guidelines to protect the Calif. spotted owl and increase harvest throughout the Sierra Nevada. USDA held that up using this report as the rationale. However, as of today, the Forest Service still plans, as of now, the release of around 200 salvage sales this summer that will be extremely controversial with greens in Calif.

From a different perspective, there obviously are serious concerns about fire in California and real questions in peoples' minds about the relationship between salvage sales and fires. As I understand it, the SNEP report will address that issue and generally suggest that prescribed burns and thinnings are better ways to control fires than salvage sales.

SNEP's release will provide an opportunity to say we just got the most comprehensive scientific study of these issues in California ever delivered to us - we are going to take a SERIOUS look at the implications of this report and what it means for our forestry practices in California. But we want to stop short of making specific committments.

Distribution:

TO: Kris Balderston

CC: Jennifer Palmieri

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

04-Jun-1996 07:59pm

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: Briefing on Sierra Nevada Ecosystem Project

There will be a briefing this coming Friday, June 7th, at 4:30 p.m. in the CEQ conference room on the Sierra Nevada Ecosystem Project, which is scheduled to be released publicly the following Monday, June 10th, in California.

The Sierra Nevada Ecosystem Project was mandated by Congress in 1993 to conduct a comprehensive scientific review of the remaining old growth in the national forests in the Sierra Nevada, and to provide for a study of the entire Sierra Nevada ecosystem by an independent panel of scientists. There will be considerable attention paid to it in California and in the press.

The briefing team consists of the Chair of the Steering Committee who conducted the report (from the U. of California), the science team leader and a third scientist on the team. They plan to brief the Congressional delegation in the morning and Secretary Glickman and Babbitt in the early afternoon.

If you want to be briefed on this but can't make this session or if you want further opportunity to discuss the report, there will be a second session in Katie's office around June 13-14th with Jerry Franklin, of FEMAT fame, and Norm Johnson - two other scientists of note who worked on this. We'll let you know when that is scheduled. However, those of you who want immediate information about the scope and general thrust of the report may want to come to the Friday afternoon briefing.

Distribution:

TO: Jennifer Palmieri
TO: Martha Foley
TO: T J Glauthier
TO: Barbara C. Chow
TO: Kris Balderston

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	From Kathleen McGinty re: timber [partial] (1 page)	06/04/1996	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
OA/Box Number: 8247

FOLDER TITLE:

Timber - memos, emails, etc. [1]

2009-1006-F
ke686

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

04-Jun-1996 06:15pm

TO: (See Below)

FROM: Kathleen A. McGinty
 Council on Environmental Quality

SUBJECT: timber

just have to say that i believe usda's presentation was absolutely unacceptable. they obviously have no idea of what their agency is doing. they have no idea of the likely impact of what they are proposing here. substantively and politically they are leading us in a completely unknown and uninformed direction.

unless a miracle happens over nite, and they miraculously get on top of their program, i have to say that i would be very reluctant to act on their proposal. this of course leaves us vulneralbe on thursday and increásingly vulnerable in key states for continued and prolonged periods of time. but, maybe better the devil we know than the devil we don't.

i don't want to write off the possibility that we will get something acceptable here to say on thursday. but if we do, it will mean that we all will spend untold hours trying to put this into shape.

that to me is dangerous and unacceptable--no matter how hard we try we can not understand the program as we should in order responsibly to be making these calls. and, in any event, even if we do put out a nice statement of policy, there is no other way to ensure that it is carried out than for secy glickman to take the reigns and make it happen.)

to me, the bottom line is that the leadership of the agency MUST get this program under control. it is being ignored to the president's significant detriment; our entreaties have fallen on deaf ears.

P5

[001]

Distribution:

12
13
14

Name	Date
<i>Peter Rundle</i>	<i>9/9/99</i>

counsel

CLINTON LIBRARY PHOTOCOPY

DRAFT

MEMORANDUM FROM THE SECRETARY

TO: Jack Ward Thomas, Chief
Forest Service

SUBJECT: Salvage Program Review

Special
review

While I understand the need to deal with forest health and fire related problems in the National Forest System, I do not want the FS authorizing the harvesting of trees that ought not be in the salvage program. Accordingly, I intend to ensure that the sales the FS offers under the salvage program rise to a standard equal to the unique legal protections afforded to them by this act.

The Forest Service (FS), with concurrence from the under secretary and my office, should identify an interdisciplinary team to continue supporting the Interagency Salvage Program Review. Until we have had the opportunity to analyze the review and, as appropriate, implement its recommendations, the FS should hold in abeyance salvage sales which fall into these categories:

- 1) sales that are substantially comprised of living or "green" trees; ?
- 2) sales which had been prepared, in whole or in part, as green sales prior or subsequent to enactment of P.L. 104-19; and
- 3) sales in inventoried roadless areas.

Notwithstanding the above, these sales may move forward if the FS:

- shuf*
- 1) documents clearly and convincingly the rationale for offering the sale under the terms of the salvage program; and
 - 2) documents that interested parties have reviewed, commented on, and substantially concurred with the sale.

FS implementation and compliance with this directive and participation in the interagency review will be standing agenda items for our weekly meetings.

Timber mtg - Katie's office 6-4-96

Suspend those sales in salvage program that are -
1. green sales - what's substantial?
2. sales in roadless areas

Not sure how many. 1) not advertised + not awarded
Prospective only - can 2) be used but not awarded
2) any liability?
3) K signed.

KM-Pub process even if sales
don't meet these 3 categories?
GF - could have

Support may were awarded

Why don't we suspend / cancel

Can we get into claims fund?

Is there a reimbursement req?

What is left -
which category?
MT then?
most fine?
most not?
etc

Ok
memo

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

04-Jun-1996 08:58am

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: Revised timber meeting agenda

Please disregard agenda received last night, and note addition of review of REO memorandum on new information to agenda. Meeting will be held today at 2:00 p.m. in the CEQ conference room.

