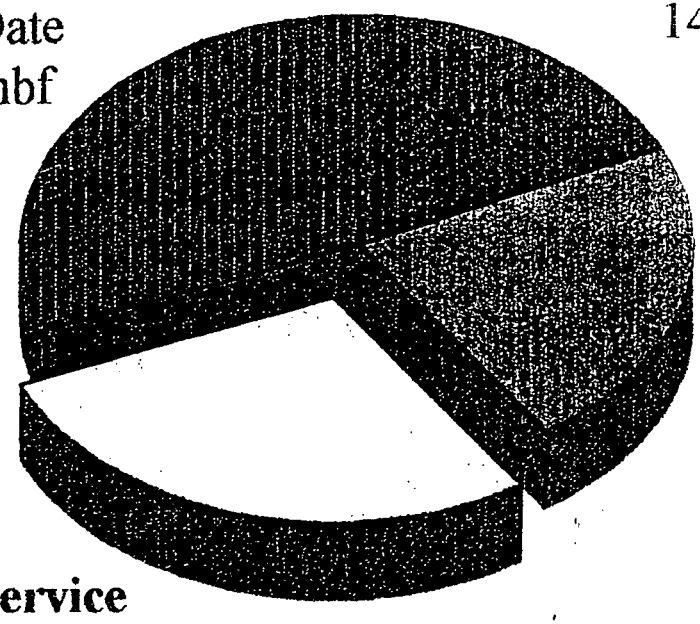
NLWJC- Kagan

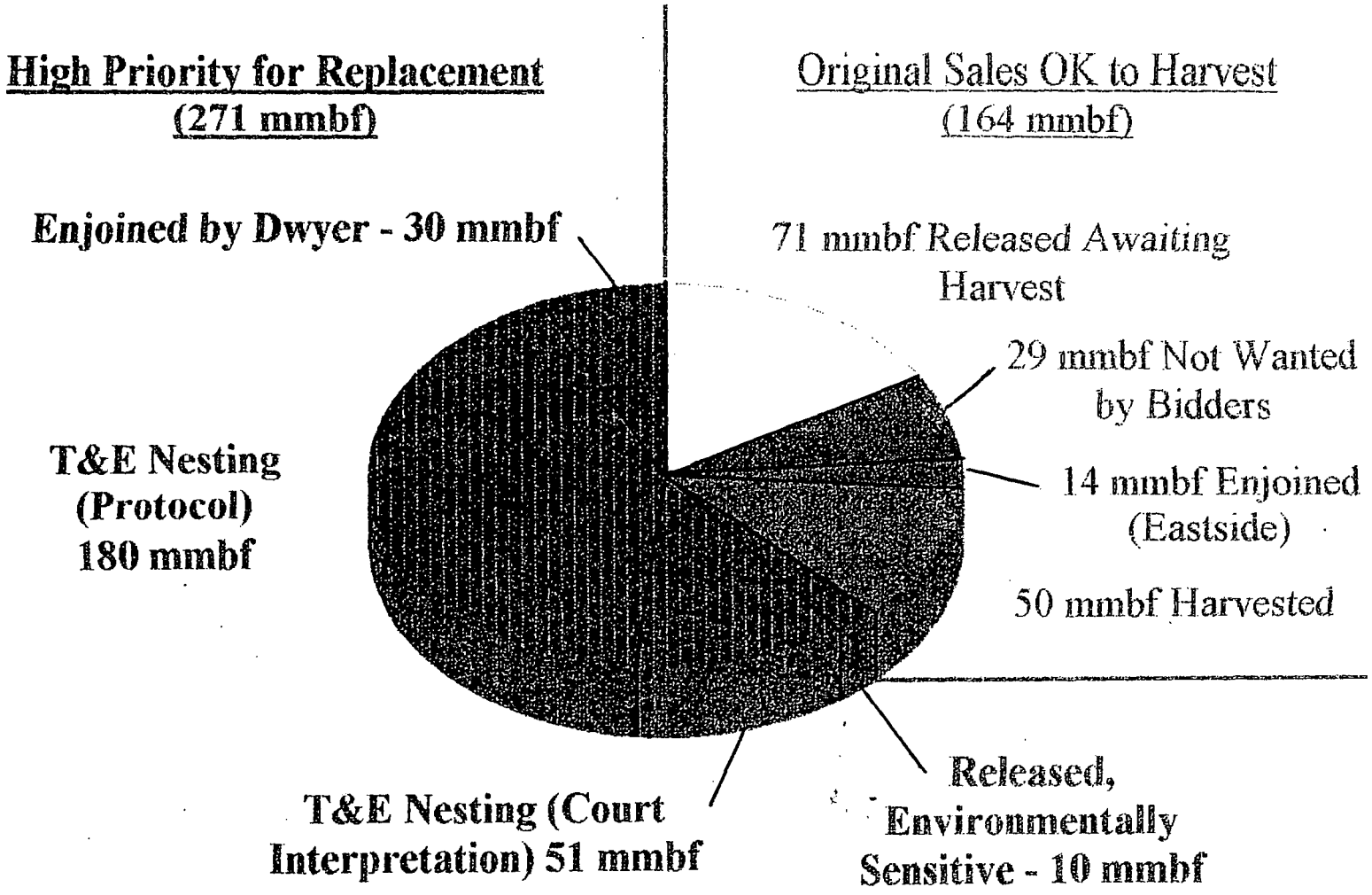
Counsel - Box 001 - Folder 002

Timber-memos, emails, etc. [2]

Pacific Northwest Forest Plan
FY '96 Planned Timber Offer (800 mmbf)



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



Consequences of Replacing All High Priority Volume (271 mmbf) As Soon As Possible

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- Replacement Volume Required Estimated at 500+ mmbf to Equal Value of Original Sales

- It Would be Impossible to Prepare 500 mmbf Over the Next 2 Months Under Any Circumstances--the Maximum the Forest Service Could Prepare Would be 50-70 mmbf

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If the September 30 Date is Extended:

- Approximately 200+ Additional Employees Needed

- Approximately $20 Million Needed

- Would Need to Substantially Reduce Analysis (Watershed and T&E spp.) Requirements -- Level 1 Teams Would Need to Clear

- Would Need to Expedite NEPA--Substantially Reduce Documentation and Public Participation (including no appeals)

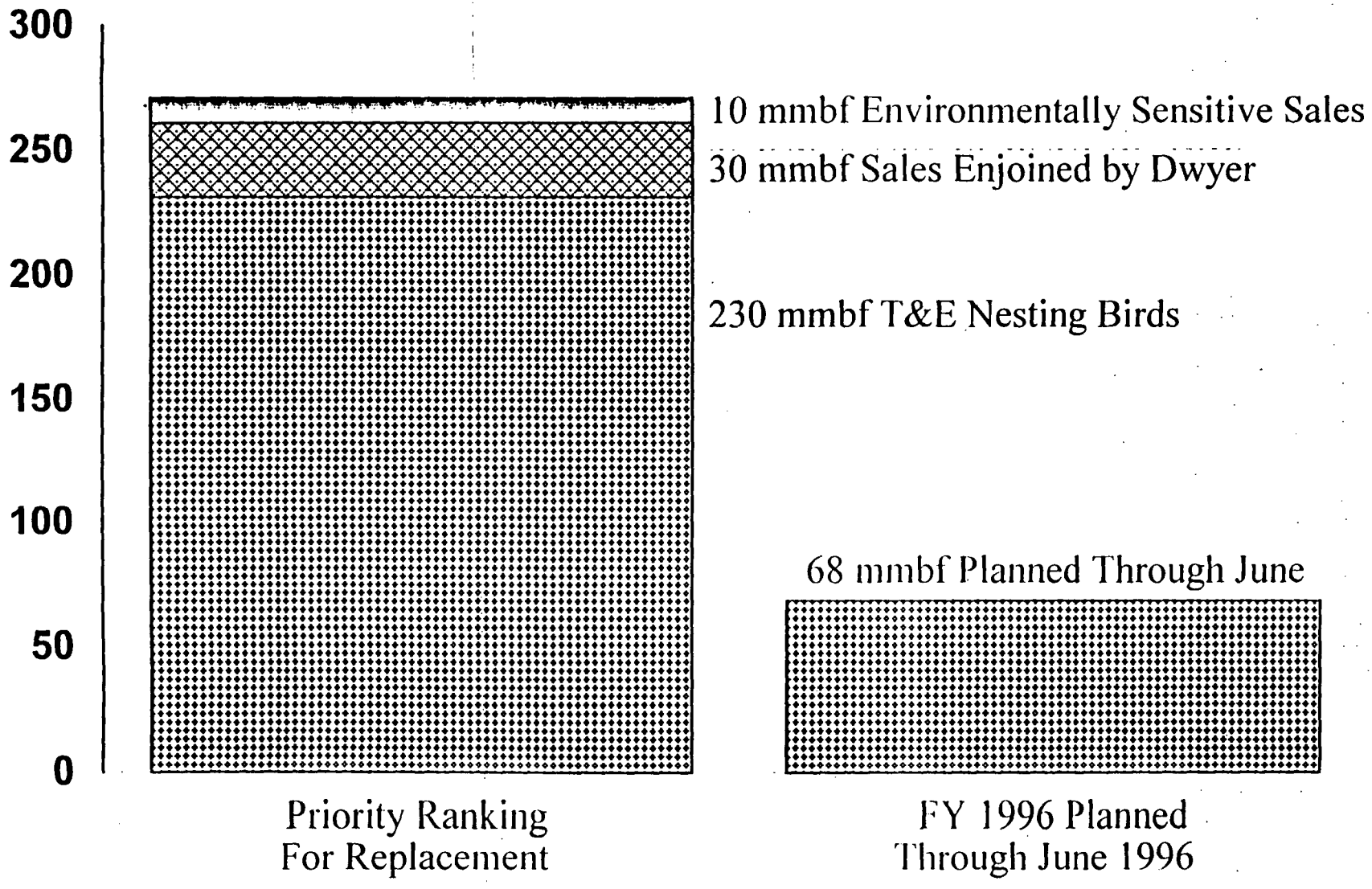
- Nearly All Remaining FY 1996 (Region 6) PNW Plan Volume (225 mmbf) Would Need to Be Used--FS Would Not Meet PNW Plan Volume

- Would Substantially Affect FY 1997 Program -- Region Would Suspend Ongoing Survey and Analysis Work--FS Would Not Meet Plan Volume

Note: Natural disasters, such as a bad fire year, could prevent completing the alternative timber program. In addition, the FS could not spend the additional funds if we continue to operate on continuing resolutions that are apportioned for the period of time they cover.

Section 2001 (k) Timber Sales

High Priority Replacement Volume Compared to FY 1996 Remaining Program - Region 6



Possible Alternative Timber Options
Listed in Order of Least Effect on PNW Forest Plan

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1. **Buyout or Cancel All High Priority Replacement Sales**

2. **"Triage" -- Use a Combination of Buyout, Alternative Timber, and Harvest (with mutual modification) and Apply to Sales Based on Standard Criteria**

3. **Use Some BLM Timber as Alternative Volume**

4. **Extend Protections of the Act Beyond September 30 (Use Section 2001 (d) Provisions)**

5. **Harvest Sales Using Mutual Modification to Mitigate Environmental Damage to the Extent Possible**

Buyout or Cancel All High Priority Replacement Sales

- Estimated Cost = $100-$150 million (the Forest Service cannot absorb these costs in FY's 1996 or 1997)
- Requires Least Amount of Change in PNW Forest Plan
- Minimum Effect on FY 1996 and 1997 PNW Timber Sale Programs (if no budgeted funds are not used for buyout)
- Allows Ongoing Section 2001 (k) Sales to Come to a Logical Termination

"Triage"

Use a Combination of Buyout, Alternative Timber, and Harvest (with mutual modification) Apply to Sales Based on Standard Criteria

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- The Amount of Timber that Can be Replaced is Limited by Time, Funds, and Personnel
- Requires Agreement Between Agencies Concerning the Standard Criteria that Would be Used to Determine Which Sales are Replaced, Bought Out, or Harvested and Strong Commitment to Follow the Agreement
- Amendment of the PNW Forest Plan Would Probably be Needed, but May be Able to Avoid Major Changes
- Requires Approximately $20 Million in Additional Funds for FY 1996 to Accomplish (moderate to substantial buyout would require additional funds)
- Replacement Timber Opportunities Would be Limited if All Standards and Guidelines and NEPA Requirements Must be Met
- Extension of September 30 Deadline Would Expand Replacement Opportunities
- On 2001 (k)(1) Sales, Mutual Agreement by Purchaser Required to Replace Sales
- Would Need to Interrupt FY 1996 and FY 1997 Program Work to Some Degree (approx. 50% reduction in volume accomplishment)

Use Some BLM Timber as Alternative Volume

- Limited Alternative Timber Available from BLM
- More Volume Could Be Replaced if Used in the "Triage" Option
- Would Require Additional Funds for BLM

Extend Protections of the Act Beyond September 30
Use Section 2001 (d) Provisions

- Provides More Time and Flexibility and Increases the Scope of Volume Available for Replacement from the FY 1996 and FY 1997 Programs
- Also Extends Scope of Other Matrix Volume Available--Would Lessen Impact on FY 1996 & 1997 Programs if Other Matrix Volume is Used
- Cost of Preparing New Sales is $20 million
- PNW Forest Plan May Need Amendment, but May be Able to Keep Changes to a Moderate Level

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Harvest Sales Using Mutual Modification to Mitigate Environmental Damage to the Extent Possible

- PNW Forest Plan Would Probably Need to be Amended, Changes Could be Significant
- Keeps the FY 1996 and FY 1997 Programs on Track
- No Additional Funds Required
- Has Least Impacts on Other Purchasers (of FY 1996 and FY 1997 program sales)--Maintains Supply to Local Mills

REMAINING REGION 6 FY 1996 GREEN SALE PROGRAM

Number of sales and volume (mmbf) to be offered (advertised) by month thru the end of the fiscal year.

WEST SIDE FORESTS

FOREST	April		May		June		July		August		Sept		Total	
	#	Vol MMBF	#	Vol MMBF	#	Vol MMBF	#	Vol MMBF	#	Vol MMBF	#	Vol MMBF	#	Vol MMBF
GIFFORD PIN. - WA	0	0.0	0	0.0	1	2.0	3	11.7	9	31.2	3	12.0	16	56.9
MT. HOOD - OR	1	1.1	0	0.0	0	0.0	0	0.0	2	17.7	4	15.7	7	34.5
ROGUE RIVER - OR	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
UMPQUA - OR	0	0.0	2	4.6	1	1.0	6	17.8	5	29.3	0	0.0	14	52.7
WILLAMETTE - OR	0	0.0	5	9.5	3	8.7	1	4.0	2	9.2	9	49.8	20	81.2
SUBTOTAL	1	1.1	7	14.1	5	11.7	10	33.5	18	87.4	16	77.5	57	225.3

EAST SIDE FORESTS

COLVILLE - WA	1	4.6	3	11.1	0	0.0	2	4.8	4	15.1	1	8.0	11	43.6
DESCHUTES - OR	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
FREMONT - OR	1	0.1	0	0.0	3	0.6	1	2.7	3	3.6	1	0.5	9	7.5
MALHEUR - OR	1	2.2	1	5.5	1	0.6	1	0.1	5	5.2	3	2.3	12	15.9
OCHOCO - OR	1	0.7	0	0.0	0	0.0	0	0.0	2	5.5	1	4.5	4	10.7
OKANAGAN - WA	0	0.0	1	3.0	0	0.0	2	7.5	3	9.5	1	5.0	7	25.0
UMATILLA - OR	0	0.0	9	1.9	2	2.3	1	0.2	0	0.0	0	0.0	12	4.4
WALLOWA-WH. - OR	0	0.0	0	0.0	0	0.0	0	0.0	1	1.0	3	5.0	4	6.0
WENATCHEE - WA	0	0.0	1	2.4	1	0.4	0	0.0	0	0.0	0	0.0	2	2.8
WINEMA - WA	0	0.0	0	0.0	1	5.6	1	1.0	2	8.4	1	5.5	5	20.5
SUBTOTAL	4	7.6	15	23.9	8	9.5	8	16.3	20	48.3	11	30.8	66	136.4

SUMMARY

EAST	1	1.1	7	14.1	5	11.7	10	33.5	18	87.4	16	77.5	57	225.3
WEST	4	7.6	15	23.9	8	9.5	8	16.3	20	48.3	11	30.8	66	136.4

Table 1 – USDA Forest Service – Sales Reported in Federal Court As Related to Section 2001(k), P.L. 104-19, Litigation