1. Current issues
2. Litigation report
3. Review of REO memorandum on analysis of effects of timber rider sales (see package distributed at last meeting)
4. Forest Service direction for k(1) and k(3) alternataive timber
5. Marbled murrelet surveys
6. Interagency salvage sale review
7. Other business

Distribution:

TO: Thomas C. Jensen
TO: FAX (9-720-4732, Jim Lyons)
TO: FAX (9-482-6318, Doug Hall)
TO: Kathleen A. McGinty
TO: Ron Cogswell
TO: Mark A. Weatherly
TO: Christine L. Nolin
TO: Elena Kagan
TO: Martha Foley
TO: Kris Balderston
TO: Jennifer M. O'Connor
TO: Remote Addressee
TO: FAX (94821041, Bob Ziobro)
TO: Remote Addressee
TO: Remote Addressee
TO: FAX (92191792, Kris Clark)

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

29-May-1996 06:59pm

TO: (See Below)

FROM: T J Glauthier
 Office of Mgmt and Budget, NRES

SUBJECT: RE: Snow Basin legislation

Welcome back, Martha! I hope you got enough sun for all of us over the weekend.

On snow basin (to switch weather venues), I think we would really have a hard time holding the bill hostage over this issue. I don't know if anyone else has a different view, but I think this is close to final passage and not about to be changed further. And I think we are going to want to sign it.

Is there anything so horrible here that we should not take this position?

Distribution:

TO: Martha Foley

CC: Thomas C. Jensen
CC: Kathleen A. McGinty
CC: Jennifer M. O'Connor
CC: Elena Kagan
CC: Shelley N. Fidler
CC: Dinah Bear
CC: Ron Cogswell
CC: Mark A. Weatherly
CC: Christine L. Nolin
CC: Ruth D. Saunders
CC: Alecia Ward

Name	Date
<i>Peter Sundlet</i>	<i>9/9/99</i>

Counsel

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

29-May-1996 07:11pm

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: RE: Snow Basin legislation

Well, yes (maybe). I have gotten loads of calls today indicating that Murkowski/Young may introduce an amendment to the bill that would transfer large chunks of the Tongass to native corporations which would then immediately harvest all of the trees. I don't know the details yet, but clearly there is a high level of concern from both Interior and enviros.

Also, there may be an attempt to legislatively extend the KPC contract in the context of this bill. OMB just circulated and cleared testimony last Friday - which was to be given in Alaska yesterday and today by the Forest Service - that carried the Administration's policy that there would be NO decision on KPC contract extension (which runs out in the year 2004) until the T-LMP process is completed later this year.

From the perspective of having been through the Tongass rider wars and the Administration getting great kudos for winning, I think that if either of these provisions make it on to the bill - we would have to very seriously reconsider signing the bill.

Distribution:

TO: T J Glauthier

CC: Martha Foley
CC: Thomas C. Jensen
CC: Kathleen A. McGinty
CC: Jennifer M. O'Connor
CC: Elena Kagan
CC: Shelley N. Fidler
CC: Ron Cogswell
CC: Mark A. Weatherly
CC: Christine L. Nolin
CC: Ruth D. Saunders
CC: Alecia Ward

Name	Date
<i>Peter Cundlet</i>	<i>9/9/19</i>

Counsel

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

29-May-1996 07:13pm

TO: (See Below)

FROM: Martha Foley
 Office of the Chief of Staff

SUBJECT: RE: Snow Basin legislation

Could be. I just am somewhat rusty on this (could be all the rain in DC) so I thought it would be helpful to meet briefly. But if everyone else is like-minded, it may not be necessary...

Distribution:

TO: T J Glauthier

CC: Thomas C. Jensen
CC: Kathleen A. McGinty
CC: Jennifer M. O'Connor
CC: Elena Kagan
CC: Shelley N. Fidler
CC: Dinah Bear
CC: Ron Cogswell
CC: Mark A. Weatherly
CC: Christine L. Nolin
CC: Ruth D. Saunders
CC: Alecia Ward

Name	Date
<i>Peter Rundlet</i>	<i>9/9/19</i>

Counsel

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

29-May-1996 07:14pm

TO: (See Below)

FROM: Martha Foley
 Office of the Chief of Staff

SUBJECT: RE: Snow Basin legislation

On behalf of all of us, may I say "Aaaarrrggghhh."

Thank you.

Distribution:

TO: Dinah Bear

CC: T J Glauthier
CC: Thomas C. Jensen
CC: Kathleen A. McGinty
CC: Jennifer M. O'Connor
CC: Elena Kagan
CC: Shelley N. Fidler
CC: Ron Cogswell
CC: Mark A. Weatherly
CC: Christine L. Nolin
CC: Ruth D. Saunders
CC: Alecia Ward

Name	Date
<i>Pete, Ruppel</i>	<i>9/9/99</i>

Counsel

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

29-May-1996 08:01pm

TO: (See Below)

FROM: T J Glauthier
 Office of Mgmt and Budget, NRES

SUBJECT: RE: Snow Basin legislation

A meeting may indeed be warranted if there are other changes being made to this bill, and issues are being tacked on like Tongass!

I'll try to get a better read on the bill tomorrow and send around something to help us decide one way or the other.

Distribution:

TO: Martha Foley

CC: Thomas C. Jensen
CC: Kathleen A. McGinty
CC: Jennifer M. O'Connor
CC: Elena Kagan
CC: Shelley N. Fidler
CC: Dinah Bear
CC: Ron Cogswell
CC: Mark A. Weatherly
CC: Christine L. Nolin
CC: Ruth D. Saunders
CC: Alecia Ward

Name	Date
<i>Peter Rindlet</i>	<i>9/9/99</i>

Counsel

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

30-May-1996 07:59am

TO: (See Below)

FROM: T J Glauthier
 Office of Mgmt and Budget, NRES

SUBJECT: Good news! Tongass settlement approved (Greenwire)

TONGASS: JUDGE OKs DEAL TO FREE SOME HELD-UP TIMBER SALES

US District Court Judge John Sedwick on 5/22 approved a deal that will free up about one-third of the Tongass National Forest timber sales that were tied up by a lawsuit first filed two years ago. The Alaska Wilderness Recreation and Tourism Association had sued in an effort to secure new environmental studies before the US Forest Service could resell timber that had been pledged to now-defunct pulp and saw mills in Sitka and Wrangell.

Under the deal struck between the feds, enviros and tourism groups, two-thirds of those sales must go through enviro reviews before they can be resold. The accord also ensures that further enviro reviews of some sales will not have to wait if the US Forest Service is slow in completing its Tongass management plan.

The federal government says the deal means some of the timber will be sold and harvested this year.

Tom Waldo of the Sierra Club Legal Defense Fund, which represented enviros: "We hope the formal decision approving the agreement will pave the way for a new way of managing the Tongass" (Dirk Miller, AP/ANCHORAGE DAILY NEWS, 5/24).

(c) The American Political Network, Inc.

Distribution:

TO: Martha Foley
TO: Kathleen A. McGinty
TO: Elena Kagan
TO: Barbara C. Chow
TO: Dinah Bear
TO: Mark A. Weatherly
TO: Christine L. Nolin
TO: Ruth D. Saunders
TO: Alecia Ward

Name	Date
<i>Peter Rindlet</i>	<i>9/9/99</i>

Counsel

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

29-May-1996 08:16am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: RE: Snow Basin legislation

TJ,

I know that Katie and Martha were intending to speak in the last day or so on the Snow Basin issue, so they may have reached an understanding on how we should proceed.

If the topic is still open, I'd note my basic agreement with the options you described in your note.

Unless we are ready to significantly increase the confrontation level on the parks/public lands bill by objecting more strongly to Snow Basin, then our only choice is to use the authorities in the statute to our best advantage.

I believe that the Olympic Committee folks, and the recipient of the land (whom I happen to know from a prior stop on life's railway) will be inclined to accomodate the Administration, up to a point. They don't want adverse publicity now or in the future, but they're in a hurry and they are, after all, business people.

If we follow this route, I think it would be advisable to make sure that the President is on record expressing discomfort with the provision and calling on the Olympic organizers to take the high road.

Tom

Distribution:

TO: T J Glauthier

CC: Kathleen A. McGinty
CC: Martha Foley

Name	Date
<i>Peter Lundlet</i>	<i>9/9/99</i>

Consent

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

23-May-1996 03:40pm

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: Salvage sales under the timber rider

Katie is out of town, but wanted me to give all of you a heads-up about action that USDA is considering taking to address public concerns over the salvage side of the rider.

Their idea is that the Secretary would direct the Forest Service to engage in an internal review of salvage sales, focusing on the kinds of complaints they're hearing from the public, and while that review was on-going, salvage sales in 3 categories would be suspended: a) sales that had been previously prepared as green sales, but were being prepared and advertised as salvage sales under the rider; b) sales that the Forest Service had decided not to proceed with prior to the rider due to environmental concerns, but were going forward w/under the rider; c) sales in inventoried roadless areas.

After this review was complete, the recommendations would go to an interagency team that (meanwhile) will be reviewing implementation of the interagency MOA signed in August for salvage sales. The interagency team would review the recommendations, make suggestions - and then the recommendations would go to the Secretary.

Justice and USDA lawyers are working w/the Secretary's office on this, and BLM's Chief of Staff is working to see whether BLM has sales that might fall under the potential suspension categories, but other than that, this proposal is being kept close hold for now. Jack Ward Thomas has been out of town; he's been called back to discuss this tomorrow and then USDA will decide how and when to proceed. Before anything was announced, USDA would anticipate briefing Hill Democrats.

Distribution:

TO: Ron Klain
TO: Martha Foley
TO: Jennifer M. O'Connor
TO: T J Glauthier

Name	Date
<i>Peter Kundlet</i>	<i>9/9/99</i>

Counsel

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

23-May-1996 10:11am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: RE: Snow Basin legislation

Martha,

Jim Lyons has been handling the Snow Basin issue for USDA and is the reigning expert. Would you find it useful if I had him come over to provide a briefing on the policy issues they see with the bill -- which are significant themselves, and add to the problems created by the sufficiency language?

Tom

Distribution:

TO: Martha Foley

CC: Kathleen A. McGinty
 T J Glauthier
 Jennifer M. O'Connor
 Elena Kagan
 Shelley N. Fidler
 Dinah Bear
 Ron Cogswell

Name	Date
<i>Peter Kundlet</i>	<i>9/9/99</i>

Counsel

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

23-May-1996 02:07pm

TO: (See Below)

FROM: T J Glauthier
 Office of Mgmt and Budget, NRES

SUBJECT: RE: Snow Basin legislation

I think we do need to sit down and discuss this around a table. I haven't been involved for a couple of months, but I'm sure it's still a tough call--exactly what compliance with normal environmental procedures we will insist on while also ensuring that this will not jeopardize the schedule for the Olympics.

I will be happy to attend a session and to get my staff involved again, if they haven't already been working with Tom and USDA recently.

Distribution:

TO: Martha Foley

CC: Thomas C. Jensen
CC: Kathleen A. McGinty
CC: Jennifer M. O'Connor
CC: Elena Kagan
CC: Shelley N. Fidler
CC: Dinah Bear
CC: Ron Cogswell

Name	Date
<i>Peter Rundlet</i>	<i>9/9/99</i>

Council

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

27-May-1996 09:22am

TO: (See Below)

FROM: T J Glauthier
 Office of Mgmt and Budget, NRES

SUBJECT: RE: Snow Basin legislation

Tom, it's been several weeks since we've talked about Snow Basin, but from the emails and from the text that my staff has provided (Chris Nolin), it seems that the bill still has several problems but that it would be very difficult at this point to raise a "1-year-line" veto stand on the bill.

I say that because the bill has a number of other provisions we want, especially the Presidio legislation, and because I don't believe we've ever taken a strong stand on the issues in the Snow Basin language. While you note that the USDA report on the bill says we "strongly oppose" some of the Snow Basin provisions, my notes indicate that we never did send the SAP that we developed on these points in April.

Do you have any reason to believe we can get any additional changes?

If not, can we significantly mute the problems of sufficiency language by putting some real effort into the provision that allows the Secretary of Ag to impose "reasonable conditions to protect National Forest System Resources", including any modification that "is necessary to protect health and safety"? As I read it, we have 120 days after receipt of the application to specify these.

Distribution:

TO: Thomas C. Jensen

CC: Kathleen A. McGinty
 Martha Foley
 Jennifer M. O'Connor
 Elena Kagan

Name	Date
<i>Peter Rundle</i>	<i>9/9/99</i>

Counsel

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

27-May-1996 11:16am

TO: (See Below)

FROM: T J Glauthier
 Office of Mgmt and Budget, NRES

SUBJECT: Section 318 Timber Sales Replacement Negotiations

Should we soon begin to engage in negotiations regarding replacement of 2001(k)(3) timber sales?

My logic is that we've needed to focus on the (k)(1) sales until now, because those have to be completely as quickly as possible to save the old growth trees. And we've needed to establish that we actually could succeed in completing some replacement negotiations. In this coming week, we should see if we are going to be able to do that beyond the First and Last sale.