Category / Sub-Category / Forest and Sale Name	High Bidder or Purchaser	Bid Date	Previous Award?	MMBF Released, Susp, or Unawarded	Remarks NoIA = Notice of Intent to Award Sent to High Bidder NSO = Northern Spotted Owl MM = Marbled Murrelet
I. Sales Released or Awarded Under Section 2001 (k)					
Rogue River NF					
Head	Boise Casc	09/18/90	no	3.96	Awarded 09/08/95 – Cutting Complete
Olympic NF					
Caraco Cat	Mesa Res.	05/16/90	no	3.70	Awarded – Cutting Completed
Rocky	Buse Timb.	07/18/90	no	2.90	Awarded – Cutting Completed
Forest Totals				6.60	
Gifford Pinchot NF					
Holdaway 2	Kyles Peter	01/04/90	no	1.70	NoIA sent 09/29/95 –No interest in sale to date
Mt. Hood NF					
Enola	Hanel Lumb	08/07/90	no	4.80	Awarded 09/08/95 – TRO lifted, cutting resumed
Umpqua NF					
Zanita	Lone Rock	03/14/90	yes	3.00	Released 09/29/95 – cutting in progress
Jack	C&D Lumb	08/01/90	yes	6.53	Released 09/29/95 – cutting in progress
Redlick	Superior	08/01/90	yes	4.00	Released 09/29/95 – cutting in progress
Gage	Scott	09/12/90	yes	6.20	Released 09/29/95 – cutting in progress
Honeytree	Scott	08/08/90	yes	3.80	Released 09/29/95 – cutting in progress
Last	Scott	09/12/90	no	6.70	Awarded 3/8/96 – Contract Replacement Timber Provided
First	Scott	09/18/90	no	5.10	Awarded 3/8/96 – Contract Replacement Timber Provided
Forest Totals				35.33	Scott Timber has accepted contract replacement timber on the First and Last Sales
Willamette NF					
Red 90	Freres Lumb	09/28/90	no	6.26	Awarded - cutting in progress - 1 unit suspended for NSO
Horse Byars	Freres Lumb	08/31/90	no	5.70	Awarded - date cutting will start is currently unknown
Forest Totals				11.96	
Siskiyou NF					
Boulder Krab	Scott	09/27/90	no	5.02	Awarded 11/03/95 -1 unit suspended MM - Unit 4 being replaced
Elk Fork	CLR Timber	09/27/90	no	2.76	Awarded 11/03/95 - 1 unit suspended MM - cutting in progress
Forest Totals				7.78	Negotiations regarding replacement timber for Unit 4, Boulder Krab, with Scott Timber are ongoing
Fremont NF					
Blue Ford	Boise Casc	09/25/91	no	6.50	Awarded 11/30/95 - date cutting will start is currently unknown
Malheur NF					
Locust	Smerski	04/14/93	no	1.00	Awarded 11/22/95 - date cutting will start is currently unknown
Forks	Snow Mtn	04/28/93	no	5.00	No bidders interested, sale will not be awarded
Forest Totals				6.00	
Okanogan NF					
Nicholoson Slvg I	Vaagan Bro	02/29/93	no	0.89	Awarded 11/03/95 - cutting in progress
Ochoco NF					
Off Broadway	Kinzua	03/29/93	no	12.30	NoIA sent 01/18/96 –No interest in sale to date
Siuslaw NF					
Hiack Thin	Hampton	12/30/93	no	1.60	No bidders interested, sale will not be awarded
Wallowa-Whitman NF					
Allen	Rogge	10/08/92	no	3.80	Awarded - date cutting will start is currently unknown
Cantrel Springs	Rogge	11/03/92	no	0.61	No bidders interested, sale will not be awarded
Horn Salvage	Kinzua	11/17/92	no	1.34	Awarded - date cutting will start is currently unknown
Prong Salvage	Rogge	10/15/92	no	3.80	No bidders interested, sale will not be awarded
Banty Salvage	Ellingson	08/04/92	no	0.61	Awarded - date cutting will start is currently unknown
Sweet Pea	Ellingson	05/26/92	no	1.28	No bidders interested, sale will not be awarded
Johnson Salvage	Rosboro	08/27/92	no	3.60	No bidders interested, sale will not be awarded
Hilton	Malheur	09/26/91	no	5.30	No bidders interested, sale will not be awarded

Table 1 – USDA Forest Service – Sales Reported in Federal Court As Related to Section 2001(k), P.L. 104-19, Litigation

Category Sub-Category Forest and Sale Name	High Bidder or Purchaser	Bid Date	Previous Award?	MMBF Released, Susp, or Unawarded	Remarks NoIA = Notice of Intent to Award Sent to High Bidder NSO = Northern Spotted Owl MM = Marbled Murrelet
Tanya	Boise Casc	09/26/91	no	0.59	Awarded - date cutting will start is currently unknown
Tanhorse	Boise Casc	09/24/91	no	1.34	Awarded - date cutting will start is currently unknown
RD Salvage	Dodge	10/29/92	no	3.30	Awarded - date cutting will start is currently unknown
Park HFR	Boise Casc	11/03/92	no	0.70	Awarded 11/13/95 - cutting complete
Forest Totals				26.27	
Winema NF					
John	Huffman	08/14/91	no	1.80	Awarded 11/14/95 - date cutting will begin currently unknown
John Lodgepole	DAW	08/22/91	no	2.20	Awarded - date cutting will start is currently unknown
Yoss	Boise Casc	09/19/91	no	7.10	Awarded 11/14/95 - cutting in progress
Willy	Boise Casc	09/26/91	no	4.40	Awarded 11/14/95 - cutting complete
Nelson	DAW	01/06/92	no	7.40	No bidders interested, sale will not be awarded
Bill	Huffman	09/28/92	no	5.80	Awarded 11/14/95 - cutting in progress
Cinder	Scott	09/28/92	no	5.30	Awarded 11/14/95 - cutting in progress
Forest Totals				34.00	
Umatilla NF					
Eagle Rdge Houselog	Rogge	09/30/91	no	0.17	Awarded - date cutting will start is currently unknown
Subtotal Released Sales				169.86	(42 Sales)

Table 1 – USDA Forest Service – Sales Reported in Federal Court As Related to Section 2001(k), P.L. 104-19, Litigation

Category / Sub-Category / Forest and Sale Name	High Bidder or Purchaser	Bid Date	Previous Award?	MMBF Released, Susp, or Unawarded	Remarks (NoIA = Notice of Intent to Award Sent to High Bidder; NSO = Northern Spotted Owl; MM = Marbled Murrelet)
II. Remaining Sales Suspended, Unawarded, or Pending					
Sales Not Released Based on Section 2001 (k)(2):					
Mt. Baker/Snoqualmie NF					
Fish Story	LB&R Log.	12/12/89	yes	0.70	Marbled Murrelet
Old Grade	Summit	08/14/90	yes	2.20	Marbled Murrelet
Median Buyback	LB&R Log.	09/27/90	yes	5.81	Marbled Murrelet
Stalwart	Miller Shing.	09/18/90	yes	2.50	Marbled Murrelet
Scraps	Miller Shing.	09/27/90	yes	3.76	Marbled Murrelet
Boyd Creek	Hurn Shing.	09/25/90	yes	0.78	Marbled Murrelet
Clear Creek	Buse Timb.	08/21/90	yes	2.97	
Forest Totals				18.73	
Olympic NF					
Camel	Mayr Bros.	01/04/90	yes	2.11	Marbled Murrelet
Not Bad	Hoh River	07/02/90	yes	1.60	Marbled Murrelet
Deodar	Hoh River	09/14/90	yes	0.80	Marbled Murrelet
You Who	MCMC Res.	09/14/90	yes	1.75	Marbled Murrelet
West Boundary	Mayr Bros.	09/20/90	yes	2.53	Marbled Murrelet
Wynochee Res.	Mayr Bros.	09/24/90	yes	2.20	Marbled Murrelet
Stevens	Mayr Bros.	09/06/90	yes	0.08	
Forest Totals				11.07	
Siskiyou NF					
Sugar Cube	CLR Timb.	09/17/90	yes	1.30	Marbled Murrelet
Winriver	CLR Timb.	01/06/90	yes	0.69	Marbled Murrelet
Spur Trigger	CLR Timb.	05/22/90	yes	3.14	Marbled Murrelet
Lobster	CLR Timb.	09/06/90	yes	0.85	Marbled Murrelet
Father Oak	Scott	03/28/90	yes	2.36	Marbled Murrelet
Taylor Ranch	CLR Timb.	12/27/89	yes	1.77	Marbled Murrelet
Toastberry	Scott	06/06/90	yes	1.78	Marbled Murrelet
Forest Totals				11.89	
Siuslaw NF					
Mr. Rogers	Seneca Saw	09/28/90	no	10.00	Marbled Murrelet & Northern Spotted Owl
Prong	Lone Rock	08/27/90	no	4.80	Marbled Murrelet
Foland Ridge	Hampton	09/25/90	yes	0.89	Marbled Murrelet
Gordy Bluff	Hampton	05/29/90	yes	2.69	Marbled Murrelet
North Ball	Hampton	04/11/89	yes	1.04	Marbled Murrelet
Square Clare	Wilamette	05/29/90	yes	1.38	Marbled Murrelet
Berry Bushel	Scott	07/06/90	yes	1.42	Marbled Murrelet
Condon Carr.	Wilamette	09/11/90	yes	3.79	Marbled Murrelet
Fivemile Flume	Scott	09/27/90	yes	7.08	Marbled Murrelet
Franklin Ridge	Wilamette	09/11/90	yes	6.64	Marbled Murrelet
Indian Hook	Scott	09/11/90	yes	15.14	Marbled Murrelet
Lower Bailey	Lone Rock	09/27/90	yes	0.91	Marbled Murrelet
Maria Skyline	Scott	09/20/90	yes	9.00	Marbled Murrelet
Skywalker	Scott	09/04/90	yes	5.16	Marbled Murrelet
South Paxton	Wilamette	09/20/90	yes	9.07	Marbled Murrelet
Sugar Maple	Wilamette	03/08/90	yes	1.54	Marbled Murrelet
Sulphur	Scott	06/07/90	yes	5.50	Marbled Murrelet
Uncle Condon	Willamette	09/11/90	yes	8.48	Marbled Murrelet
Upper McLeod	Seneca Saw	09/11/90	yes	2.38	Marbled Murrelet
Benner Bunch	Bugaboo	12/19/89	yes	5.79	Marbled Murrelet
Grass Hula	Bugaboo	07/31/90	yes	8.55	Marbled Murrelet
Green Apple	Boise Casc	07/24/90	yes	9.87	Marbled Murrelet
Green Horn	Willamette	08/21/90	yes	2.51	Marbled Murrelet
Randall Salado	Boise Casc	09/28/90	yes	1.39	Marbled Murrelet
Ryan Wapiti	Freres Lumb	03/20/90	yes	6.40	Marbled Murrelet
Beamer 712	Scott	06/26/90	yes	8.67	Marbled Murrelet
Canal 606	Hampton	04/03/90	yes	6.24	Marbled Murrelet
Formader 103	Scott	08/14/90	yes	8.17	Marbled Murrelet
Formader 717	Scott	06/28/90	yes	2.35	Marbled Murrelet
Upperten 002	Boise Casc	05/03/90	yes	14.41	Marbled Murrelet
Wapiti 305	Scott	09/20/90	yes	2.29	Marbled Murrelet
Wheelock 403	Hampton	06/19/90	yes	5.74	Marbled Murrelet
Forest Totals				179.29	

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Willamette NF					
Anchovy	Thomas Ck	09/28/90	yes	1.30	Marbled Murrelet - partially released - no operations yet
Umpqua NF					
Abes Wren	DR Johnson	12/27/89	yes	6.20	Northern Spotted Owl - Partially Released Negotiations regarding replacement timber for released units are ongoing with DR Johnson
Partial Sales Not Subject to Release:					
Siskiyou NF – Elk Fork Timber Sale					1 unit suspended for Marbled Murrelet
Siskiyou NF – Boulder Krab Timber Sale				1.05	1 unit suspended for Marbled Murrelet
Willamette NF – Red 90 Timber Sale				1.04	1 unit suspended for Northern Spotted Owl
Subtotal Section Sales Not Released per 2001 (k)				230.56	(55 Sales)
Sales Enjoined or Delayed by Pre-Existing Court Cases:					
Umpqua NF					
Cowboy	Scott	04/18/90	no	9.40	Enjoined (SAS v. Thomas--Dwyer's Court)
Nita	Scott	08/29/90	no	9.30	Enjoined (SAS v. Thomas--Dwyer's Court)
South Nita	Scott	08/29/90	no	6.30	Enjoined (SAS v. Thomas--Dwyer's Court)
Forest Totals				25.00	
Siskiyou NF					
Garden	Medford	09/12/90	no	4.59	Enjoined (SAS v. Thomas--Dwyer's Court)
Colville NF					
Gatorson	Vaagan Bro	03/25/91	yes	11.86	sale suspended 05/20/93 - court injunction
Wenatchee NF					
Tip	Longview	03/08/94	yes	0.75	sale enjoined 03/03/95 - court injunction
Tiptop	St. Joe Lum	11/15/93	yes	2.20	sale enjoined 03/03/95 - court injunction
Forest Totals				2.95	
Subtotal Remaining Sales Suspended, Unawarded or Pending				274.96	(62 Sales)
Total All Sales Subject to Section 2001(k)				434.82	(104 Sales)

Sales Not Subject to Section 2001 (k) (sales no longer exist):					
Umatilla NF					
Bald	Boise Casc	09/30/91	no	2.90	Bids rejected 12/11/91
Stagecoach	Boise Casc	09/29/91	no	0.20	Bids rejected 12/11/91
Forest Totals				3.10	
Wallowa-Whitman NF					
Bugout Salvage	Dodge	10/29/92	no	5.40	Bids rejected 02/23/95
Tower Salvage	Boise Casc	08/04/92	no	1.01	Bids rejected 02/23/95
Forest Totals				6.41	
Total Sales That No Longer Exist				9.51	(4 Sales)

Forest Service, Region 6

18-Apr-96

Priority for Replacement Volume 2001(k) Sales; as of April 18, 1996

A. T&E Sales (Marbled Murrelet and Spotted Owl) with Units Suspended

DRAFT

Sale Name	Forest	Bid Date	Original Volume	Acres	Remaining Volume	Meets Court's Nesting Criteria	High-Bidder	Sale Status	Priority for Replace.
ABES WREN	UMP	12/27/89	6580				D.R Johnson Company	Awarded. Contract Suspended, Spotted Owls	
Unit 32				17	689	Y			H
BEAMER 712	SIU	08/26/90	8900				Scott Timber	Awarded, Contract Suspended, Marbled Murrelet	
Unit 1				46	4108	N			H
Unit 2				50	4493	N			H
BENNER BUNCH	SIU	12/19/89	10300				Bugaboo Timber	Awarded, Contract Suspended, Marbled Murrelet	
Unit D3				27	2530	Y			H
Unit G4				39	1825	N			H
Unit L5				17	1376	N			H
BERRY BUSHEL	SIU	07/08/90	5500				Scott Timber	Awarded, Contract Suspended, Marbled Murrelet	
Unit 1				15	370	Y			H
Unit 2				25	395	N			H
BOULDER KRAB	SIS	09/27/90	6070				Scott Timber	Awarded 11/3/95; Unit 1 in Marbled Murrelet occupied stand,	
Unit 1				32	1050	N		all activity on unit suspended on 12/5/95. Plan of operations	H
Units 4A,B,&C				39	1680	N		received for Unit 4, not suspended.	H
BOYD CREEK	MBS	09/25/90	3750				Hurn Shingle	Awarded; Contract Suspended, Marbled Murrelet	
Unit 2				8	384	N			H
Unit 3				6	265	N			H
Unit 4				2	135	N			H
CAMEL	OLY	01/04/90	6050				Mayr Brothers	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				11	676	N			H
Unit 4				36	1680	N			H
CANAL 806	SIU	04/03/90	9400				Hampton Tree Farms	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				47	3006	N			H
Unit 2				25	3817	N			H
CLEAR CREEK	MBS	08/21/90	3435				Buse Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				29	2970	Y			H
CONDON CARR.	SIU	09/11/90	6800				Willamette Industries	Awarded, Contract Suspended, Marbled Murrelet	
Unit 1				47	3827	N			H
DEODAR	OLY	09/14/90	9900				Hoh River Lumber	Awarded, Contract Suspended, Marbled Murrelet	
T-155				23	800	Y			H
ELK FORK	SIS	09/27/90	2760				CLR Timber	Awarded 11/3/95, Unit 4 Marbled Murrelet occupied and suspended	
Unit 4				35	1320	Y			H
FATHER OAK	SIS	03/28/90	5730				Scott Timber	Awarded. Contract Suspended, Marbled Murrelet	
Unit 1				49	570	Y			H
Unit 4				33	790	N			H
Unit 5				41	1000	Y			H
FISH STORY	MBS	12/12/89	6700				LB&R Logging	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				27	700	Y			H