Eventually, we know we are going to want to offer replacement timber for the (k)(3) sales. The effect of the court decision will make some difference in terms of whether the replacement volume absolutely has to meet standards and guidelines, and will affect the required timing, but I'm not sure it prevents us from starting the process now with those contract holders who are willing to proceed.

We've already said that our goal is for all replacement sales to meet standards and guidelines, so does it matter whether it's (k)(1) or (k)(3)? And while we would have more time under our construction of the (k)(3) language, wouldn't we get a positive reaction if we show that we're trying to work as expeditiously as possible? Any agreement with a willing contract holder could apply to any time period at all, as long as it's in full compliance.

I don't want to overload the field personnel, but to the extent they can begin to negotiate on some of the (k)(3) sales, I think it would be to our strong advantage to start right away.

Distribution:

TO: Ruth D. Saunders

TO: Christine L. Nolin
TO: Dinah Bear

CC: Kathleen A. McGinty
CC: Martha Foley
CC: Elena Kagan
CC: Ron Cogswell
CC: Mark A. Weatherly
CC: Alecia Ward

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

27-May-1996 11:36am

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: RE: Section 318 Timber Sales Replacement Negotiations

Yes, you're right. In particular, the agencies should be focusing on those k(3) sales which are no longer subject to challenge - i.e., Judge Hogan has ruled that there are birds "known to be nesting" in them and the industry isn't challenging them.

BLM has started offering replacement volume for those sales, but the Forest Service has not done so. Industry is now in court challenging the Forest Service's failure to do so.

Distribution:

TO: T J Glauthier

CC: Ruth D. Saunders
CC: Christine L. Nolin
CC: Kathleen A. McGinty
CC: Martha Foley
CC: Elena Kagan
CC: Ron Cogswell
CC: Mark A. Weatherly
CC: Alecia Ward

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

23-May-1996 09:32am

TO: (See Below)

FROM: Martha Foley
 Office of the Chief of Staff

SUBJECT: RE: Snow Basin legislation

Obviously, this is complicated and sensitive. We should probably discuss. "Strongly oppose" will be read as we will sign the bill.

Distribution:

TO: Thomas C. Jensen

CC: Kathleen A. McGinty
 T J Glauthier
 Jennifer M. O'Connor
 Elena Kagan
 Shelley N. Fidler
 Dinah Bear
 Ron Cogswell

Name	Date
<i>Peter Rindlet</i>	<i>9/9/99</i>

Counsel

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

22-May-1996 05:02pm

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Snow Basin legislation

The House and Senate are scheduled to begin conference tomorrow on their respective versions of omnibus parks and public lands bills. The Snow Basin land exchange is part of the package, and that provision still includes the broad override of environmental law and numerous other features that severely hamper USDA's land management authority.

You'll recall that the Snow Basin bill involves a transfer of some USFS land near Ogden, Utah, to a private owner to assist in development of a Salt Lake City winter olympic venue.

The USDA report on the bill notes that the Administrations "strongly opposes" the Snow Basin provision.

I have not been lobbied hard by any of the environmental groups on this issue, and I really don't know whether they will get aroused as the conference proceeds. This is a very local issue, but like all overrides of federal law has national implications. I am concerned that we're facing another "sufficiency" situation which seems somewhat innocuous, but may come back to haunt us.

As veterans of the sufficiency battles, do you have an opinion on whether we should take a harder line?

Shall we discuss?

Distribution:

TO: Kathleen A. McGinty
TO: Martha Foley
TO: T J Glauthier
TO: Jennifer M. O'Connor
TO: Elena Kagan

CC: Shelley N. Fidler
CC: Dinah Bear

Name	Date
<i>Peter Rindlet</i>	<i>9/9/99</i>

Counsel

Timber interagency mtg 5-21-96

LITIGATION

**

1. RM Act scope
SCLUB not pursuing rehearing en banc

en banc petition?

2 who for Friday.

SC needs recs from ag's.

2. Replacement timber
filing today.

3. Jackson (DE) tomorrow -
status conf on challenges to Forest Plan (3)

SALVAGE

Interagency working group considering how to review salvage program
Plan to do obj. review - compliance + effectiveness of MOA

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

22-May-1996 12:30pm

TO: Elena Kagan

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: Remaining forest plan cases

Good news - Judge Jackson dismissed all 3 remaining cases
challenging the Forest Plan this am!!!!!!

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

20-May-1996 02:56pm

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: Meeting Notice and Agenda

The EOP/Agency forest working group will meet this coming Tuesday afternoon, May 21, 1996, at 2:00 p.m. in the CEQ conference room (722 Jackson Place)..

The agenda will include the following:

1. Recent events update
 - a. Forest health
2. Litigation report
3. Taking a "hard look" at salvage: objectives of exercise
4. Alternative timber sales
 - a. Administrative appeals process for alternative sales (Forest Service/BLM)

Distribution:

TO: Thomas C. Jensen
TO: FAX (9-720-4732, Jim Lyons)
TO: FAX (9-482-6318, Doug Hall)
TO: Kathleen A. McGinty
TO: Ron Cogswell
TO: Mark A. Weatherly
TO: Christine L. Nolin
TO: Elena Kagan
TO: Martha Foley
TO: Kris Balderston
TO: Jennifer M. O'Connor
TO: Remote Addressee
TO: FAX (94821041, Bob Ziobro)
TO: Remote Addressee
TO: Remote Addressee



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

May 14, 1996

MEMORANDUM FOR LEON PANETTA

FROM: KATHLEEN A. MCGINTY

CC: HAROLD ICKES
RON KLAIN
JOHN EMERSON
MARTHA FOLEY
KITTY HIGGINS
T.J. GLAUTHIER
BARBARA CHOW
ELENA KAGAN

RE: MARBLED MURRELET CRITICAL HABITAT DESIGNATION

Tomorrow, the U.S. Fish and Wildlife Service (USFWS) will send to the Federal Register the final designation under the Endangered Species Act (ESA) of 3,883,400 acres of critical habitat for the marbled murrelet. As you all know too well by now, the marbled murrelet is a threatened seabird that breeds in old growth forests of the Pacific Northwest. It was listed as threatened under ESA in 1992, but at the time the USFWS didn't know enough about its behavior to designate critical habitat. A major effort was mounted to learn more about the bird's nesting habitat. That knowledge was incorporated into the President's Northwest Forest Plan. The USFWS published a proposed critical habitat designation in January of 1994 and issued a supplemental proposal in August of 1995. However, the designation did not go to the final stage because of the ESA moratorium and lack of funding.