Forest Service, Region 6

18-Apr-96

Priority for Replacement Volume 2001(k) Sales; as of April 18, 1996

A. T&E Sales (Marbled Murrelet and Spotted Owl) with Units Suspended

DRAFT

Sale Name	Forest	Bid Date	Original Volume	Acres	Remaining Volume	Meets Court's Nesting Criteria	High-Bidder	Sale Status	Priority for Replace.
FIVEMILE FLUME	SIU	09/27/90	7500				Scott Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 2				57	2830	N			H
Unit 3				54	2514	N			H
Unit 4				31	1776	Y			H
FOLAND RIDGE	SIU	09/25/90	4400				Hampton Tree Farms	Awarded; Contract Suspended, Marbled Murrelet	
Unit 3				24	549	Y			H
FORMADER 103	SIU	08/14/90	8300				Scott Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				39	2864	Y			H
Unit 2				28	1407	N			H
Unit 4				28	1697	N			H
Unit 5				23	2016	N			H
FORMADER 717	SIU	06/28/90	2400				Scott Timber	Awarded; Contract suspended, Marbled Murrelet	
Unit 1				33	2367	N			H
FRANKLIN RDGE	SIU	09/11/90	9000				Willamette Industries	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				52	2042	N			H
Unit 3				33	2605	N			H
Unit 4				32	1870	N			H
GORDY BLUFF	SIU	05/29/90	7590				Hampton Tree Farms	Awarded; Contract Suspended, Marbled Murrelet	
Unit 3				31	2604	Y			H
GRASS HULA	SIU	07/31/90	8700				Bugaboo Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				38	3150	N			H
Unit 2				28	2048	N			H
Unit 3				30	1486	N			H
Unit 4				11	402	N			H
Unit 5				23	1339	N			H
GREEN APPLE	SIU	07/24/90	10100				Boise Cascade	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				35	3150	N			H
Unit 2				33	2639	N			H
Unit 3				25	2421	Y			H
Unit 4				20	1680	N			H
GREEN HORN	SIU	08/21/90	5800				Willamette Industries	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				36	1840	N			H
Unit 4				4	434	Y			H
INDIAN HOOK	SIU	09/11/90	15200				Scott Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				46	3279	N			H
Unit 2				51	3944	N			H
Unit 3				45	3249	N			H
Unit 4				18	2009	Y			H
Unit 5				31	2436	Y			H
LOBSTER	SIS	09/06/90	8580				CLR Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 9				23	1000	Y			H
LOWER BAILEY	SIU	09/27/90	3200				Lone Rock Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 4				16	661	Y			H

Forest Service, Region 6

15-Apr-96

Priority for Replacement Volume 2001(k) Sales; as of April 18, 1996

A. T&E Sales (Marbled Murrelet and Spotted Owl) with Units Suspended

DRAFT

Sale Name	Forest	Bid Date	Original Volume	Acres	Remaining Volume	Meets Court's Nesting Criteria	High-Bidder	Sale Status	Priority for Replace.
MARIA SKYLINE	SIU	09/20/90	12700				Scott Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 3				54	3524	N			H
Unit 4				25	1234	N			H
Unit 5				52	4094	N			H
MEDIAN BUYBACK	MBS	09/27/90	7190				LB&R Logging	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				18	684	N			H
Unit 2				31	1364	N			H
Unit 3				30	1320	Y			H
Unit 4				35	1330	N			H
Unit 5				25	1110	Y			H
MR ROGERS	SIU	09/28/90	10000				Seneca Sawmills	Not Awarded; Marbled Murrelet	
Unit 1				47	2444	N			H
Unit 2				50	2981	N			H
Unit 3				38	2012	N			H
Unit 4				49	2509	N			H
NORTH BALL	SIU	04/11/89	6700				Hampton Tree Farms	Awarded; Contract Suspended, Marbled Murrelet	
Unit C				14	561	N			H
Unit D				7	305	Y			H
NOT BAD	OLY	07/02/90	7290				Hoh River Lumber	Awarded, Contract Suspended, Marbled Murrelet	
SO-110				12	800	Y			H
SO-111				11	800	Y			H
OLD GRADE	MBS	08/14/90	9900				Summit Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 9				7	317	N			H
Unit 11				14	951	N			H
Unit 12				10	220	N			H
Unit 13				9	167	N			H
Unit 14				11	401	N			H
PRONG	SIU	08/27/90	4800				Lone Rock Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				58	4630	N			H
RANDALL SALADO	SIU	09/28/90	6500				Boise Cascade	Awarded; Contract Suspended, Marbled Murrelet	
Unit 2				32	1387	N			H
RYAN WAPITI	SIU	03/20/90	10700				Freres Lumber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				51	3503	N			H
Unit 2				27	2782	N			H
SCRAPS	MBS	09/27/90	7550				Miller Shingle	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				9	672	Y			H
Unit 2				28	1237	N			H
Unit 4				10	480	Y			H
Unit 5				16	410	N			H
Unit 9				18	963	Y			H

Forest Service, Region 6

18-Apr-96

Priority for Replacement Volume 2001(k) Sales; as of April 18, 1996

A. T&E Sales (Marbled Murrelet and Spotted Owl) with Units Suspended

DRAFT

Sale Name	Forest	Bid Date	Original Volume	Acres	Remaining Volume	Meets Court's Nesting Criteria	High-Bidder	Sale Status	Priority for Replace.
SKYWALKER	SIU	09/04/90	7700				Scott Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 3				13	774	N			H
Unit 5				26	873	N			H
Unit 6				46	3443	Y			H
SOUTH PAXTON	SIU	09/20/90	9200				Willamette Industries	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				58	3807	N			H
Unit 2				37	2353	N			H
Unit 3				38	1818	N			H
Unit 5				2	118	N			H
Unit 6				15	744	N			H
Unit 8				1	63	Y			H
SPUR TRIGGER	SIS	05/22/90	5420				CLR Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 3				27	739	Y			H
Unit 4				38	1085	Y			H
Unit 5				34	202	Y			H
SQUARE CLARE	SIU	05/29/90	10700				Willamette Industries	Awarded; Contract Suspended, Marbled Murrelet	
Unit 3				34	1178	N			H
STALWART	MBS	09/18/90	2600				Miller Shingle	Awarded; Contract Suspended, Marbled Murrelet	
Unit 3				7	835	Y			H
Unit 4				7	785	N			H
Unit 5				8	845	N			H
STEVENS	OLY	09/06/90	5600				Mayr Brothers	Awarded; Contract Suspended, Marbled Murrelet	
Unit 3				16	630	N			H
Unit 4				4	80	N			H
SUGAR CUBE	SIS	09/17/90	4830				CLR Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 3				30	1304	N			H
Unit 7				12	130	Y			H
SUGAR MAPLE	SIU	03/08/90	6400				Willamette Industries	Awarded; Contract Suspended, Marbled Murrelet	
Unit 4				38	1459	Y			H
SULPHUR	SIU	06/07/90	6400				Scott Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 3				36	1536	N			H
Unit 4				40	2765	Y			H
TAYLOR RANCH	SIS	12/27/89	5350				CLR Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				42	1770	Y			H
TOASTBERRY	SIS	08/08/90	4010				Scott Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				14	820	N			H
Unit 2				28	960	N			H
UNCLE CONDON	SIU	09/11/90	12800				Willamette Industries	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				33	2259	N			H
Unit 2				30	1427	N			H
Unit 3				49	3831	N			H
Unit 4				14	916	N			H
UPPER MCLEOD	SIU	09/11/90	5100				Seneca Sawmills	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				40	2382	N			H

Forest Service, Region 6

18-Apr-96

Priority for Replacement Volume 2001(k) Sales; as of April 18, 1996

A. T&E Sales (Marbled Murrelet and Spotted Owl) with Units Suspended

DRAFT

Sale Name	Forest	Bid Date	Original Volume	Acres	Remaining Volume	Meets Court's Nesting Criteria	High-Bidder	Sale Status	Priority for Replace.
UPPERTEN 002	SIU	05/03/90	14485				Boise Cascade	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				50	3089	N			H
Unit 2				56	3290	N			H
Unit 3				53	3913	N			H
Unit 4				45	3578	N			H
WAPITI 305	SIU	09/20/90	2300				Scott Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 3				23	1198	N			H
Unit 5				26	1080	N			H
WEST BOUNDARY	OLY	09/20/90	4300				Mayr Brothers	Awarded; Contract Suspended, Marbled Murrelet	
Unit 3				2	47	N			H
Unit 4				27	1230	Y			H
Unit 4A				6	150	N			H
Unit 5A-D				45	1000	N			H
WHEELOCK 403	SIU	06/19/90	6013				Hampton Tree Farms	Awarded; Contract Suspended, Marbled Murrelet	
Unit 1				32	1290	N			H
Unit 2				29	1242	N			H
Unit 3				25	2025	N			H
Unit 4				27	757	N			H
WINRIVER	SIS	01/08/90	3140				CLR Timber	Awarded; Contract Suspended, Marbled Murrelet	
Unit 12				24	239	N			H
Unit 13				29	664	N			H
Unit 14				33	794	Y			H
WYNOCHEE RES.	OLY	09/24/90	16980				Mayr Brothers	Awarded; Contract Suspended, Marbled Murrelet	
A-240				15	1230	Y			H
A-240A				4	74	N			H
A-261				24	550	N			H
A-293				11	300	N			H
A-346				3	50	N			H
YOU WHO	OLY	09/14/90	12400				MCMC Resources	Awarded; Suspended, Spotted Owls & Marbled Murrelet	
SO-116				13	1750	Y			H
				3794	210287				

DRAFT

DRAFT

Forest Service, Region 6

DRAFT

Priority for Replacement Volume 2001(k) Sales; as of April 18, 1996

B. Umpqua/Siskiyou Sales with proposed T&E Fish and Aquatic Issues.

Sale Name	Forest	Bid Date	Original Volume	Acres	Remaining Volume	High-Bidder	Sale Status	Priority for Replace.
COWBOY	UMP	04/18/90	9400		9400	Scott Timber	Not Awarded, SAS v. THOMAS, 89-160WD	H
FIRST	UMP	09/19/90	5100			Scott Timber	Awarded 3/8/96, SAS vs Thomas 89-160WD; Substitute volume being provided	Done
GARDEN	SIS	09/12/90	4590		4590	Medford Corporation	Not Awarded, SAS vs. Thomas 89-160WD	H
GAGE	UMP	09/12/90	16500			Scott Timber	Released 9/29/95; Sale was modified to change some units from tractor to skyline logging, mark additional leave trees, provide wider buffers along streams.	L
Unit 5				14	358			
Unit 7				31	616			
Unit 10				9	270			
Unit 17				17	651			
Unit 23				9	298			
Unit 24				1	27			
Unit 26				26	117			
Unit 27				46	151			
Unit 29				28	180			
HONEYTREE	UMP	08/08/90	9300		350	Scott Timber	Released 9/29/95; Sale was modified to provide wider buffers along streams in Units 1, 7, 8, 9	L
Unit 1				2	72			
Unit 9				9	378			
JACK	UMP	08/01/90	9030			C&D Lumber	Released 9/29/95; Portion of Unit 1 and all of Units 9, 11, 12 deleted. Stream buffers added or widened in Units 7, 11, 15, 16, 21, 22. Tractor logging units changed to skyline logging.	L
Unit 14				14	598			
Unit 15				15	586			
Unit 18				4	142			
Unit 21				4	162			
LAST	UMP	09/12/90	6700			Scott Timber	Awarded 3/8/96, SAS vs. Thomas 89-160WD; Substitute volume being provided	Done
NITA	UMP	08/29/90	9300		9300	Scott Timber	Not Awarded, SAS vs. Thomas 89-160WD	H
REDLICK	UMP	08/01/90	6600			Superior Lumber	Released 9/29/95; Portions of Units 8 and 9 were deleted. Wider stream buffers implemented.	L
Unit 13				101	762			
SOUTH NITA	UMP	08/29/90	6300		6300	Scott Timber	Not Awarded, SAS vs. Thomas 89-160WD	H
ZANITA	UMP	03/14/90	11900			Lone Rock	Released 9/29/95; Deleted Units 1 and 2, Added wider stream buffers. All skyline logging.	L
Unit 3				17	428			
Unit 5				5	127			
Unit 8				10	429			
Unit 18				40	176			

Forest Service, Region 6
18-Apr-96

Priority for Replacement Volume 2001(k) Sales; as of April 18, 1996

C. PACFISH, INFISH and Eastside Screens

DRAFT

Sale Name	Forest	Bid Date	Original Volume	Acres	Remaining Volume	High-Bidder	Sale Status	Priority for Replace.
ALLEN	WAW	10/08/92	3800		3400	Rosboro Lumber	Awarded 3/11/96. Will seek contract modification of 5 units to meet PacFish Guidelines - can do within Sale Area.	H
BALD	UMA	09/30/91	2900		N/A	Boise Cascade	Not Awarded; Sale no longer exists on ground	N/A
BANTY SLV	WAW	08/04/92	610		610	Idaho Timber	Awarded 3/14/96. Need to go outside Sale Area to provide replacement volume to meet PacFish Guidelines.	H
BILL	WIN	09/28/92	5800		3000	Huffman/Wright	Awarded 11/14/95	L
BLUE FORD	FRE	09/25/91	6500		6500	Boise Cascade	Awarded 11/30/95; did not meet Eastside screens.	M
BUGOUT SLV	WAW	10/29/92	6400		N/A	Dodge Logging	Not Awarded; Sale no longer exists on ground	N/A
CANTREL SPRINGS	WAW	11/03/92	610		N/A	Kinzua	Not Awarded; no "responsible bidder" wanted sale	N/A
CINDER	WIN	09/28/92	5300		4400	Scott Timber	Awarded 11/14/95	L
EAGLE RIDGE HOUSELOG	UMA	09/30/91	170		170	Tucker Logging	Awarded 3/13/96; awaiting operating plan, did not meet Eastside screens.	L
FORKS	MAL	04/28/93	5000		N/A	Snow Mountain Pine	Not Awarded, no "responsible bidder" wanted sale	N/A
GATORSON	COL	03/25/91	13700		11880	Vaagan Brothers	Awarded 5/6/93. Suspended 5/20/93. SMITH v. USFS, 93-0178-JLQ (E.D.Wa).	L
HILTON	WAW	09/26/91	5300		N/A	Malheur Lumber	Not Awarded; no "responsible bidder" wanted sale	N/A
HORN SALVAGE	WAW	11/17/92	1340		1340	Boise Cascade	Awarded 3/13/96; Will seek contract modification to meet PacFish Guidelines - can do within Sale Area.	H
JOHN	WIN	08/14/91	1800		1800	Huffman/Wright	Awarded 11/14/95	L
JOHN LODGEPOLE	WIN	08/22/91	2200		2200	Western Timber	Awarded 3/12/96	L
JOHNSON SLV	WAW	08/27/92	3600		N/A	Rosboro Lumber	Not Awarded; no "responsible bidder" wanted sale	N/A
LOCUST	MAL	04/14/93	1000		1000	Smerski Logging	Awarded 11/22/95; did not meet Eastside screens.	L
NELSON	WIN	01/06/92	7400		N/A	DAW	Not Awarded; no "responsible bidder" wanted sale	N/A
NICHOLSON SLV I	OKA	02/29/93	890		0	Vaagan Brothers	Awarded 11/3/95; cutting completed.	N/A
OFF BROADWAY	OCH	03/29/93	12300			Kinzua	Award pending-Letters sent to other bidders concerning their interest in sale; did not meet Eastside screens	
PARK HFR	WAW	11/03/92	700		0	Boise Cascade	Awarded 11/13/95; cutting completed.	N/A
PRONG SALVAGE	WAW	10/16/92	3800		N/A	Rogge	Not Awarded; no "responsible bidder" wanted sale	N/A
RD SALVAGE	WAW	10/29/92	3300		3300	Dodge Logging	Awarded 11/14/95; Seeking contract modification to meet PacFish Guidelines - can do within Sale Area.	H
STAGECOACH	UMA	09/29/91	200		N/A	Boise Cascade	Not Awarded; Sale no longer exists on ground	N/A
SWEET PEA	WAW	05/26/92	1280		N/A	Ellingson Lumber	Not Awarded; no "responsible bidder" wanted sale	N/A
TANHORSE	WAW	09/24/91	1340		1340	Boise Cascade	Awarded 11/15/95. Seeking contract modification (PacFish) - can do within Sale	H
TANYA	WAW	09/26/91	585		585	Boise Cascade	Awarded 11/15/95; Seeking contract modification (PacFish) - can do within Sale	H
TIP	WEN	03/08/94	751		751	Longview Fiber	Awarded 9/9/94; Enjoined 3/3/95, LEAF et al v. FERRARO, 94-1026 (W.D. WA)	L
TIPTOP	WEN	11/15/93	2200		2200	St. Joe Lumber	Awarded 2/16/94; Enjoined 3/3/95, LEAF et al v. FERRARO, 94-1025 (W.D. WA	L
TOWER SLV	WAW	08/04/92	1010		N/A	Boise Cascade	Not Awarded; Sale no longer exists on ground	N/A
WILLY	WIN	09/26/91	4400		0	Boise Cascade	Awarded 11/14/95; cutting completed	N/A
YOSS	WIN	09/19/91	7100		2300	Boise Cascade	Awarded 11/14/95	L

Forest Service, Region 6

18-Apr-96

Priority for Replacement Volume 2001(k) Sales; as of April 18, 1996

D. Other Sales

DRAFT

Sale Name	Forest	Bid Date	Original Volume	Acres	Remaining Volume	Meets Court's Nesting Criteria	High-Bidder	Sale Status	Priority for Replace.
ANCHOVY	WIL	09/28/90	3400				Thomas Creek	Awarded; Contract modified, Unit 5 deleted and replaced with timber	L
Unit 5				23	900	N		within Sale Area.	
ABES WREN	UMP	12/27/89	6580				D R. Johnson Company	Awarded; Unit 32 Suspended, Spotted Owls; screened	
Unit 29				28	867	N			L-M
Unit 30				17	270	N			
Unit 31				25	933	N			
Unit 33				29	1428	N			
BOULDER KRAB	SIS	09/27/90	6070				Scott Timber	Awarded 11/3/95; Unit 1 in Marbled Murrelet occupied stand, all activity on unit	
Unit 4A				4	0	N		suspended on 12/5/95. Plan of operation received to cut Unit 4 Operating	H
Unit 4B				14	720	N		Schedule to begin operations by May 1996.	H
Unit 4C				25	960	N			H
CARACO CAT	OLY	05/18/90	3700		0	N	Mesa Resources	Awarded 11/21/95; Contract modified for riparian, buffers and some units deleted.	N/A
ENOLA	MTH	08/07/90	4800		4800	N	Hanel Lumber	Awarded 9/8/95; cutting started.	L
HEAD	ROR	09/18/90	3960		0	N	Boise Cascade	Awarded 9/8/95; Contract modified to add stream buffers and some units deleted;	N/A
								cutting completed.	
HIACK THIN	SIU	12/30/93	1600		N/A	N	Hampton Tree Farms	Not Awarded; no "responsible bidder" wanted sale	N/A
HOLDAWAY 2	GIP	02/24/89	1700			N	Kyle Peters	Award pending-Letters sent to other bidders concerning their interest in sale	
HORSE BYARS	WIL	08/31/90	5700		5700	N	Freres Lumber	Awarded 12/19/95; awaiting Plan of Operation	L
RED 90	WIL	09/28/90	7300		7300	N	Freres Lumber	Awarded 12/18/95; Contract modified and 1 unit replaced; currently cutting.	L
ROCKY	OLY	07/18/90	2900		2900	N	Buse Timber	Awarded 11/30/95; Contract modified for buffers; cutting completed.	N/A

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-May-1996 04:52pm

TO: (See Below)

FROM: Kathleen A. McGinty
Council on Environmental Quality

SUBJECT: vp mtg with glickman

just wanted to report that it went very well. the vp layed out as clearly as can be that it is time for the secy to take over management of the forest service -- on a daily basis -- to be excrutiatingly engaged until this is on a better track.

i think dan appreciates the depth of the problems with the forest service better than he did. i think he still does not relish the idea and that we will have to continue to monitor closely, however. but, he could not have helped to have gotten the vp's message. (by the way, he still had not heard anything about the infamous 1.6 billion letter....)

it also helped that leon came in for other reasons towards the end of the meeting and, while leaving, caught dan's eye and said: "you've got to get on top of this, my friend".

i have just shipped to most of you the long awaited alternative timber strategy memo that greg frazier handed me after the mtg. i susp and get comments back to greg frazier. thx.

Distribution:

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

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-May-1996 07:58am

TO: (See Below)

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

SUBJECT: RE: vp mtg with glickman

Glad to hear that the meeting went well--we all hope that the message got thru and that things will improve.

I'm surprised that he hadn't heard about the letter. Must be just the fact that he was out of town and none of us talked to him directly, but I am surprised that Greg didn't alert him to it as the most recent infraction that was sure to come up.

You've cleared up the mystery on the timber package that was delivered late yesterday afternoon. It was dropped off with no indication of where it came from, except that it obviously must have been prepared by USDA. We'll go over it Monday.

Distribution:

TO: Kathleen A. McGinty

CC: Martha Foley
CC: Jennifer M. O'Connor
CC: Ron Klain
CC: Shelley N. Fidler
CC: Dinah Bear
CC: Elena Kagan
CC: Barbara C. Chow

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-May-1996 12:02pm

TO: (See Below)

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

SUBJECT: USDA Reponse to Craig

Here are my comments on the draft response to Larry Craig--for the letter to follow the retraction.

First, I definitely think the final letter to Craig should come from Jack Ward Thomas. If his personal leave is continuing and he really is not available, then let's talk.

Second, I find the draft extremely defensive. It explains in too much detail that the original letter wasn't vetted properly, that some of the information was incorrect, that ongoing litigation prevents us from providing more information, and that we're still working on the analysis. Can't we craft a new second paragraph to the letter that states these points briefly but firmly. Then follow with a couple of paragraphs that provide more information where we feel we need to explain more fully.

Also, to the extent that the claims are a matter of public record, shouldn't we include some response to his question about the additional damages being sought by purchasers?

Regarding the substance of his first question, "total funding required to compensate timber sale contract holders", would it be correct to say that we hope to be able to provide replacement timber to these parties and therefore do not have any estimate of funding requirements at this time?

As to the substance of the text of the present draft letter, to the extent we still incorporate it, I will look to what Dinah, DOJ, and the other lawyers tell us since that makes numerous references to ongoing litigation and relies upon that as the main reason we are not providing more information.

In the next to last paragraph, the letter refers to the GAO analysis in a manner that implies that it will be the substantive response to Craig's question. We shouldn't leave our response in the hands of an arm of the Congress--at most we could

indicate that the GAO information will be helpful to him.

Distribution:

TO: Mark A. Weatherly

CC: Ruth D. Saunders
CC: Christine L. Nolin
CC: Dinah Bear
CC: Kathleen A. McGinty
CC: Martha Foley
CC: Elena Kagan
CC: Ron Cogswell

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-May-1996 05:10pm

TO: Elena Kagan

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: cancellation of contracts

1.) how are you?

2.) any news on cancellation brief?

3.) what do you think about the last line in the draft USDA guidance on alternative timber , i.e., if these steps are unsuccessful, FS will exercise their right to cancel the contracts? I assume that Rutzick already knows everything we're thinking and writing, but do you have concerns about putting it in this memo at this stage this way? I'm vaguely uneasy.

Yes - not for public consumption

do you see any legal distintion between our ability to cancel contracts that fall under k(1) and k(3)? Seems to me that we have an affirmative obligation to offer alt. timber under k(3), and since it's not dependent on purchasers' agreement, don't we just make a good faith offer and that's that? One reason I think that rather bald statement at the end of the USDA draft concerns me is that it sounds as though all alt. timber is negotiated and then we go to cancellation if that doesn't work. I think it has to make a much sharper distinction between k(1) and k(3). But I didn't want to go down this road in the more general e-mail until we'd had a chance to deal with this.

Absolutely!

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-May-1996 08:31am

TO: (See Below)

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

SUBJECT: Replacement Timber -- Mystery Solved

The mystery has been solved--the anonymous package labelled "Alternative Timber ...." that appeared late Friday came from CEQ and was prepared by USDA. This is the material that Greg Frazier had promised long ago. He finally gave it to Katie yesterday afternoon, and her office dropped it off.

I'd like our OMB staff to go over it Monday morning. I'd especially like an assessment of the evaluation they've come up with regarding how much timber will need to be replaced and how much (or little) is available (note that the paper also says that because the original sales included larger and more valuable trees, "it could take nearly twice as much volume from the 1996 sales to equal the same value").

From my quick read thru, I see three problems with the paper:

First, there's no prioritization for the field. It appears that we now have an assessment that the "top priority" sales that need to be replaced are sales that total 271 mbf! That could be correct that we would ideally be able to replace that much, but I had expected some further prioritization to indicate that, say, some group of sales totalling 100 mbf was extremely damaging (trees 500 to 1,000 years old, etc), and so on. The paper does not give any direction to the field in terms of where to go first, or which sales to work on if they can't come up with enough replacement timber to do them all.

As for their overall strategy, it was my understanding that we were not going to explicitly agree to "consider minor deviations from forest plan standards and guidelines", but that we would only do that on a case by case basis, if all other options failed and the field negotiators appealed to HQ/DC.

Finally, the impression that comes across is that there is not much negotiation going on right now. I hope that's not true. They are supposed to be going full speed ahead with

negotiations to replace the most problematic sales. Please let me know what is actually happening.

Distribution:

TO: Ron Cogswell
TO: Mark A. Weatherly
TO: Ruth D. Saunders
TO: Christine L. Nolin

CC: Kathleen A. McGinty
CC: Martha Foley
CC: Jennifer M. O'Connor
CC: Ron Klain
CC: Shelley N. Fidler
CC: Dinah Bear
CC: Elena Kagan
CC: Barbara C. Chow

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-May-1996 05:05pm

TO: (See Below)

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: RE: Replacement Timber -- Mystery Solved

A few thoughts to throw in the pot:

o In regards to prioritizing sales for replacement, I think the Forest Service has done that for the k(1) sales. For the k(3) sales, of course, we have legally obligated to supply replacement timber for all of the sales. So if we win the "known to be nesting" argument, that means at least 225 mbf of replacement timber - or likely much more, according to the FS. Whether, however, the statutory criteria of like kind and value, actually requires "nearly twice as much" is something I think OMB needs to scrutinize . . . . Dubious

o Justice should review this draft also (do we know if they have it?), and will no doubt have additional thoughts, but I am troubled by the wording in the next to the last line on p. 1 that says, "The Administration has taken the position in court that the alternative volume . . .". I think the first part of that statement should be dropped and it should simply read, "Alternative volume provided for these sales must comply with all laws". This is supposed to be clear guidance for the field, not a discussion of litigation positions. ok

o I recommend that the first full paragraph on p. 2, "However, if the 9th Circuit rules . . . ." be struck. It is full of assumptions that are not necessarily true and are not necessary for the purposes of this guidance. For example, it assumes that if lose in the 9th Circuit, we wouldn't seek a rehearing, wouldn't seek cert w/the Supremes, and wouldn't cancel. It also assumes that none of the purchasers are wiling to follow env. law.

o Again, I question the "double the number" assumption on top of p. 3.

o I concur with TJ's concern about the "minor deviation" language. I liked the "call home" language that BLM used for their guidance and that USDA had for the more limited guidance.

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

06-May-1996 11:12am

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

FROM: Elena Kagan
Office of the Counsel

SUBJECT: alternative timber memo

A few more thoughts:

1. On the need to prioritize: I agree with TJ that there should be more guidance for the field. It's true that if we win on k3, we're legally obligated to provide replacement timber for the whole 225 mbf. But we might lose on k3 -- and if we do, we will need to know which of these sales are the worst, which the next worst, and so on. TJ's right that the memo doesn't prioritize in this way, nor does it suggest how the field folks should prioritize for themselves.

2. The memo suggests that we have no problem with any of the sales we already have been forced to release. Is that true? Or are there some previously released sales that we currently are -- or ought to be -- negotiating about? And if so, how do these sales fit within the (nonexistent) list of priorities.

3. The statement about needing twice as much alternative timber has to be deleted. Someday we may be in litigation with purchasers over whether timber we've given them is of like kind and value, and in that context, this statement will come back to haunt us.

4. To expand on the concerns raised by Dinah in her second and third bullitts, can't we cut back on a lot of this memo's statement of the problem? I'd be more comfortable if this memo didn't spend so much time characterizing our legal obligations.

5. I'm of mixed mind as to whether we should say so directly that we will exercise our right to cancel contracts if negotiations are unsuccessful. It might be helpful, from an internal point of view, to put this position on record. More, I doubt it will come as a surprise to the timber industry that we've been thinking about this option. Finally, we will need to state this position, at some point and in some context, if we want to use it as leverage. But I worry that the industry will attempt to use this memo's flat statement against us -- perhaps as a basis for immediately seeking a declaratory judgment regarding our contractual rights, or perhaps as evidence that the cancellations result from broadscale policy concerns, rather than from good faith case-by-case

evaluation of the results of contractual performance. I think I would at least like to play with the language to alleviate my concerns on these matters.

6. I don't have the letter to Craig that TJ wrote an e-mail about. Can someone send me a copy?

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

06-May-1996 05:00pm

TO: (See Below)

FROM: Martha Foley
Office of the Chief of Staff

SUBJECT: RE: Replacement Timber -- Mystery Solved

This is literally addressed to Dinah, b/c I used the "a" button on her e-mail, but it is really to all...

Remind me again what the purpose of the memo is? To whom would it be addressed?

It certainly does not seem to me to lay out anything new re a Forest Service strategy for dealing with the problem if there is one (a strategy, that is). I generally agree with the other comments on this subject.

I agree with Dinah and someone (and disagree with Elena, I think) that we should use the call home approach, rather than a more formal commitment, on the guidance issue.

Distribution:

TO: Dinah Bear

CC: T J Glauthier
CC: Kathleen A. McGinty
CC: Jennifer M. O'Connor
CC: Shelley N. Fidler
CC: Elena Kagan
CC: Barbara C. Chow

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

07-May-1996 09:22am

TO: (See Below)

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: CANCELLED - TODAY'S FOREST MEETING

Due to the fact many of the usual participants in the EOP/agency working group will be at either the Opal Creek or Columbia Basin Ecosystem Project Congressional hearings this afternoon, the usual meeting for today is CANCELLED.

We will plan on having a meeting next Tuesday afternoon. Please come prepared to discuss your agency's perspective on the implementation of the salvage program under the timber rider, recalling the President's statement that we should take a "hard look" at that part of the program. Thank you.

Distribution:

TO: FAX (9-720-5437,greg frazier)
TO: FAX (9-720-4732,Jim Lyons)
TO: FAX (9-208-6956,Ann Shields)
TO: FAX (9-514-0557,Peter Coppelman)
TO: FAX (9-482-6318,Doug Hall)
TO: FAX (9-260-0550,Steve Herman)
TO: T J Glauthier
TO: Alicia Ward
TO: Ruth D. Saunders
TO: Elena Kagan
TO: Martha Foley
TO: Jennifer M. O'Connor
TO: Kris Balderston
TO: FAX (9-564-0070,Richard Sanderson)
TO: FAX (9-208-6916,Gerry Jackson)
TO: FAX (9-482-1041,Bob Ziobro)
TO: FAX (9-219-1792,Kris Clark)
TO: FAX (9-690-2730,Mike Gippert)
TO: FAX (9-920-3877,Bob Baum)
TO: FAX (9-514-0557,Ellen Athas)

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES DIVISION
APPELLATE SECTION
WASHINGTON, D.C. 20530
FAX NUMBER (202) 514-4240

DATE: May 2, 1996

FROM: Albert M. Ferlo, Jr.

RE: NFRC v. Glickman and Babbitt

OFFICE PHONE: (202) 514-2757

NUMBER OF PAGES: Message and 2 pages

PLEASE DELIVER TO:

Don Barry	208-4684
Bob Baum	208-3877
David Gayer	
Dinah Bear	456-0753
Brian Burke	720-4732
Mark Gaede	
Greg Frazier	720-5437
Mike Gippert,	690-2730
Jay McWhirter	
Jim Perry	
Nancy Hayes	208-5242
Gerry Jackson	208-6916
Elena Kagan	456-1647
Karen Mouritsen	219-1792
Kris Clark	
Chris Nolin	395-4941
Jason Patlis (301)	713-0658

MESSAGE:

An informal moot court for the May 7 argument on "known to be nesting," "next high bidder," and "enjoined sales" issues, on Friday May 3 at 11:00 am. We will be meeting in the Assistant Attorney General's Conference Room which is located on the Second Floor of the Main Justice Building, next to the Assistant Attorney General's office.

Attached are several questions which I believe could be of concern to the court. I will welcome your collective thoughts on the answers to these issues at our meeting tomorrow.

Al Ferlo

Known to be nesting questions

1. How quickly can contract holders expect to receive replacement timber if this court agrees with the Secretaries' interpretation of Section 2001(k)(2)?

2. What have the Secretaries done to date to identify replacement timber under Section 2001(k)(3)?

3. Does the ability to receive replacement timber for those sale units withheld under Section 2001(k)(2) survive September 30, 1996?

   (our previously stated position is "yes" See motion to extend stay pending appeal filed with Judge Hogan).

4. Will replacement timber be subject to legal challenges under environmental laws after September 30, 1996?

   (our previously stated position is "yes." See Motion to extend Stay Pending appeal filed with Judge Hogan).

5. Will replacement timber comply with the Standards and Guidelines of the Northwest Forest Plan? Even before 9/30?

   (our previously stated position is "yes." See August 23 Memorandum which states: "In accordance wit the standards and guidelines for the President's Northwest Plan and within the limits of available personnel and appropriated funds, we will assess the availability of alternative volume." See also Motion to extend stay pending appeal filed with Judge Hogan).

Next High Bidder Question

How often do the agencies elect not to offer the sale to the next high bidder when the high bidder elects to reject the sale.

NEXT HIGH BIDDER SALES

ENJOINED SALES

Cowboy
Garden
Nita
South Nita

WITHDRAWN BUT NEVER ENJOINED

First
Last

NEXT HIGH BIDDER SALES - 6 SALES AT ISSUE

AWARDED - NOT YET CUT

John Lodgepole
Eagle Ridge
Allen
Horn Salvage

UNDER CONSIDERATION BY HIGH BIDDER

Off Broadway

NO BIDDER INTERESTED

Nelson
Johnson Salvage
Hilton
Forks
Hiack Thin
Prong Salvage
Cantrel Spring

Timber meeting 4-30-96

Tongass - approved settlement w/ a couple of caveats

H-G rider dropped.
Oregonian - walked away from fire.