Despite the Congressional action taken to prohibit final designation of critical habitat, a federal judge in Washington State directed the completion of this listing (she read the rider as excluding prior judicial orders). She ordered the USFWS to complete their final designation by May 15th - this Wednesday.

The critical habitat designation will include federal, state and private lands in Washington, Oregon and California. The designation is very specific to particular pieces of land that contain nesting habitat, as opposed to broad swaths of land.

Accordingly, the Department of the Interior (DOI) strongly believes that the amount of controversy that this kind of rule might normally generate may be muted considerably by the work that has already been done to protect the species. For example, no further restrictions are anticipated on timber harvest on federal lands, because of the President's Northwest Forest Plan already takes the murrelets' needs into account. Similarly, all Habitat

Conservation Plans - the touchstone of our ESA reinvention policy on private lands - are exempt from the critical habitat designation. In Washington State and in Oregon, private landowners, including major timber companies, have cooperated with the USFWS and, I have been assured, have not voiced serious objections to the designation. In California, the Pacific Lumber Co. is expected to object strenuously to the listing. But, this is Charles Hurwitz's company and part of his reaction will be designed to increase his leverage in our on-going dialogue with him (confidential!) regarding the Headwaters Forests. (In fact, Hurwitz has just filed a lawsuit against us on this matter asking for approximately \$166 million).

As to the rest of California, again I am assured that all is well. In fact, DOI reports that some private landowners around Santa Cruz actually asked that more of their land be included in the designation!

In terms of Congressional interest, Congressman Frank Riggs (R-CA) did write a letter to USFWS urging that the primary burden of protecting murrelets be put on federal lands. Congressman Gary Condit (D-CA) apparently expressed a similar view, but neither have asked the USFWS to refrain from the final designation. The USFWS did, in fact, reduce the final area by about 500,000 acres as a result of comments received on the proposal.

The USFWS economic analysis demonstrates few immediate and direct impacts on the economy - in large part because of the President's Northwest Forest Plan and our Habitat Conservation Plans have already taken the murrelets' needs into account.

One caveat: As you know, one of the most significant remaining legal battles under the timber rider is over the nesting habitat of the marbled murrelet. If we lose that case and therefore have to cut 14% of the birds' nesting habitat, the optimistic picture painted here would be subject to considerable change, and there likely would be significant negative impacts on the both the President's Northwest Forest Plan, future Habitat Conservation Plans, and private lands because of the need to set aside additional forest areas for the murrelet.

5-14-96 Timber mtg

NFRC memo - subic law applies to replacement timber.

Also says - protected until Dec 31 -

theory: They are Optic 9 sales, so (d) applies

Attaches F+L ag - didn't comply w/ env law.

But this is a K1 sale.

Klamath - denied transfer motion

waiting for Prejudice decision.

Salvage

giving # of complaints

Gady: like-ag why 9P

developing IA salvage review plan

generic review

also - review of partic sales complained of

Complaint: Too long a time frame -

prop will be over by time it's set to go

looks like 72 more.

|| investigation - or defense? ||

Next week - full discussion.

Need to reach consensus:

what are we doing + why?

next - structure

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

14-May-1996 09:22am

TO: Dinah Bear

FROM: Ruth D. Saunders
 Office of Mgmt and Budget, NRD

SUBJECT: RE: response to Senator Craig

Apparently Jim Lyons sent a follow-up memo to the Chief asking them to reevaluate the issue and draft a new response. Needless to say, I think they got the message that whatever they intend to send will need clearance! No timing was mentioned. I'll let you know if I see anything.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

13-May-1996 08:01pm

TO: Elena Kagan

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: RE: TIMBER

In response to your e-mail (a welcome break from my forray into the wonderful world of utiliy regulation):

1. Yes, so far JWT's response is our only response. The Lyons letter starting generating lots of comments about it being too wordy, etc., and I have the sense that someone made a decision not to do a follow-up substantive response. But that makes no sense, so hopefully I'm wrong. I need to follow up on this, or better yet, ask OMB to do so. I'll e-mail Ruth Saunders.
2. First and Last - yes, we traded. Somewhat better, not perfect. About to do the same thing on Abes Wren, and I suspect, any remaining units of Boulder Krab and Elk Fork. Those sales were treated as kind of a separate bundle of emergency situations for which alternative timber needed to be identified asap. Rest of the sales are awaiting final guidance yet to be issued from the FS.
3. What's going on with salvage? Come to tommorrow's meeting (if you can - or if not, I'll get back to you). You will note that the agenda message mechanism got switched to my machine and I got it out on Friday (I'm very, very proud of this - hey, gotta have something!). I did that in large part to give a heads-up to the agencies that we were going to have a serious talk about salvage (they'd had an early warning the week before).
4. Looking forward to the next version of our favorite brief.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

13-May-1996 05:31pm

TO: Dinah Bear

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: TIMBER

I had a long talk with Jennifer O'Connor today regarding where we were on timber. A few things came up that I didn't know or had forgotten the answers to. Specifically:

1. Is the very brief Jack Ward Thomas letter you sent me our only response to the liability letter? Why did we decide not to send the Lyons letter? Are we sending anything else?
2. What did we ever manage to do re the First and the Last sales. I can't believe I've forgotten this, but I think I have. My best recollection is that we provided alternative timber that wasn't all that much better than the original? Am I right?
3. What's going on on salvage? Jennifer showed me a letter from Ed Begley Jr complaining vehemently about the salvage program and urging its suspension; and also a cover memo from Katie to Leon(?) reacting sympathetically. Are we planning anything on this front?

Many, many thanks. You probably want to know about the brief. I know I've said this a lot of times by now, but I promise . . .tomorrow.

EXECUTIVE OFFICE OF THE PRESIDENT

14-May-1996 09:28am

TO: Jennifer M. O'Connor
FROM: Elena Kagan
Office of the Counsel
SUBJECT: timber

A couple of notes following up on our timber conversation:

1. We did provide alternative timber to the purchasers of the First and Last sales -- not perfect (maybe not even good), but better. We are about to do the same thing on a sale called Abes Wren, and then (probably) on the remaining units of Boulder Krab and Elk Fork. These sales were considered the absolute worst, and the Forest Service has identified alternative timber for them. The Forest Service has not identified alternative timber for other sales; as we discussed, everyone is awaiting this guidance.
2. On the Forest Service's liability letter, Jack Ward Thomas sent a very short note disclaiming the letter to Craig. Lyons wrote a longer response, but people (I'm not sure who) were dubious as to whether it struck the right tone. As a result, the Lyons letter did not go to the Hill. Dinah, for one, still thinks a longer letter, explaining our position, is necessary. I'll send you the Thomas and Lyons letters in case you don't have them.
3. On salvage: it is the main item on the agenda of today's 2:00 meeting. If you're not there, I'll send you a message when I get back.

derailed and ruptured near Alberton, MT, spewing more than 170,000 pounds of the "poisonous" gas into the air. Gov. Marc Racicot (R) declared an emergency in Missoula and Mineral counties to allow the National Guard and other state agencies to assist local efforts if needed.

Throughout the day, a "cloud of chlorine gas hovered" over the area, leading officials to close I-90, which runs near the derailment site. Missoula Rural Fire Dept. Chief Bill Reed late yesterday reported that the plume was stable and would not threaten neighboring communities, including Missoula, one of the MT's largest cities. The cause of the derailment is not known.

All 400 Alberton residents were evacuated and up to 91 were sent to area hospitals. Two were listed in critical condition. A spokeswoman for the train's operator, Montana Rail Link, said the company had paid for the accommodations of those evacuated (Len Iwanski, AP/mult., 4/12).

===== ENERGY AND NATURAL RESOURCES =====

*7 LOGGING: CRAIG CALLS FOR TIMBER SALE INVESTIGATION
 Sen. Larry Craig (R-ID) has asked the General Accounting Office to investigate "the mounting levels of actual or potential liability" being incurred by the federal government for voiding timber sale contracts for environmental reasons. Craig cited a 6/94 US Forest Service memo which stated that "an additional \$200 million may potentially be needed" in the 1996 budget for compensation of cancelled timber contracts (Craig release, 4/3).

Craig spokesman Bryan Wilkes: "You can't have the White House intervene and have the Forest Service continue to cancel the contracts without considering the financial implications."

Idaho Conservation League State Lands Director Mike Medberry said Craig's petition was "small-minded petty politics at its worst. ... [Craig] seems to forget these are public forests and wildlife habitat and water quality are legitimate issues" (Michael Wickline, Lewiston [ID] MORNING TRIBUNE, 4/10).

USFS officials said environmental laws have never prompted any timber sale cancellations in Idaho's Panhandle, Coleville, Clearwater or Nez Perce national forests, nor in any national forests in Montana. Craig said he expects a preliminary investigation from the GAO by this summer, and Forest Service spokesman Alan Polk said his agency would cooperate fully with an inquiry (Ken Olsen, Spokane SPOKESMAN-REVIEW, 4/11).

*8 SALMON: IDAHO RECOVERY PLAN EARNS UNPRECEDENTED SUPPORT

Offering "unprecedented unity on the issue," irrigators, enviros, fishing groups, state agencies and others are "lining up" behind a compromise plan offered in 2/96 by Idaho Gov. Phil Batt (R) to save Northwest salmon and steelhead trout. While the groups backing the plan are not unanimous about the details, they've put aside differences to work together.

Idaho officials are hoping that the support will give the state more of a voice in the debate over the fish with federal wildlife and hydropower agencies, "influential" Oregon and Washington industries and tribes with fishing rights.

Batt's plan calls for a "spread the risk" strategy for 1996 -- barging half of the fish around dams and leaving the other half in the river to be washed over dams by spilling water. Clearing its first hurdle, this strategy was "tentatively

LARRY E. CRAIG

U.S. SENATOR - ARIZONA
OFFICE: 205-3722

AGRICULTURE, NUTRITION
AND FORESTRY
ENERGY AND NATURAL
RESOURCES
SPECIAL COMMITTEE
ON AGING
JOINT ECONOMIC
COMMITTEE
SELECT COMMITTEE
ON ETHICS

United States Senate

WASHINGTON, DC 20510-1203

April 4, 1996

David Hessel
Director Timber Management
Forest Service - USDA
301 14th St. SW
Washington, DC 20250

Dear Dave:

In accordance with the attached April 3, 1996, letter to the GAO and my earlier December 4, 1995, request, please provide me with your most recent estimates of total funding required by the Forest Service to compensate timber sale contract holders under the terms of the contract for the government's modification or cancellation of contracts for environmental reasons.

In addition to compensation recognized as owed under the terms of the contract, please provide any estimates that you have compiled of additional damages that are being sought by purchasers.

I look forward to your prompt reply.

Sincerely,

LARRY E. CRAIG
United States Senator

APR 30 '96 01:26PM USDA FOREST SERVICE

P.2/3

United States
Department of
Agriculture

Forest
Service

Washington
Office

14th & Independence SW
P.O. Box 96090
Washington, DC 20090-6090

File Code: 2400

Date: April 26, 1996

Honorable Larry E. Craig
United States Senate
313 Senate Hart Office Building
Washington, DC 20510

Dear Senator Craig:

This is our reply to your April 4, 1996, letter concerning potential liability to the Government and funding necessary to compensate timber sale purchasers for contract modification, cancellation, and other litigation. We have gathered this information from our field units. These represent total dollars for claims and litigation filed by timber purchasers. These lawsuits and claims will be vigorously contested by the Government. However, we know that the Government will not prevail on some of these lawsuits. The following information, by Forest Service Regions, includes contract damages, litigation, and possible liability from actions that have been taken where a claim or suit has not been filed. It needs to be emphasized that these estimates are potential liabilities. They reflect demands for monetary damages from lawsuits and claims from timber sale purchasers. We have legal defenses for some of these lawsuits and claims and do not expect to pay the total amount. We anticipate these potential outlays may be spread over fiscal years 1996 to 1998, depending on the timeframes of litigation. Our best estimate is that about \$42 million will be needed in fiscal year 1996, with the additional adjudications coming over the next 2 to 5 years.

Region 1	\$250,000	
Region 2	\$4,173,000	
Region 3	\$10,275,000	(Estimated liability from Region 3 Silver v. Thomas litigation is \$2 million)
Region 4	0	
Region 5	\$36,495,000	
Region 6	\$182,500,000	(Estimated liability from 318 sales is \$106 million)
Region 8	\$300,000	
Region 9	0	
Region 10	\$1,405,187,000	(Includes the Alaska Pulp Corporation \$1 billion suit plus claims and lawsuits pertaining to implementation of the Tongass Timber Reform Act.)
Total	\$1,639,180,000	

APR 30 '96 01:27PM USDA FOREST SERVICE

P.3/3

Honorable Larry E. Craig

2

These estimates do not include additional claims that may result if the bull trout is declared to be a threatened or endangered species. Again, I want to emphasize that these amounts are not intended to represent the Forest Service's estimate of success. Indeed, all claims and cases will be aggressively defended.