Craig Forest Health Bill
Designation - process out
Consensus -
give Secy's discretion to deal w/
unhealthy stands
Discussing - drop 2001 k?? (as part of bill)
Negots going on now w/ San Dems.
We don't want problematic fait accompli

Enviros - next bad thing
son of rescissions act

Our leg report on this - very critical as to current bill. Doesn't recommend veto though

60 Minutes Show

Forest Service letter - to Craig !!!
1.6 b in liability.
(106 m for 318 sales)

Litigation Report -

1. Areas v. sales - we lost
Clarification - apply only to W. side forests

2. Klamath - all motions - May 6 hearing
3. Eviola - vacated TRO. Demos/cutting going on.

Issue we going back to 9th Cir.
Inconsistency in descrip. of prog scope.
Affirms inj — all
In anal, ct often talks abt prog scope as only covering nat'l forests
Petition for rehearing to panel??
see 4956 —
face value - inj doesn't apply to E. side sales.
Opinion - inconsis. on this pt.
34 sales.

Motion for panel rehearing —
Ask for stay pending decision of this motion
Have to check factual info.
PK —
worried - 3rd bite at apple
will weaken our credibility!
Get back to me + Dinah tomorrow

Alternative timber

Greg Frazier to write memo —
laying out process for dealing w/ problematic timber sales.

Forest Service —
White Paper on low eff.
Rise of viol. on public lands. Serious resource problems.
How distribute resources in next few mos?
How much involvement from DC wanted?

Name	Date
Peter Rundlet	9/9/99

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-Apr-1996 10:09am

TO: (See Below)

FROM: Thomas C. Jensen
Council on Environmental Quality

SUBJECT: Meeting Reminder and Agenda

The EOP/Agency timber working group will meet as regularly scheduled today, Tuesday, April 30, 1996, at 2:00 p.m. in the CEQ conference room (722 Jackson Place).

Many of you have noted that it would seem possible and desirable to streamline the interagency consultation process on the issues discussed in the timber working group. Others have noted that there may be more personnel resources committed to the timber working group than the current mix and urgency of issues require. In light of these observations, with which we concur, we'd like to ask that you come to this meeting prepared to identify a single person to serve as your agency's principal point of contact for the working group.

In addition to the above matter, the agenda will include the following:

1. Recent events update
   a. Hatfield/Gorton rider
   b. Craig forest health bill

2. Litigation update
   a. NFRC v. Glickman - geographic scope decision
   b. Other developments

3. Alternative timber

4. Other business

Distribution:

TO: Alice E. Shuffield
TO: FAX (9-720-5437, Greg Frazier)
TO: FAX (9-720-4732, Jim Lyons)
TO: FAX (9-208-6956, Ann Shields)

THE WHITE HOUSE

WASHINGTON

April 21, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

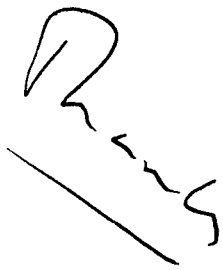
FROM: ELENA KAGAN EK

SUBJECT: NINTH CIRCUIT DECISION ON PRESIDENT'S FOREST PLAN

Jack: Last week you asked me what the recent Ninth Circuit decision upholding the President's Forest Plan has to do with the timber cases we are currently litigating. The short answer is: not much.

The Ninth Circuit decision, issued on April 10, concerned the validity of the Administration's Forest Plan -- a plan, approved in the spring of 1994, to manage federal land containing spotted owl habitat in the Pacific Northwest. The timber cases we are currently litigating concern the meaning of the timber rider to the rescissions act -- a piece of legislation that Congress, in the summer of 1994, essentially laid on top of the Forest Plan.

Approval of the Forest Plan does not at all affect the questions we are litigating under the timber rider. The Ninth Circuit decision thus will have no effect on any other cases. The only conceivable connection between the Forest Plan and the timber rider runs the other way: that is, the wholesale release of timber mandated by the timber rider may at some point bring down the Forest Plan. The Ninth Circuit decision, however, indicated that this result has not yet occurred; the court upheld the Forest Plan without even referring to the effects of the timber rider.



THE WHITE HOUSE

WASHINGTON

April 21, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN EK

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TO: Jennifer O'Connor
CC: Elena Kagan
FROM: Dinah Bear
DATE: April 18, 1996
RE: Timber issues for 4:30 meeting today

Last Friday, Katie chaired a meeting to discuss the issue of how the Forest Service should go about identifying the sales under Section 2001(k)(1)[1] of the timber rider for which we would offer substitute timber and where the Forest Service would get that substitute timber. The Forest Service had already identified about half a dozen sales that it believed would have particularly harmful consequences for the environment, including endangered species. They indicated that they would be completing that analysis shortly.

On the issues of substitute timber. the policy direction was to take timber out of this year's planned supply for the President's Forest Plan. These would be sales for which the Forest Service had already complied with the environmental laws, and that obviously met Plan standards and guidelines. That timber would no longer count as "Plan" timber.

Once the list of sales for which we should offer substitute timber had been developed and we had the list of available timber sales we could offer instead, the thought was that Secretaries Glickman and Babbitt should go to the Pacific Northwest and make a very public presentation regarding their offer to mitigate - to the full extent of our administrative authorities - the adverse impacts of the worst of these sales by offering Plan timber that did not pose environmental risks.

Since that meeting, numerous issues have been raised by the Forest Service in regards to the availability of Plan timber. Katie asked that they make a presentation at this afternoon's meeting that would essentially be suitable for a press conference - essentially, a trial run. It is not clear at this point whether the briefing will include all of the needed information, or whether we are about to run into another set of problems. Much of the USDA/Forest Service staff is still on the hill at a hearing on the Tongass National Forest.

As you may already know, we also are not yet in possession of a satisfactory brief on the issue of cancelling the contract. Elena and I met with Justice earlier this week on that issue, and expect to see the next draft tomorrow.

---

[1]These are all of the sales other than those which are found to contain threatened or endangered birds that are "known to be nesting". As you know, the case that raises the interpretation of the "known to be nesting" standard is on appeal, but if we prevail, we are required by the rider to offer replacement timber. We have already taken the position in court that replacement timber for those sales will require compliance with the environmental laws.

Dinah Bear 4-17-96

1. Klamath Tribes

2. Tongass - informal - go talk more
7:00 tonight - deadline
industry intervenors.

That's what prompted him to send everyone back. → [Ind. request for 2-mo discovery period - motive behind settlement.

3. Enola - noon tomorrow

4. Poss ARGUMENT -
"If for any other reason" -
other reason = K termination
then stat. remedy/

5. 4:30 mtg - supposed
USDA to make presentation:
a) K1 sales which are worst
b) here's what we have to offer as subst volume

Focus:
policy toward AT
what timber we take
what compliance is necessary etc.
law/policy

mtg w/ minority enterprises?
not there yet.

Name	Date
Peter Lundblet	9/9/99

Counsel

Ellen Athas 4-16-96

Judge Marsh – Natives for Enola Hill

2> Arguably covered by Hogan's injunction

under injunction?? just basic rescissions act.

– Old 318

– Real

Claim of sacred sites on sale area

We Filed motion to dismiss.

No tribal π / They can't be joined.

bec of sov immun.

we argued – nec parties.

some disc of merit of treaty rts argument

Ct granted motion

πs appealed

πs today back to dist ct – asked for TRO (cmt of order)

hearing by telephone

granted the relief – TRO entered

bond by πs

briefing on stay pending appeal – next wk.

Thurs. cmt call.

Pilot for going before Hogan? Terrible sale | Agree to stay pending appeal?

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-Apr-1996 10:11pm

TO: Elena Kagan

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: Enola hill

Talked to ellen athas . . . . she has no objection to not objecting to the stay, but will be briefing Lois in the am on various options.

The merits issue deals with the Religious Freedom Act. Our legal position here seems pretty firm - the Act requires the tribe to act, and the tribe didn't in this case. There is also a Supreme Ct. ruling on point (the Lyng case).

There is a conference call hrg. tommorrow at 2 pm over the issue of a bond the judge wants the enviros to post.

Plaintiff's appeal brief is due Monday; our is Wednesday.

The Forest Service in the field is furious that DOJ didn't argue that cutting trees is not irreperable harm in the argument today.

Katie is fine with not opposing the TRO right now.

Ellen points out that USDA's draft letter (which I should fax to you) and that says that this sale meets the Forest Plan rather undercuts our ability to move forward on termination, which it certainly does. Both Katie and I have the same question - which I have no answer to yet - as to why this sale was held up in the first place. Just the 6 acres of old growth? We don't know.

Sorry this is disjointed. Ellen is trying to figure out strategy for using this as a way to push termination, while the FS is trying to convince the world that minus the 6 acres this is a Fine Sale. I need to find out more about the problems with the sale prior to the rider. All for 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

17-Apr-1996 08:35pm

TO: (See Below)

FROM: Deborah L. Fine
Domestic Policy Council

SUBJECT: draft q and a

Attached is a first draft of the q and a with input from many of you. Please review, make edits, and fax them back to me or call me with your changes by 12pm if possible. My phone is 65572, my fax is 67028.

Thanks so much.

Distribution:

TO: Todd Stern
TO: Elena Kagan
TO: Jennifer L. Klein
TO: John P. Hart
TO: Katharine M. Button for verveer
TO: Betsy Myers
TO: Mary Dixon
TO: Jeremy D. Benami

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

12-Apr-1996 07:46pm

TO: Elena Kagan

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: meeting on Monday?

DOJ has sent two pleadings today: SCLDF's brief in opposition to our motion to transfer (yuck) which raises (yeah) the cancellation issue and the next version of our draft motion to clarify. Ellen et al would like to come back over on Monday to meet with you and I and discuss the draft brief and its relationship to the SCLDF pleading.

My only firm commitments on Monday are a 12-1 meeting and a 3 pm dental appointment. How's your schedule?

THE WHITE HOUSE

WASHINGTON

April 9, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN EK

SUBJECT: TIMBER

1. John Dwyer is not calling me back. I thought it was a bad idea for me to call Lois directly or for me to call John Schmidt.

2. I would guess that Lois told her attorneys on Friday to cease working on the brief. Lois may or may not have told John Schmidt that she was taking this action.

3. We have reached a settlement on the First and Last sales. We therefore have no immediate need for the brief.

4. We do, however, need to settle on a "model brief" to use when we want to cancel other bad sales. We should have this brief in the drawer, so that we can take it out at a moment's notice. (I attach the President's response to the news that the Vice President had instructed DOJ to begin work on this brief.)

5. Jack: I think you should call John Schmidt and try to find out what in the world is going on.

Elena

Kar

Spoke to John. They're getting the brief here on Friday — ok?

Jack

Senator Dole had just a week ago spoken to Paul Tudor Jones about the sugar assessment, and assured Jones that he would not oppose it. Today's announcement by Dole is virtually certain to trigger an all-out campaign against Dole by the Everglades-related environmental community.

In addition, and significantly, the Governor's letter also asks Senator Dole to support your Everglades proposal and to make it happen in this Congress. A copy of the Governor's letter is attached.

JAPANESE WHALING

The Japanese government is considering expanding its whaling in the Antarctic Sanctuary to include a new species (southern bottlenose whales). If they do so this will this would increase pressure on you to sanction Japan for its whaling activities. Just two months ago, in a report to Congress, you expressed "particular concern" about any "further expansion of lethal research in the Southern Ocean Whale Sanctuary." These developments increase the importance of discussions between you and Prime Minister Hashimoto on whaling when you visit Japan later this month.

NORWEGIAN WHALING

Norway, too, is threatening to increase its whaling activities significantly beyond limits currently allowed by the International Whaling Commission (IWC). Their threatened actions also amount to a violation of an understanding they had reached with us last year that allowed us to avoid imposing trade sanctions on them although we had found them to be in violation of the IWC (and, therefore, our own Marine Mammal Protection Act). If they move forward this year, we will lose all cover and face significant pressure to impose sanctions. The Vice President called prime Minister Bruntland this week to urge her to uphold the agreement they reached with us last year. We await final word but are not optimistic.

TIMBER RIDER NEGOTIATIONS

Earlier this week, USDA and the Forest Service were instructed to make all reasonable efforts to negotiate substitute timber for two sales of old growth forests in Oregon that we are under court injunction to release through the provisions of the timber rider. These sales (ironically named the "First" and "Last" sales) have been highly controversial because of the high degree of environmental damage they would cause and the age (up to 1,000 years old) of the trees. We were even willing to offer the purchasers replacement sales that departed in some measure from the strict requirements of the Forest Plan, and that they could start to harvest this Monday. However, as we head into what is being billed as the final meeting with the contract holders, we hear that they are insisting that the proposed new sales be shielded from litigation for an even longer period of time than the original sales would have been. We have been clear that the provisions of this old growth rider must end on September 30th. If the purchasers walk away over this, I think it will be clear that we have gone the

Isn't it worth that to save the environment?

Recycled Paper

extra 100 miles to try to accommodate them. The next possibility we have is to try to cancel their contracts. The Department of Justice was instructed by the Vice President and Leon Panetta to begin work on a brief supporting cancellation of the contracts, and we have asked to see the brief Monday morning.

NEW WORLD MINE

On Monday I will be meeting once again with the Canadian company that owns the New World mine, near Yellowstone National Park. I will introduce them to our two negotiators (John Schmidt, DOJ and Jim Pipkin, DOI). This meeting will officially launch our negotiation with the company. It is my goal to push this through by early summer.

While there are still significant hurdles, I believe we have this issue on a very good track. We should know within the next several weeks just how serious the company is about developing an agreement. Again, confidentiality is critical.

3rd → ↓

BLM - good job

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

10-Apr-1996 05:03pm

TO: Kathleen A. McGinty
TO: Dinah Bear

FROM: Kathleen M. Wallman
Office of the Counsel

CC: Elena Kagan
CC: Jack M. Quinn

SUBJECT: timber brief

I've been talking with the Associate AG's office. We will have the brief on Friday.

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

09-Apr-1996 09:50am

TO: (See Below)

FROM: Thomas C. Jensen
Council on Environmental Quality

SUBJECT: MEETING NOTICE

MEETING NOTICE -- PLEASE NOTE NEW MEETING LOCATION

The EOP/Agency timber working group will meet today at 2:00 p.m. in room 450 of the OEOB. We apologize for this late notice and the location change.

If you will need clearance into the OEOB, please call Carolyn Mosley at 395-5754 with your birthdate. You will need photo ID to be cleared into the building when you arrive.

The agenda for today's meeting will include:

1. Recent events update

2. Litigation updatee

3. Replacement timber issues

   a. Modification of sales under 2000(k)(1)
   b. Replacement sales under 2000(k)(3)

4. Status of murrelet surveys

5. Other business

Thanks for your cooperation.

Distribution:

TO: Alice E. Shuffield
TO: FAX (9-720-5437, Greg Frazier)
TO: FAX (9-720-4732, Jim Lyons)
TO: FAX (9-208-6956, Ann Shields)
TO: FAX (9-208-4684, George Frampton)
TO: FAX (9-208-3144, Bob Armstrong)
TO: FAX (9-514-0557, Lois Schiffer)

THE WHITE HOUSE

WASHINGTON

April 9, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN

SUBJECT: TIMBER

1. John Dwyer is not calling me back. I thought it was a bad idea for me to call Lois directly or for me to call John Schmidt.

2. I would guess that Lois told her attorneys on Friday to cease working on the brief. Lois may or may not have told John Schmidt that she was taking this action.

3. We have reached a settlement on the First and Last sales. We therefore have no immediate need for the brief.

4. We do, however, need to settle on a "model brief" to use when we want to cancel other bad sales. We should have this brief in the drawer, so that we can take it out at a moment's notice. (I attach the President's response to the news that the Vice President had instructed DOJ to begin work on this brief.)

5. Jack: I think you should call John Schmidt and try to find out what in the world is going on.

Senator Dole had just a week ago spoken to Paul Tudor Jones about the sugar assessment, and assured Jones that he would not oppose it. Today's announcement by Dole is virtually certain to trigger an all-out campaign against Dole by the Everglades-related environmental community.

In addition, and significantly, the Governor's letter also asks Senator Dole to support your Everglades proposal and to make it happen in this Congress. A copy of the Governor's letter is attached.

JAPANESE WHALING

The Japanese government is considering expanding its whaling in the Antarctic Sanctuary to include a new species (southern bottlenose whales). If they do so this will this would increase pressure on you to sanction Japan for its whaling activities. Just two months ago, in a report to Congress, you expressed "particular concern" about any "further expansion of lethal research in the Southern Ocean Whale Sanctuary." These developments increase the importance of discussions between you and Prime Minister Hashimoto on whaling when you visit Japan later this month.

NORWEGIAN WHALING

Norway, too, is threatening to increase its whaling activities significantly beyond limits currently allowed by the International Whaling Commission (IWC). Their threatened actions also amount to a violation of an understanding they had reached with us last year that allowed us to avoid imposing trade sanctions on them although we had found them to be in violation of the IWC (and, therefore, our own Marine Mammal Protection Act). If they move forward this year, we will lose all cover and face significant pressure to impose sanctions. The Vice President called prime Minister Bruntland this week to urge her to uphold the agreement they reached with us last year. We await final word but are not optimistic.

TIMBER RIDER NEGOTIATIONS

Earlier this week, USDA and the Forest Service were instructed to make all reasonable efforts to negotiate substitute timber for two sales of old growth forests in Oregon that we are under court injunction to release through the provisions of the timber rider. These sales (ironically named the "First" and "Last" sales) have been highly controversial because of the high degree of environmental damage they would cause and the age (up to 1,000 years old) of the trees. We were even willing to offer the purchasers replacement sales that departed in some measure from the strict requirements of the Forest Plan, and that they could start to harvest this Monday. However, as we head into what is being billed as the final meeting with the contract holders, we hear that they are insisting that the proposed new sales be shielded from litigation for an even longer period of time than the original sales would have been. We have been clear that the provisions of this old growth rider must end on September 30th. If the purchasers walk away over this, I think it will be clear that we have gone the

Isn't it worth that to save the environment?

Recycled Paper

extra 100 miles to try to accommodate them. The next possibility we have is to try to cancel their contracts. The Department of Justice was instructed by the Vice President and Leon Panetta to begin work on a brief supporting cancellation of the contracts, and we have asked to see the brief Monday morning.

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3nd → ↓

BLM - good job

say have deal { FS
Purch.
Env gp - locals

no compliance w/ plan.
not much better.

last night - SCALDEF
or other purchaser may sue.

said rep timber should follow stds

then - we'd have to defend on "notw/standing other law" language -
i.e. rep timber doesn't have to comply.

have to do it here -
but nowhere else?

but next wk - Abe's Wren
Elk Fork
Boulder Krabbe

tmrw at 5:00

7317

sales

Proposed K for cancelling
1st + last ~~[illegible]~~ + giving
alt. timber.

Matthews
66796

SCALDEF – Shell
cancellation – permitted –
Shell
=> talk of him about
legal theories

Sunrise Mt. McKinley — Ansel Adams

SIERRA CLUB LEGAL DEFENSE FUND, INC.

The Law Firm for the Environmental Movement

180 Montgomery Street, Suite 1400, San Francisco, CA 94104-4209

E-MAIL: scldfsf@igc.apc.org
(415) 627-6700 FAX (415) 627-6740

4 April 1996

Leon Panetta
Chief of Staff
The White House

By FAX: 202/456-2883

Attention: Martha Foley

Dear Mr. Panetta:

I learned this evening that some administration officials who attended our meeting in your office on March 29 apparently are under the misimpression that the Sierra Club Legal Defense Fund either did or would agree not to challenge timber sales in the Pacific Northwest that violate "Option 9" or the federal environmental laws. Nothing could be further from the truth, and I am writing to set the record straight quickly and in the strongest possible terms.

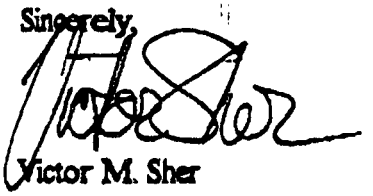
I made three points concerning these issues in our meeting. First, the administration should not look to the environmental community to agree to insulate timber sales in the Pacific Northwest from judicial review -- including "substitute volume" intended to replace sales under the Logging Rider that violate the President's plan for the ancient forests and that would clearly be illegal but for the Rider. While the Legal Defense Fund will always convey settlement proposals from the administration to our clients -- as our ethical obligations require us to do -- in this case we believe it is a bad idea not worth the effort to seek to enlist the environmental community's support on this point. It is an especially bad idea, given the availability of better alternatives that would prevent those sales from being logged.

Second, the solution for the administration's dilemma with respect to sales it does not wish logged is to terminate the contracts. In our view, the Forest Service clearly has the authority to take this step under the contracts, and under the Logging Rider (which explicitly preserves *all* of the original contract terms, including the terms governing termination for environment reasons). The government does not need our approval or anyone else's to take this step, and it is the logical (and right) thing to do.

Finally, if the government insists on providing substitute timber to the purchasers of the existing sales, the new timber must in our view also be in full compliance with Option 9 and the federal environmental laws. The President's assurances to the public in the wake of the Logging Rider that the government will not violate our environmental standards, and his directive to the agencies to that effect, require no less. As I pointed out, if the new timber meets these standards, the government is highly unlikely to be sued by anyone; if sued, the government would surely win.

I trust this sets the record straight. Please feel free to call me if you have any further questions.

Sincerely,



Victor M. Sher
President

United States Department of Agriculture
Forest Service

Umpqua National Forest
PO Box 1008
Roseburg, OR 97470
(541) 672-6601
FAX (541) 957-3495

REPLY TO: 2450

4/4/96 5pm
D R A F T

DATE

SUBJECT: First Timber Sale, Contract No. 083979 and
Last Timber Sale, Contract No. 083847

TO: Scott Timber Company
P.O. Box 1088
Roseburg, OR 97470

LETTER OF AGREEMENT

Pursuant to the interim final rule for 36 CFR Part 223 (Disposal of National Forest System Timber; Modification of Timber Sale Contracts in Extraordinary Conditions) published in the Federal Register on April 3, 1996, the Secretary of Agriculture authorized the Forest Service to modify the First and Last Timber Sales by substituting timber from outside the sale area specified in the contract for timber within the timber sale contract area.

In accordance with direction from the Regional Forester, the Forest Service proposes to substitute the uncut volume on First and Last Timber Sales according to the following procedures for implementing the contract modifications to consumate this action:

1. Both parties are agree to substitute the entire sale volumes, minus the volume that has already been felled.

2. The substitute volume will be the overstory trees in existing shelterwood harvest units in the Matrix on the Tiller Ranger District that are identified by the Forest Service, then presented to the Purchaser for review and acceptance. Reserve trees will be marked in the identified riparian areas by the Forest Service.

3. The Forest Service will cruise the volume in the units accepted for substitution. The Purchaser will have an opportunity to review the cruise reports and will notify the Forest Service of any major disagreements on the volume determinations.

4. The Forest Service will complete an appraisal using the current Transaction Evidence Appraisal program and the costs for the current timber sale conterct and for the modified timber sale contract. The appraisal of the modified contract will reflect the changed conditions in the substitution units including, but not limited to, the revised haul routes, volume per acre, move-in/move-out costs, and logging systems. The difference in appraised value between the two reappraisals will be used to adjust the Current Contract Rates. The Purchaser will have an opportunity to review the appraisal and will notify the Forest Service of any major disagreements with the costs and values.

5. The Current Contract Rates will be charged for any substituted volume that is removed prior to the completion of the reappraisal. When the reappraisal is completed, a retroactive adjustment will be made to the charges for timber removed so that all substituted volume is charged at the reappraised rates.

6. Upon completion of the above steps, an Agreement to Modify Contract, 2400-9, will be prepared and offered to Scott Timber Company to delete the existing units and add the substitute units. This Letter of Agreement is sufficient to allow both parties to proceed with the substitution of volume.

7. Upon substitute units being made available, cutting operations will cease in the existing units and may begin in substitute units. ?

Please sign demonstrating your agreement with these procedures and that cutting will cease in existing units as soon as substitute units are made available. ?

DON OSTBY
Contracting Officer
Umpqua National Forest

I agree with the above procedures to implement the contract modifications for substitute volume for First and Last Timber Sale Contracts and to cease cutting existing units as soon as substitute units are made available.

_____
ALLAN FORD
Vice President
Scott Timber Company

cc: Tiller RD
Regional Forester

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-Apr-1996 10:54am

TO: JOHNSON_BJ

FROM: Jim Petterson

SUBJECT: First and Last Sales

A recent AP story.

---------- old follows ----------
Timber Swap,0450
Agreement Near on Swap to Save Old Trees

ROSEBURG, Ore. (AP) Agreement is near on a timber swap that would save from logging centuries-old federal timber that has been the focus of demonstrations by environmentalists, the U.S. Forest Service says.

Roseburg Forest Products could sign the agreement with the Forest Service as early as today, Umpqua spokeswoman Cheryl Walters. The company would trade the controversial First timber sale for 4 million board feet of other trees from partially logged stands.

''An agreement is so darn close,'' Walters said. ''RFP has agreed in concept and we don't see any reason why they would back out.''

Speaking to the Roseburg Area Chamber of Commerce, Umpqua National Forest Supervisor Don Otsby said Thursday the deal could be the first of a series of swaps to stop logging of environmentally sensitive areas under the so-called salvage rider.

Roseburg Forest Products began logging last month on the First timber sale after negotiations for the trade broke down. The sale is one of a number that were offered in the midst of the battle over the northern spotted owl and later withdrawn over environmental concerns.

After finding at least one tree that appeared to be 1,000 years old, environmentalists tried to stop the logging. At one point three people were arrested when they chained themselves to junked cars to block a logging road.

''We expect the cutting will stop immediately now that substitute volume has been explicitly authorized by the Department of Agriculture, identified by the Forest Service and offered to Scott Timber,'' said Ken Carloni, president of the environmental group Umpqua Watersheds Inc. Scott Timber is the logging subsidiary of Roseburg Forest Products.

''Allyn Ford (executive vice president of Roseburg Forest Products) indicated to me that he would stop cutting as soon as the Forest Service offered suitable substitute volume and I am confident he will abide by his word.''

Roseburg Forest Products didn't immediately return a telephone

call for comment.

The sale was withdrawn by the Forest Service in 1990 after deciding that logging the old-growth timber would harm spotted owls, a threatened species, as well as cutthroat trout in the Umpqua River system.

The sale was released to Roseburg Forest Products recently under the so-called salvage rider. The rider suspends enforcement of environmental laws to speed logging that was held up for years in the spotted owl fight.

(PROFILE
(CAT:Agriculture;)
(CAT:Business;)
(CAT:Environment;)
(SRC:AP; ST:ID;)
)
AP-NY-04-05-96 0428EST

:SUBJECT: AGRI ENV ID CONW
Copyright (c) 1996 The Associated Press
Received by NewsEDGE/LAN: 4/5/96 4:19 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

08-Apr-1996 12:28pm

TO: (See Below)

FROM: Kathleen A. McGinty
Council on Environmental Quality

SUBJECT: RE: One for the marbled murrelets!!!!!!!

hey, not to be a party pooper, but i'm not certain that we have actually signed the deal on first and last yet. my latest word was that allyn ford could not be reached yesterday.

Distribution:

TO: T J Glauthier

CC: Dinah Bear
CC: Martha Foley
CC: Jennifer M. O'Connor
CC: Elena Kagan
CC: Barbara C. Chow
CC: Thomas C. Jensen

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-Apr-1996 09:22pm

TO: (See Below)

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: One for the marbled murrelets!!!!!!!

In our first victory in any of the timber rider-related cases, the Court of Appeals for the Ninth Circuit just granted the government's motion to extend the stay for the marbled murrelet "known to be nesting" sales until they issue a decision on the merits (oral argument is May 7th). Apparently, the panel issued their ruling before the industry even filed their brief; they gave the industry 14 days to file their brief, but the read is that the stay will stay on, so to speak. (I don't know who was on the panel yet, but it is the same panel that will hear the merits).

Distribution:

TO: Kathleen A. McGinty
TO: Martha Foley
TO: T J Glauthier
TO: Jennifer M. O'Connor
TO: Elena Kagan
TO: Barbara C. Chow
TO: Thomas C. Jensen

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

MEMORANDUM TO THE CHIEF, FOREST SERVICE

FROM: **James R. Lyons**
Under Secretary
Natural Resources and Environment

James Gilliland
General Counsel
U.S. Department of Agriculture

SUBJECT: **First, Last, and Abes Wren Timber Sales (Umpqua NF)**
Elk Fork and Boulder Krab Timber Sales (Siskiyou NF)

In light of the fact that the subject timber sales substantially violate the standards and guidelines of the Pacific NW Forest Plan and may cause considerable environmental harm if operated, the following directive is provided to guide the modification of the above sales to provide replacement volume that would be less environmentally harmful.

1. It is our intent that all modifications to the subject sales offered under section 2001 k(1) of the FY 1995 Rescissions Act to provide replacement timber volume for these specific timber sales should comply with the standards and guidelines of the Pacific NW Forest Plan and all applicable environmental laws. However, should there be a need to expedite identification and harvest of replacement timber volume in order to avoid cutting of a timber sale of greater adverse environmental consequences, assure that the replacement sale:

is only pursued after ensuring that

a. Such alternative volume ~~described in the preceding sentence~~ that meets the standards and guidelines of the Forest Plan and all applicable environmental laws is not available.

b. Is substantially consistent with the forest plan.

c. Uses an expedited environmental assessment procedure similar to that currently being used for salvage sales.

d. Is acceptable to the Level One team; and

e. Is acceptable to other interested parties.

2. Volume shall be prepared quickly and priority given to preparing replacement volume over all other timber sales.

3. Volume offered for replacement shall be of similar value.

4. Use your best professional judgement and sound stewardship principles to guide your efforts regarding modification of the subject sales.

5. Please give this directive your highest priority.

Any proposed offer of replacement volume on the subject sales should be coordinated through counsel prior to making a formal offer to the contract holder.

Any questions regarding this directive should be presented to the Under Secretary of Agriculture and the General Counsel..

Please convey this directive to the appropriate Forest Service officials, immediately.

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

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complying with the standards & guidelines of the Pacific NW Forest Plan + all applicable environmental laws

a. ~~Such~~ alternative volume ~~described in the preceding sentence~~ is not available.

The replacement sale

b. Is substantially consistent with the forest plan.

c. Uses an expedited environmental assessment procedure similar to that currently being used for salvage sales.

The replacement sale

d. Is acceptable to the Level One team; and

e. Is acceptable to other interested parties.

The replacement sale

What's the proper subject here? The alternative sale? Or something else?

AN EQUAL OPPORTUNITY EMPLOYER

2. Volume shall be prepared quickly and priority given to preparing replacement volume over all other timber sales.

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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-Apr-1996 03:44pm

TO: (See Below)

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

SUBJECT: Timber Letter Sent Yesterday

Attached is a copy of the letter that Sec. Glickman sent yesterday to the owner of the "First" and "Last" timber sales in Oregon. The letter reaffirms our offer of replacement timber for these sales that would cut trees of up to 650 years old.

Negotiations are continuing between this contract holder and the Forest Service, with the hope of possible agreement on replacement timber this week.

Similar negotiations by the Forest Service should begin immediately with the holders of at least three other sales in such old growth areas. The BLM is also about to release agreements with several contract holders on replacement timber, and will begin negotiations on other potential contracts.

Distribution:

TO: Alice M. Rivlin
TO: Jacob J. Lew
TO: Martha Foley
TO: Elena Kagan
TO: Jennifer M. O'Connor
TO: Ron Klain

CC: Ron Cogswell

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

April 2, 1996

Mr. Allyn Ford
Roseburg Forest Products
Post Office Box 1088
Roseburg, Oregon 97470

Dear Mr. Ford:

As you know, the Clinton Administration is deeply concerned about the harvesting of old growth timber sales in extremely sensitive watersheds. The First and Last timber sales were awarded to Scott Lumber Company, a subsidiary of Roseburg Forest Products, on March 8, 1996, as required by the court's interpretation of the salvage rider of the 1995 Rescissions Act. These are primary examples of sales which should not be harvested. Operation of these sales poses a significant threat to coho salmon and cutthroat trout which are very important to the environment and the region's economy.

On February 6, 1996, you wrote Secretary Babbitt and myself expressing your willingness to engage constructively with us in an effort to find more environmentally sound alternatives. We appreciated your initiative in that regard and the Forest Service began working with you.

In short order, the Forest Supervisor of the Umpqua National Forest offered you alternative volume in the Diamond Lake District to be available in June, to operate in lieu of First and Last. It is my understanding that you declined to accept this offer at that time and intend to continue the cutting of ancient trees, some as old as 650 years, instead of waiting 2 more months for this replacement timber. Your actions pose significant and potentially irreversible economic and environmental harm to the region.

Upon your refusal of its offer, the Forest Service redoubled its efforts once again to identify alternatives. I am hereby repeating our first offer to you to exchange First and Last timber for timber in the Diamond Lake District previously offered. In the alternative, we can offer replacement timber being prepared by the Umpqua Forest Supervisor in the Tiller District to be ready for harvest very soon. In response to these offers, I request that you cease cutting the First and Last timber sales and indicate your willingness to accept one of these offers of alternative volume.

I request that you affirmatively respond to this letter by April 5, 1996. Because of the gravity of the situation, the Government is prepared to pursue all legal remedies available regarding the First and Last timber sales.

I look forward to your reply.

Sincerely,

DAN GLICKMAN
Secretary

±±± â ââââââ

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-Apr-1996 03:23pm

TO: (See Below)

FROM: Christine L. Nolin
Office of Mgmt and Budget, NRD

SUBJECT: Forest Service Guidance on Replacement timber for 1st & Last

USDA will be revising its draft guidance to the field as a result of a meeting held this afternoon with TJ Glauthier, CEQ, DOJ, DOI and NMFS. TJ has asked that I circulate the revised version to you. You should be getting it about 4:30 and we need a quick turn around in order to try to get it out today.

Because of outstanding legal concerns raised by DOJ, the guidance will be limited at this time to the 5 released sales that are the subject of current controversy. This includes the First and Last sales.

In order to guide policy making on replacement timber for other environmentally damaging sales, DOJ has been charged with providing answers to the following legal questions:

1) Do we have the authority to unilaterally cancel 318 contracts under their original contract provisions? (analysis underway since last week).