Sincerely,

/s/JOAN COMANOR (for)
JACK WARD THOMAS
Chief



02 MAY 1996

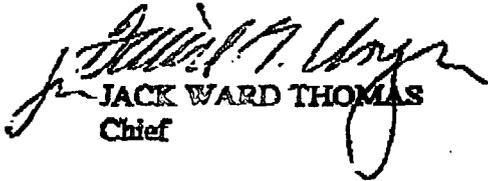
Honorable Larry E. Craig
United States Senate
313 Senate Hart Office Building
Washington, DC 20510

Dear Senator Craig:

I am writing to retract the letter sent to you by the Forest Service on April 26, 1996, concerning potential liability to the government and funding necessary to compensate timber sale purchasers for contract modification, cancellation, and other litigation.

We regret any misunderstanding that may have been created by these estimates.

Sincerely,


JACK WARD THOMAS
Chief



DRAFT -
NOT sent

Honorable Larry E. Craig
United States Senate
Washington, D.C. 20510-1203

Dear Senator Craig:

I am concerned with the response Deputy Chief Comanor provided to your April 4, 1996, request to Mr. David Hessel regarding estimates of funding "to compensate timber sale contract holders under the terms of the contract for the Government's modification or cancellation of contracts for environmental reasons."

First, the estimates contained in the April 26, 1996, response are unreliable due to the fact that they were not vetted through the Office of the General Counsel and the Department of Justice, which both deal with litigation and claims against the U.S. Department of Agriculture (USDA). Furthermore, the letter was not vetted through my office or the Office of the Secretary and, therefore, does not represent any official policy position of this Administration. In fact, this letter was signed by one of many deputy chiefs of the Forest Service who does not deal, at all, with timber contract issues or disputes. In fact, the Chief of the Forest Service, the Secretary, or I should have responded to your letter. Since the Chief is still on personal leave, I am taking this opportunity to clarify the April 26 response.

USDA must be very cautious when commenting on issues that are under litigation and must avoid speculation on claims which have not been, and may never be, filed against it. This policy is necessary to protect the integrity of the Department's position in court. Furthermore, speculating on the amount of possible claims could be used against the Department if a claim was actually ever filed in court.

Honorable Larry E. Craig

2

The estimates contained in the letter are highly speculative and somewhat misleading. To begin with, potential claims do not become liabilities of the United States until awards in Forest Service Contracting Officers' decisions or by courts are made and all appeal opportunities have expired. The estimates in the letter include amounts which have been filed as claims to Contracting Officers, amounts claimed in filed Contract Disputes Act cases and estimates of potential claims not yet filed with Contracting Officers or the courts. As the letter stated, the Department will defend itself vigorously in any claims case and, therefore, speculating on the outcome is inappropriate. The most misleading and erroneous aspect of the Hessel response is the fact that it included amounts for claims from other than "environmental reasons." For instance, the response included approximately \$1.4 billion in potential liability resulting from implementation of the Tongass Timber Reform Act and the effect on the Alaska Pulp Corporation's (APC) long-term timber sale contract. The Government's cancellation did not involve cancellation or modification for environmental reasons and, as such, inclusion of this estimate was a gross misstatement.

The estimate of liability from "Section 318 sales," stated as \$106 million, is unclear because we are only aware of claims pending in the Claims Court for about \$13 million. The potential for damages from "Section 318" sales is also affected by the 1995 Rescission Act, Section 2001(k), which provides for release or alternative timber for the "Section 318 sales." The "Section 318 sales" are the subject of pending litigation, so we cannot speculate as to potential liability.

Honorable Larry E. Craig

3

For the other estimates in the response, I am still in the process of discerning the actual claims from the speculative estimates given to you. Moreover, USDA will assist the General Accounting Office as it works on a response to your April 3, 1996, letter to the Comptroller General regarding potential liability "for unilaterally modifying, canceling, suspending, or otherwise terminating, delaying, or breaching timber sale contracts." We will be operating under the general rule that we must not compromise matters involving potential liability of the United States that are in litigation or about to be litigated.

I am sure you share my general concern of avoiding the dissemination of speculative or inaccurate information that could ultimately be used against the Federal Government in litigation and cost taxpayers' money.

Sincerely,

James R. Lyons
Under Secretary for
Natural Resources and Environment

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-May-1996 01:22pm

TO: (See Below)

FROM: Kathleen A. McGinty
 Council on Environmental Quality

SUBJECT: catching up on usfs alt timber memo

out of the office yesterday. catching up on some of the email --

as to the question concerning the origin and purpose of this memo, it is the overdue response to the request leon and harold made of the secretary several weeks ago to put together a plan that clearly demonstrates that we have a strong handle on BOTH the exact bad sales that we have and that are coming down the pike AND the alternative timber we are prepared to offer.

from the traffic and from my own brief review of the memo it seems to fall far short of that.

as to whether this is supposed to be public, the answer is that this document itself would not necessarily be public. BUT it is supposed to have the substantive guts that WOULD be public. both leon and the vp have asked the secy to get his tail out to the region asap and publicize our strategy. i suspect that no such effort is likely in the works.

Distribution:

TO: Martha Foley
TO: T J Glauthier
TO: Jennifer M. O'Connor
TO: Elena Kagan
TO: Shelley N. Fidler
TO: Barbara C. Chow
TO: Dinah Bear

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-May-1996 02:13pm

TO: (See Below)

FROM: Martha Foley
 Office of the Chief of Staff

SUBJECT: RE: catching up on usfs alt timber memo

I think that an operational plan would be more useful than a memo
-- I think they are caught up in the memo format and are
forgetting the original purpose of this drill.