2) a. Can we provid, for k(1) sales, replacement timber that doesn't comply with environmental laws and Forest Plan standards and guidelines?
b. Can we provide, for k(3) sales, replacement timber that doesn't comply with environmental laws and Forest Plan standards and guidelines? (the general consensus is that the answers to these questions may be different).

3) Do we have the authority to offer Forest Plan timber as replacement timber under k(3)?

4) Do we have the authority to buy out a 318 contract in a voluntary agreement with a purchaser?

Distribution:

TO: Martha Foley

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

April 2, 1996

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Roseburg Forest Products
Post Office Box 1088
Roseburg, Oregon 97470

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I request that you affirmatively respond to this letter by April 5, 1996. Because of the gravity of the situation, the Government is prepared to pursue all legal remedies available regarding the First and Last timber sales.

I look forward to your reply.

Sincerely,

JOAN GLICKMAN
Secretary

Timber Interagency 4/1/96

1. MM stay -
   expires 4/3. We've asked: if denies, give 5 days for appeal to 9C
2. Klamath Tribes -
   Diff of opin among ags.
   Able to smash positions together.
   Oblig under treaties / met in this case.
3. Rutzick letter - should award / even if not released

WHY?

Tomorrow 12:30 CEQ
Line by line markup of UIDA
directive on rep. timber.

Directive also cover known to be
nesting sales?
Nancy says shouldn't.
What do we get out of
relaxing stds for K3 timber?

Against the law?!! ← We are using FP timber as
rep timber.
• all such is in compliance
w/everything.

DRAFT

SUBJECT: First, Last, and Abes Wren Timber Sales (Umpqua NF)
Elk Fork and Boulder Krab Timber Sales (Siskiyou NF)

TO: Regional Forester, R-6

Please refer to the attached letter of Under Secretary James Lyons, regarding replacement timber volume for certain "318" timber sales on the Umpqua and Siskiyou National Forests. In addition to that letter, we are providing some additional clarification for you to follow in preparing this replacement volume.

- Priority will be given to replacement volume from the marix, and, to the extent possible given the need to expedite preparation of replacement volume, consistent with NW Forest Plan standards and guidelines.

- Volume will be prepared quickly and priority given to preparing replacement volume over all other timber sales.

- Volume offered for replacement should be of similar value to that being replaced.

- Proposed replacement units will be discussed with the contract holder and local environmental leaders prior to being awarded.

- Use your best professional judgement and sound stewardship principles to guide your efforts regarding replacement timber volume.

- Please give this directive your highest priority.

301-277-3922
307-489-9124

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

Mr. Allyn Ford
Executive Vice President
Roseburg Forest Products
P.O. Box 1088
Roseburg, Oregon 97470

DRAFT

Dear Mr. Ford:

As you know, the Clinton Administration is deeply concerned about the harvesting of old growth sales in extremely sensitive watersheds. The First and Last timber sales, which were awarded to Scott Lumber Company on March 8, 1996, as required by the salvage rider of the 1995 Recissions Act, are primary examples of sales, which, if harvested, will be very environmentally damaging, particularly to salmon.

Previously, representatives of the Umpqua National Forest offered you alternative volume, originally prepared as a part of the FY 1996 timber sale program, to operate in lieu of First and Last. It is my understanding that you declined to accept this offer.

I am extending to you, once again, an offer to exchange this timber on the Umpqua National Forest for the First and Last timber sales. As a part of this offer, I request that you cease cutting of First and Last and indicate your willingness to accept this offer of alternative volume.

I request that you affirmatively respond to this letter by April 4, 1996; otherwise the Government will pursue all legal remedies available to it to prevent further harvest of the First and Last timber sales.

I look forward to your reply.

Sincerely,

DAN GLICKMAN
Secretary

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

NATURAL RESOURCES DIVISION

FAX COVER SHEET

DATE: 4/1/96

FAX NO: 202-395-1067
CONFIRMATION NO: 395-4586

TO: ELENA KAGAN 61647
JEN O'CONNOR 62883
(Sorry!)

FROM: CHRIS NOLAN

Number of pages being transmitted
(including cover sheet) ____

COMMENT: ENCLOSED ARE:
1) FYI - PRESS RELEASE FROM 3/29 OF SEC. GLICKMAN
2) FOR COMMENT BY NOON TODAY - DRAFT
• GUIDELINES FOR REPLACEMENT TIMBER
• LETTERS TO TIMBER COMPANIES

PLEASE CALL TO CONFIRM RECEIPT OF FAX.

Release No. 0160.96

Jim Petterson (202) 720-4623

GLICKMAN MOVES TO PROTECT OLD-GROWTH AREAS IN NORTHWEST

Washington, March 29, 1996--Agriculture Secretary Dan Glickman today announced that he has signed an order, in the form of an interim final rule, to provide the Forest Service with an additional tool it needs to modify the most environmentally-damaging timber sales authorized under the timber rider included by Congress in the 1995 Rescission Act.

Glickman's order will give the Forest Service added flexibility to work with timber operators that hold rights to log certain old-growth timber sales, known as "section 318 sales," in the Northwest, such as the First and Last timber sales on the Umpqua National Forest in Oregon.

The order gives the Forest Service the authority to offer substitute timber located outside of an original sale area. Under current regulations, in offering substitute volume, the Forest Service can only swap timber within a given sale area. With the section 318 sales, alternative timber is not available within many sale areas. Therefore, in order to swap timber, the Forest Service needed the authority to offer substitute timber outside of a sale area.

"I want to be perfectly clear," Glickman said. "The Clinton Administration is exercising every option available to prevent the logging of these remarkable, environmentally-critical old-growth areas. In fact, President Clinton supports repeal of the section 318 timber rider.

"The bottom line is that the First and Last timber sales, among others, should not be cut. We have been working with timber operators and the environmental community for weeks to work out mutually acceptable solutions. Thus far, we have not reached agreement. I believe that with this new authority, the tools are in place to head off the immediate threats to fisheries, soils, streams and threatened and endangered species that would result from harvesting these section 318 sales."

In addition to Glickman's order, Under Secretary for Natural Resources and Environment, James R. Lyons, directed the Forest Service to give priority to its efforts to find alternative timber and work with timber operators, local environmentalists, and other government agencies to get work done quickly.

"We are exploring every avenue within the confines of Congress' timber rider and the narrow court interpretations to protect these areas in the Umpqua and Siskiyou National Forests," Lyons said. "Our goal is to get the contract holders, local environmentalists, and agency personnel out on the ground to find alternative timber. All parties seem to agree that they do not want to see sales, such as the Elk Fork, Boulder Krab or First and Last, harvested. Working together, we should be able to solve these problems."

#

DRAFT

SUBJECT: First, Last, and Abes Wren Timber Sales (Umpqua NF)
Elk Fork and Boulder Krab Timber Sales (Siskiyou NF)

TO: Regional Forester, R-6

Please refer to the attached letter of Under Secretary James Lyons, regarding replacement timber volume for certain "318" timber sales on the Umpqua and Siskiyou National Forests. In addition to that letter, we are providing some additional clarification for you to follow in preparing this replacement volume.

- Priority will be given to replacement volume from the marix, and, to the extent possible given the need to expedite preparation of replacement volume, consistency with NW Forest Plan standards and guidelines.
- Volume will be prepared quickly and priority given to preparing replacement volume over all other timber sales.
- Volume offered for replacement should be of similar value to that being replaced.
- Proposed replacement units will be discussed with the contract holder and local environmental leaders prior to being awarded.
- Use your best professional judgement and sound stewardship principles to guide your efforts regarding replacement timber volume.
- Please give this directive your highest priority.

JACK WARD THOMAS
Chief

MEMORANDUM

DRAFT

TO: JACK WARD THOMAS
CHIEF, USDA FOREST SERVICE

FROM: JAMES R. LYONS
UNDER SECRETARY

SUBJ: REPLACEMENT VOLUME FOR CERTAIN "318" SALES ON THE UMPQUA AND SISKIYOU NATIONAL FORESTS

DATE: March 28, 1996

As you know, the Administration has spent considerable time and effort attempting to prevent the harvest of certain so-called "318" timber sales, authorized under the Rescissions Act for FY 1996. However, harvest of certain of these sales has begun or is imminent. It is therefore imperative that we act to find alternatives to these timber sales so to limit the damage that may result from their harvest.

My recent visit to the Umpqua National Forest and discussions with Don Ostby, Supervisor of the Umpqua National Forest and Mike Lunn, Supervisor of the Siskiyou National Forest, convince me that reasonable alternatives exist to the more onerous "318" sales which they face. In addition, my discussions with the representatives of several of the companies that hold the contracts on this timber make clear that they are willing to accept reasonable alternative offers of volume that might serve as a replacement for the "318" sales they own. Therefore, we must act quickly but with good professional judgement to find replacement volume which will have less severe environmental consequences than the sales of concern.

You are instructed to carry out the following actions in order to encourage the best possible chance of maintaining the integrity of the Northwest Forest Plan, while complying with Federal Court orders issued in relation to timber provisions of the FY 1996 Rescissions Act.

1. Appropriate Forest Service personnel should deal directly with the timber contract holder and representatives of the local environmental community to identify alternative timber volume. It is my understanding that some discussions have already occurred between the timber purchasers, local environmental leaders, and the Forest supervisors regarding such alternatives. This should provide a good starting point for identifying replacement sales.

2. To the extent possible given the need to expedite identification of replacement sales, alternative volume should be prepared consistent with the standards and guidelines of the Northwest Forest Plan. That means that priority should be given to finding replacement volume in the matrix. If it is necessary to offer volume from late successional reserve (LSR) areas, be certain that other matrix alternatives have been explored, and that LSR volume is offered in a manner that would have only minimal impact on the integrity of the area (e.g., propose sales on the edge of LSR or in previously harvested portions of LSR areas).

DRAFT

3. Level One interagency teams from the land management and regulatory agencies should be involved in locating and approving alternative timber volume, in consultation with the contract holder and local environmental interests.

4. Authority is being granted to offer alternative volume from outside the sale area boundary of the "318" sales. An interim final rule will be issued today to permit you to provide timber outside the current sale area boundaries. Do not hesitate to explore alternatives in less environmentally-sensitive areas regardless of their proximity to the original sale area.

5. It is recognized that full compliance with the procedures of the National Environmental Policy Act, the National Forest Management Act, and other applicable statutes may not be possible in the short time frame provided. However, best expertise and professional judgement should continue to guide the Forest Service, our collaborators on the Level One teams, and all others who participate in this effort.

6. Volume offered for replacement should be of similar value and, of course, must be acceptable to the contract holder. The alternative may be harvested for the remaining term of the timber sale contract, but the total value of the timber harvested from either the "318" sale or its replacement should not exceed the value of the original "318" sale.

7. Replacement sales should be identified and offered to the contract holder as quickly as possible within the guidelines set forth in this memorandum. Priority is to be given to the identification, preparation, and award of replacement sales above all other timber sales.

8. In implementing this charge, please attempt to limit the effect of this effort on green timber sales being prepared for the FY 1996 or 1997 timber sales program. However, do not hesitate to use timber sales previously prepared in accordance with the NW Forest Plan as replacement volume provided all parties agree that this is an acceptable alternative. Future timber sales will be offered to "make up the difference" in terms of the timber sales previously planned for this year or next.

9. Begin execution of these instructions immediately. Make certain that the personnel assigned to carry out these instructions are provided all the necessary resources. Personnel involved should be authorized overtime, and should work without "days off" until the agreements are in place with the purchaser and cutting on the "318" sales has ceased.

10. Encourage a creative, collaborative, and concerted effort to implement this directive in keeping with the "can do" attitude of the Forest Service. This initiative is our highest priority.

It is unfortunate that we find ourselves in this position, but circumstances warrant that we take the actions I have outlined to ensure that timber harvested from these forests is done so in as environmentally-sound, safe, and efficient a manner as possible. All parties appear to agree that "better" alternatives exist to the "318" sales now pending. Let's work together to restore the integrity of the timber sale program and to protect the natural resources that we have been entrusted to manage.

To Allyn Ford:

We appreciate your letter of February 6, 1996, which stated your interest in working with the Administration to address the most environmentally-troubling timber sales ~~which~~ that were released in accordance with Section 6 (k) of the FY 1996 Rescissions Act. Your leadership and commitment to a reasonable solution to this conundrum is commendable.

As you are aware, Umpqua National Forest Supervisor Don Ostby and Siskiyou National Forest Supervisor Lunn have been working with your organizations and other "318" timber sale contract holders, local environmental interests, and representatives of the other federal agencies who are involved in planning Pacific NW timber sales to identify alternative volume for the First, Last, and Abes Wren timber sales on the Umpqua National Forest and the Boulder Krab and Elk Fork timber sales on the Siskiyou National Forest.

In addition, for the remaining "318" sales that have been or could be released pending court decisions, we are instructing the agencies in the region to develop a plan for identifying the "318" sales that pose the greatest environmental risk and to initiate a process to identify alternative volume for these sales. I have instructed that ~~to the extent practicable, given the need to expedite identification of replacement sales,~~ alternative volume should be prepared consistent with the standards and guidelines of the Northwest Forest Plan and with all applicable environmental laws. STET

Replacement sales may come from volume that was previously prepared or is being prepared for sale under the current year timber sale program for the Forest. However, recognizing that other timber purchasers in the area rely on this volume, I have asked that the Forests attempt to limit the effect of this effort on the green timber sale program and that future timber sales be offered to make up the difference in volume to be offered in subsequent years.

As you mentioned in your letter, funds to accomplish these goals are very limited. Over the next several weeks, we will determine the amount of additional money needed to provide alternative volume and will continue to meet our commitments under Option 9. We hope that the industry will support our efforts to obtain additional funds because without additional resources our attempts to identify alternative volume will be difficult.

To provide the Forest Service with the authority needed to offer "318" contract holders alternative volume outside the existing sale area boundary, I have signed an interim final rule under the National Forest Management Act. This rule will provide the flexibility needed to identify alternatives and explore the options that arise.

The direction to the field, the new rule, and the agencies' desire to find solutions are commitment to you, your employees, and the community in which you reside to find better alternatives than the environmentally-damaging sales that we all agree should not move forward. Working together – the Forest Service, timber contract holders, and local environmental interests – we can assure that more environmentally-sensitive alternatives are available.

BLM

Thank you again for your commitment and your consideration.

Sincerely,

Bruce Babbitt
Secretary
Department of Interior

Dan Glickman
Secretary
Department of Agriculture

For the other timber companies of the Feb. 6 letter

Dear:

We appreciate your letter of February 6, 1996, which stated your flexibility in dealing with the most environmentally troubling sales of subsection (k) of the salvage rider to the recissions bill. Over the last several weeks, the Forest Supervisor, working with the Fish and Wildlife Service, the National Marine Fisheries Service, local environmentalists and the timber companies involved, has begun identifying alternative volume for the First, Last, and Boudler Krab sales. In addition, Under Secretary Lyons visited the region recently to talk with you and others about the potential for negotiating some agreements for alternative timber.

We have instructed the Forest Service and the other agencies to make it a very high priority to identify alternative volume preferably from, but not limited to, the forest plan matrix for the most environmentally damaging 318 sales that have been or could be released depending on court decisions. For less environmentally damaging sales, the agencies will continue to work with the purchasers and the environmental communities to improve, through mutual contract modifications and choosing alternative volume outside the sale area.

Using Option 9 volume for alternative volume is a possibility. However, we are very aware that non-318 purchasers rely on this volume and any Option 9 timber used for alternative volume will be replaced with new sales as soon as possible. As you mentioned in your letter, funds to accomplish these goals are very limited given the fact that the Forest Service and the other agencies are operating without their FY96 appropriations. Over the next several weeks, we will determine the amount of additional money needed to provide alternative volume and continue to meet our commitments under Option 9 and share that information with you and Congress. We hope that the industry will support our efforts to obtain additional funds because without additional resources all of our attempts to identify alternative volume will be made in vain.

Since legislative attempts to repeal or significantly improve the salvage rider have failed to date, we have been seeking ways administratively to increase the Forest Service's discretion in dealing with (k). For example, yesterday, the Forest Service sent to the Federal Register a new rule that would give it the ability to offer alternative volume outside the sale area. We believe that this will help to loosen the contraints of subsection (k)(3). We believe this rule will help meet the goals you expressed in your February letter.

The direction to the field, the new rule, and the agencies' desire to find solutions are our efforts to find better alternatives to this very damaging law. Unfortunately, the rider gives us little authority to solve all of the problems administratively, therefore, we must rely on your cooperation as well as the cooperation of leaders of local environmental groups to address the remaining obstacles.

You and other timber companies hold the rights to these sales and can cut them whenever you choose, court rulings permitting. However, we strongly encourage you to make the best effort in avoiding cutting these sales without first seeking and agreeing to better alternatives.

Sincerely,

Bruce Babbitt
Secretary
Department of Interior

Dan Glickman
Secretary
Department of Agriculture

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-Apr-1996 07:50pm

TO: Thomas C. Jensen

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: weekly agenda

The EOP/agency timber working group will meet Tuesday, April 2, at 2:00 p.m. in the CEQ conference room.