Distribution:

TO: Kathleen A. McGinty

CC: T J Glauthier
CC: Jennifer M. O'Connor
CC: Elena Kagan
CC: Shelley N. Fidler
CC: Barbara C. Chow
CC: Dinah Bear

DRAFT

MEMORANDUM FOR

FROM:

SUBJECT: Alternative Timber for National Forest Timber Sales Subject to Public Law (P.L.) 104-19, Section 2001 (k)

The Forest Service (FS) is currently faced with providing replacement timber for a number of section 2001 (k) timber sales that pose environmental risks. This issue will escalate when the Ninth Circuit Court of Appeals rules on Judge Hogan's interpretation of the "known to be nesting" phrase in P.L. 104-19, which will occur probably in June.

This memorandum describes the problem and describes the Forest Service strategy for dealing with it.

THE PROBLEM:

Section 2001 (k) of P.L. 104-19 addresses the remaining unawarded or suspended Pacific Northwest timber sales subject to section 318 of the Fiscal Year 1990 Appropriations Act. The Congress gave the Forest Service and Bureau of Land Management (BLM) 45 days from the date of enactment to release the sales and permit them to be completed by purchasers in fiscal years 1995 and 1996. Alternatively, in the event there were threatened or endangered bird species known to be nesting in the sales, the agencies were to provide an equal volume of alternative timber of like kind and value.

Since enactment of the timber rider, court rulings have broadened the geographic scope of the rider to include sales in the eastern Cascade regions of Oregon and Washington, bringing the total number of sales covered to 104 totalling 435 million board feet. Of this total, the FS and BLM has released, due to court orders, approximately 44 sales totalling 165 million board feet to the purchasers or high bidders where they do not include nesting threatened or endangered birds and where they are not enjoined by other courts. The agencies have asked purchasers to modify voluntarily their sales to improve them environmentally. In addition, for the worst environmentally damaging sales, the agency has offered the purchasers alternative volume to harvest in lieu of the original sales. Of the 44 sales, approximately 17 have been or are being harvested.

The bulk of the problem remains with the remaining 270 million board feet, of which 225 is being litigated in the 9th Circuit Court of Appeals. If the 9th Circuit rules in the Administration's favor, that most of these sales do have threatened or endangered bird species "known to be nesting" in them, then the FS and BLM will work to provide alternative timber, as the rider requires in subsection (k)(3). The Administration has taken the position in court that the alternative volume provided for these sales must comply with all laws. Also, the rider does not

DRAFT

✓ DB
Isn't there still a real problem w/ some kl sales?

state a deadline by which the FS and BLM must offer this alternative volume. Therefore, the sales which may fall into the category of having birds "known to be nesting" can be handled under the normal sale preparation process.

new sec.

However, if the 9th Circuit rules that most of the 53 sales (225 mmbf) do not have threatened or endangered bird species "known to be nesting" in them, then they can be harvested by the purchasers immediately. Since the rider essentially exempts these sales from environmental and all laws through September 30, 1996, the purchasers will, no doubt, want to harvest them before this deadline.

DB is with here

The challenge for the Forest Service will be to identify those sales that are the most environmentally damaging and implement a plan of action for improving, replacing, or buying them out. As we have already experienced with other released 318 sales, the public will demand that the Administration take action to avoid the harvesting of these sales. Therefore, we must be prepared with a plan of action.

But this is all supposed to be alt sales we're saying have mms. in them.

why need all above detail?

THE STRATEGY:

If we run diff as 9 problems

Assuming we ~~lose~~ lose

We need priorities here. (TS)

The FS strategy for dealing with this problem is 1) identifying priority sales, 2) modification and replacement of problematic sales, and 3) if modification or replacement is not possible, cancellation of problematic sales.

The Forest Service, Fish and Wildlife Service, and National Marine Fisheries Service are jointly working to identify and prioritize the need for alternative timber on each section 2001 (k) timber sale cutting unit. The interagency team has tentatively identified 315 mmbf as high priority for replacement, 10 mmbf as medium priority, and 53 mmbf as low priority (57 mmbf of additional timber has either been harvested or will not be awarded for various reasons.) Of the 315 mmbf, 51 mmbf presently meets Judge Hogan's interpretation of "known to be nesting," which we are now appealing before the 9th Circuit.

Agree w/ TS - need to break down further

With this list, the agencies will then prioritize field efforts to find and offer alternative timber on a sale-by-sale basis. The interagency Level 1, on-the-ground, teams will be key to this process. Under the supervision of the regional interagency team, the Level 1 teams will be responsible to explore all options to maximize the amount of alternative timber of like kind and value that meets environmental standards. Where original sales are to be harvested, the teams would attempt to gain purchaser approval to mutually modify the contracts and mitigate potential environmental impacts.

First priority for substitute volume will be that it complies fully with the standards and guidelines under the President's forest plan. In most instances, to achieve this objective, the Forest Service will have to use volume that will be offered under the President's Forest Plan. However, the supply of this timber is limited. Of the 800 mmbf in this year's Pacific Northwest Forest Plan program, 225 mmbf has not yet been offered for sale in region

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6. However, most of these sales, plus the sales from eastern Oregon and Washington, will not be fully prepared until August or September. In addition, because the original timber sales include larger and more valuable trees than the sales in the fiscal year 1996 program, it could take nearly twice as much volume from the 1996 sales to equal the same value in the original sales.

} cut
this -
terrible
in likelihood

We will maximize the availability of alternative volume by -- 1) directing the FS to expedite the preparation of volume that would have been offered under the Plan in August through October and 2) suspending, as necessary, volume to be offered under the President's Forest Plan in May and June.

change

However, taking these actions as noted above, only a limited volume would be available. Therefore, in order to achieve the objective of mitigating environmental impacts in a manner that complies with the law and avoids environmental damage, the Level 1 teams will be allowed to consider minor deviations from forest plan standards and guidelines as long as they meet the following criteria: (1) the risk to the environment of harvesting the alternative timber is reduced over harvesting the original timber sale; (2) the harvest of the alternative timber would not violate any federal environmental protection statutes; and (3) alternative volume from the 1996 or 1997 forest plan timber sale program that is in full compliance with standards and guidelines is either not available or is unacceptable to the timber purchaser.

} see comments

[Finally, if these steps are unsuccessful, the FS will exercise its right to cancel contracts.]

3/11/96 Timber Interagency Mtg.

1. Legislative -

New Hatfield - Gordon language
May NOT get thru House!

2. Litigation

Stay in mumelets - having Mar 22

our reply - tomorrow

k3 - "if he any reason"

alter timber part date

K1 stops

K3 keeps going

This is under k3 bec it
has a relationship w/ k2 -
(even if we were wrong
to withhold under this
section, we did try to)