The agenda will include:

1. Recent events

2. Litigation update

3. Replacement timber

   a. Draft directive
   b. BLM replacement timber

4. Update on murrelet survey direction

5. Oversight on salvage sales

6. Other business

   a. Follow-up on draft directive
   b. Law enforcement coordination mtg.

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-Mar-1996 08:52am

TO: Elena Kagan

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: RE: hatfield letter

Thanks. No thanks to our fax machines!

In terms of the Hatfield letter, the last thing I heard was from Barbara Chow via Katie around 8:30ish. To Barbara's apparent surprise, the Rs were "studying" the letter and hadn't rejected it yet. Except they were cranky about one thing - that the Murray language that I was told to attach to the letter carried a fax line from - gasp - Patty Murray's office. I am not making this up. I wish I were.

Yes, I heard about the meeting on the House side. Didn't go well, I gather. I'm not confident I've heard eveyrthing, but there was a good deal of screaming about contract cancellation (with Members stating that they thought it would be fine if some of us exec. branch types went to jail (so much for my overly academic thoughts about the distinctions between the two branches of govern.!). As you may imagine, Peter C. was less than enthused about this notion. They were also adamant that those Trees Had To Stop Falling, Period. They pushed us hard to enter into negotiations on the premise that alternative timber "substantially comply" with the Forest Plan standards and guidelines. Indeed, USDA has now directed the Forest Service to come up with a package deal by next Wed. that wouldn't necessarily meet standards and guidelines and full compliance w/env. law but that would be better than 1st and Last.

I gather the finer legal points were not analyzed or debated.

THE WHITE HOUSE

WASHINGTON
March 28, 1996

MEMORANDUM FOR LEON PANETTA

FROM: ELENA KAGAN EK

CC: HAROLD ICKES, RON KLAIN, KITTY HIGGINS, KATIE McGINTY, JACK QUINN, KATHY WALLMAN

SUBJECT: YESTERDAY'S TIMBER MEETING

I heard you asked at the 8:15 meeting what had happened at the meeting on timber that the counsel's office held yesterday. Kathy Wallman requested that I give you a summary.

The purpose of the meeting was to discuss whether we should seek to cancel two timber sale contracts recently released (and other contracts that soon may be released) under the timber rider. We would base this action on a clause in the contracts that allows cancellation if completion of the sale would cause environmental harm. The legal issue is whether the timber rider implicitly invalidated this clause, such that we can no longer rely on it.

Attending the meeting were three members of the counsel's office, three lawyers from the Justice Department, Harold Ickes, Ron Klain, and Jim Lyons of the Department of Agriculture.

Ron and Harold expressed the view that seeking to cancel these contracts would make sense from the standpoint of policy and politics. Jim Lyons took the opposite position, although he previously had urged cancellation. Ron has indicated that he will talk to Secretary Glickman about this issue.

The counsel's office urged that there is a defensible legal argument for canceling the contracts. The Department of Justice attorneys disagreed, claiming that the argument is so frivolous as to pose the risk of judicial sanctions. To allow further consideration of this issue, the DOJ attorneys agreed to write a draft brief setting forth the argument. We should receive that brief in the next day or two.

Assuming we do decide that it makes sense to cancel the contracts and that there is a legal basis for doing so, we will have to decide how best procedurally to accomplish this action. Because the USDA is currently under injunction to "complete" the two contracts we now would seek to cancel, the counsel's office recommends notifying the court in advance of our intent to take this action. An alternative approach urged by Harold at the meeting (but vehemently opposed by DOJ) would be simply to cancel the sales and contest the inevitable motion to hold Secretary Glickman in contempt of court for violating the injunction.

[Deletion of dates 95-96]

55178

Hatfield timber mtg

Two concerns
1. K2 sales
New – w/hold / replace
New law – fear we wouldn't be able to w/hold unless + until op.
↓
WE WILL CORRECT

2. Dates / applic of R.A.
law. eliminates effective date

MH: don't want to rush into sale – cause env damage

Valid + existing Ks – vested rts
On Oct 1 – env laws would come back.
Rts continue – means damages

Concepts
1. Don't affirm Hogan's decision – superseding language
2. Allow subst beyond MM – not even in kind
3. And beyond K area

Need sufficiency to be able to do all this.

THE WHITE HOUSE

WASHINGTON

PRIV + CONF. ?

March 28, 1996

8:15

MEMORANDUM FOR LEON PANETTA

FROM: ~~KATHY WALLMAN~~ & CEMA

SUBJECT: YESTERDAY'S TIMBER MEETING

CC: Ron + Harold + Jack + KW

The Counsel's office held a meeting yesterday to discuss whether we should seek to cancel two timber sale contracts recently released (and other contracts that soon may be released) under the timber rider. We would base this action on a clause in the contracts that allows cancellation if completion of the sale would cause environmental harm. The legal issue is whether the timber rider implicitly invalidated this clause, such that we can no longer rely on it.

Attending the meeting were three members of the counsel's office, three lawyers from the Justice Department, Harold Ickes, Ron Klain, and Jim Lyons of the Department of Agriculture.

Ron and Harold expressed the view that seeking to cancel these contracts would make sense from the standpoint of policy and politics. Much to everyone's surprise (he previously had urged cancellation), Jim Lyons took the opposite position. Ron has indicated that he will talk to Secretary Glickman about this issue.

The counsel's office urged that there is a defensible legal argument for canceling the contracts. The Department of Justice attorneys disagreed, claiming that the argument is so frivolous as to pose the risk of judicial sanctions. To allow further consideration of this issue, the DOJ attorneys agreed to write a draft brief setting forth the argument. We should receive that brief in the next day or two.

Assuming we do decide that it makes sense to cancel the contracts and that there is a legal basis for doing so, we will have to decide how best procedurally to accomplish this action. Because the USDA is currently under injunction to "complete" the two contracts we now would seek to cancel, the counsel's office recommends notifying the court in advance of our intent to take this action. An alternative approach urged by Harold at the meeting (but vehemently opposed by DOJ) would be simply to cancel the sales and contest the inevitable motion to hold Secretary Glickman in contempt of court for violating the injunction.

THE WHITE HOUSE

WASHINGTON

March 24, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN EK

SUBJECT: NEW AND URGENT TIMBER CRISIS

At a meeting this weekend on timber issues, Ron asked that you set up a meeting Monday, to be attended by John Schmidt and Lois Schiffer, Jim Lyons (from USDA), Ron, Harold, Katie, Martha, me, and Dinah Bear. The purpose of the meeting is to discuss whether we should seek to cancel timber contracts governing the First and Last timber sales.

Justice opposes this course of action, insisting that it is legally indefensible and that it will land Secretary Glickman in jail for violating an injunction; White House people increasingly support the action, saying that it is politically necessary. My view is that we should go forward with the cancellation; although the courts probably will rule against us, the legal arguments supporting cancellation are not frivolous; moreover, these arguments can be made within a procedural setting that does not subject anyone to charges of violating an injunction.

Background

You may recall that we recently awarded the First and Last sales, notwithstanding their extreme environmental sensitivity. In the Justice Department's view, we had run out of legal bases for withholding these sales; moreover, we believed that Jim Lyons might be able to reach an agreement with the purchaser, involving the provision of less environmentally harmful but still valuable timber. These settlement efforts have now collapsed, primarily because we could not guarantee that environmental groups would forego challenging the provision of replacement timber. The purchaser has now begun to harvest; the trees he is cutting are more than 1,000 years old; and there may well be large-scale protests and lots of press coverage starting next week.

In the meantime, Senator Hatfield is urging that we accept a new timber rider, which supposedly would prevent situations like this one by making timber swaps easier to accomplish. We cannot accept Hatfield's rider in its current form because of its effect on sales where murrelets are nesting; whereas current law prevents any harvesting of these sales (though also imposing an obligation on the government to provide replacement timber), the new rider allows such harvesting until the government comes up with replacement timber acceptable to the purchaser. If this problem were fixed, however, the Hatfield rider would present us

with a serious policy issue. The rider would make timber swaps easier because it includes "sufficiency language" -- language that prevents a challenge to the provision of replacement timber on grounds that it violates environmental law. But we generally have joined the enviros in opposing sufficiency language, and they will be upset if we retreat from this principle, even to prevent bad sales from going forward.

The combination of the First and Last sales and the Hatfield rider have put us in a real bind. We look as if we are doing nothing to prevent harvesting; at the same time, we look as if we are refusing to sign on to legislation that would give us the means to do something. Even our friends are deserting us. Wyden and DeFazio just issued a blistering press release demanding that we find a way to do a timber swap on the First and Last sales, whether administratively or via the Hatfield rider.

In this context, the idea of cancelling the contracts on the First and Last sales arose again this weekend. I say "again" because this idea has been around for a long time; the enviros have urged us often to take this step. At Saturday's meeting, Ron and Martha expressed the view that we should now take this action. Cancelling the contracts, even if unsuccessful, would make it seem as if we're doing something to try to prevent the First and Last sales from going forward. Moreover, taking this action would make it easier for us (should we wish to do so) to sign on to legislation involving sufficiency language; we then could present this decision as the only remaining way to prevent sales like First and Last from going forward.

Legal Issues Involving Cancellation

Every timber sale contract contains a clause permitting termination of the contract upon a determination by the Forest Service that continuation of the contract would cause serious environmental degradation or resource damage. (Each contract also states the measure of damages in the event of termination.) There is no question that harvesting the First and Last sales would cause serious resource damage. The critical question is whether the cancellation clause remains operative given the enactment of the timber rider.

The critical portion of the timber rider directs the Secretary to "act to award, release, and permit to be completed . . . with no change in originally advertised terms" certain timber sale contracts previously offered or awarded but not released because of fear of environmental harm.

The Justice Department, in arguing that this language effectively overrides the cancellation clause in the sale contracts, points to the language "permit to be completed." DOJ argues that this language bars the Secretary from interfering (for example, by invoking the cancellation clause) with the completion of a covered timber sale contract. DOJ also argues

that if the cancellation clauses remain in effect, the entire purpose of the timber rider would be frustrated. That purpose was to force the government to release sales it had found to be environmentally harmful. If the government retains the ability to terminate all such sales via the cancellation clause, the rider would be rendered functionally inoperative.

The opposing view focuses on the reference to "originally advertised terms" of the affected contracts. This language, the argument runs, preserves all terms of the original contracts, including the cancellation clause. The statute doesn't say to return to the original contract minus the cancellation clause; it says to return to the original contract (which includes the cancellation clause). Of course, the continued efficacy of the clause would allow the Secretary to prevent most of the affected sales from going forward, in contravention of Congress's apparent intent. One response to this argument is that it doesn't matter what Congress meant; it matters what Congress said, and Congress said that the original contract terms remain in effect. Another possible response is that the rider still has meaning because it forces the Secretary to invoke the termination clause if he wishes to prevent a sale from going forward, which may affect the measure of damages to be awarded. (If there is no difference, with respect to damages, between invoking the termination clause and simply withholding the sale, as the Secretary did prior to the timber rider, this argument becomes quite weak.)

Were I a judge, I would adopt the argument of DOJ noted above that enactment of the timber rider effectively invalidates the cancellation clause of the contracts. I think most judges would rule in this manner, and I am sure Judge Hogan will do so. I do not think, however, that the opposing argument is frivolous. I cannot imagine a judge sanctioning a party for raising this argument, or even wanting to do so. In short, directing DOJ to defend cancellation of these contracts would not force it to violate any ethical obligation.

Complications Resulting from Judge Hogan's Injunction

DOJ rightly notes that at this point we are not dealing with a simple matter of statutory interpretation. The government is currently under an injunction, issued by Judge Hogan, "to immediately award, release, and permit to be completed" the First and Last sales. If the Forest Service cancels the contracts on these sales, Judge Hogan might find the government to have violated his injunction and might subject the responsible officials (Jim Lyons? Dan Glickman?) to sanctions for civil, or even criminal, contempt.

The way to avoid this outcome is to seek a clarification of the injunction, rather than simply to cancel the contracts. Effectively, we would go to Judge Hogan, make an argument that both the rider and his injunction permit us to invoke the cancellation clause, and ask for his permission to act upon that

understanding. Assuming he rejects our interpretation, we then could take that ruling to the Ninth Circuit (while also seeking a stay from Hogan and/or the appellate court).

Recommendation

Assuming an attempt to cancel the contracts is important for policy reasons, I recommend urging (and, if necessary) directing DOJ to take that action, by means of filing a motion with Judge Hogan seeking clarification of his injunction.

Elena

CANCELLATION OF TIMBER SALE CONTRACTS

(At beginning of meeting)

- I asked everyone here because there seems to be a dispute between the policy people at the White House (and also the USDA) and the legal people at the Justice Department as to whether to attempt to cancel certain timber sale contracts, under those contracts' termination clauses.

- As I understand it, the Vice President, as well as the Department of Agriculture, would like us to take that action. The Justice Department has resisted, saying the action is legally indefensible.

- I think the best thing to do is for everyone here to state their case -- to talk about whether cancellation is important as a policy matter; to talk about whether we can pursue that approach in a legally responsible manner that doesn't involve risk of contempt or sanctions.

(At end of meeting)

- It sounds as if we're in a very difficult situation from the standpoint of both policy and politics. We've had to release two sales (the First and Last sales) that are very environmentally sensitive. The purchaser has begun to harvest those sales. We're likely to see protests and lots of negative press coverage.

- The policy people at the White House and USDA believe it would help us if we tried to cancel the contracts on these sales. Of course, if the cancellation were successful, we'd have a way out of our problems. But even if it were not (as it probably won't be), our effort will allow us to say that we've taken every conceivable step to try to stop these sales. In addition, the effort to cancel -- which the environmentalists are demanding before we sign on to more controversial "fixes" -- may gain us greater freedom of action in pursuing administrative and legislative solutions.

- Given the importance of this action to the policy people, I think we should go ahead with this action unless it's sanctionable as a violation of professional obligations. Form what I've heard at this meeting, I don't think it reaches that level -- or anything close to it.

- There's no question that this will be a tough argument to make. If the contract term allowing for cancellation survived the timber rider, it would substantially (though not entirely) frustrate the purpose of the rider, which was to release sales withheld as environmentally harmful. In addition, the phrase "permit to be completed" gives support to the view that the Forest Service can't terminate the

contracts by way of their termination clause.

- On the other hand, we do have what seems to me a non-frivolous argument here. The rider specifically provides for "no change in originally advertised terms" of the contracts, and on its face that language includes the clauses allowing for cancellation. To say that the rider invalidates the cancellation clauses of the contracts requires that we essentially ignore that statutory language.

- From everything I've heard, I don't think we're going to win this case; indeed, I'd be very surprised if we did so. But I also don't think any judge would sanction us from going into court and making this case.

- I understand there's a real question about how to do this, given the existence of Judge Hogan's injunction. But it seems to me we can avoid the danger of contempt by, instead of cancelling the contracts, just going to Judge Hogan seeking a clarification of the injunction. We'd essentially be asking him whether his injunction, and the statute on which it was based, allowed cancellation under the original contract terms.

- So I would request that Justice pursue this approach. It seems to me the sort of extremely aggressive, but not sanctionable, advocacy these cases will sometimes demand.

is this ok. with Ron?

Didn't anyone get Harold on this program?

He wants to take the Candidate time—

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-Mar-1996 01:02pm

TO: (See Below)

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

SUBJECT: RE: letter to hatfield

With any luck, the letter has now gone out to Hatfield.

Are you willing to convene our group sometime this afternoon to discuss what our strategy should be during the final CR negotiations of the next 24 hours.

Whatever is or is not done on the CR now will significantly affect what we can do during the next 3 weeks.

Distribution:

TO: Kathleen A. McGinty

CC: Dinah Bear
CC: Ron Klain
CC: Martha Foley
CC: Barbara C. Chow
CC: Jennifer M. O'Connor
CC: Elena Kagan

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-Mar-1996 08:00am

TO: Elena Kagan

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: RE: trees - why do we need them?

yes, you're right, the letter to you didn't go through. it's on its way now. call me if you don't have it in 5 minutes.

no, no one has suggested (to my knowledge) marking up Hatfield language. What Barbara is suggesting is that we send up the Murray language for replacement and buy-back as an attachment.

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-Mar-1996 08:02am

TO: Elena Kagan

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: Jean's murrelet brief

have you looked at the brief yet? I looked at it early this am and have no problems with it, although I know that Nancy will be unhappy about the argument that we can't move replacement timber now. Jean couldn't get an answer out of the Forest Service yesterday and i suspect God couldn't either, had she tried.

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-Mar-1996 08:26am

TO: (See Below)

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

SUBJECT: RE: letter to hatfield

I agree that it would be advisable to get the letter up as soon as possible. I have also heard reports that Hatfield is saying in the conference that he has not heard back from us yet.

I was not at the meeting, but would suggest that the letter be signed by someone who was at the meeting, rather than be Leon. Katie or Ron could certainly sign it.

Wouldn't referencing Murray's bill be sufficient, rather than actually attaching it?

On substance, my main concern is that we get some authority right away to stop the worst sales and begin the replacement negotiations in earnest. If this is deferred for another 3 weeks as a result of failed CR negotiations, at this time of year, there will be more trees cut.

As the day goes on and the course of the CR negotiations becomes clear, I suggest we caucus on what our immediate strategy should be. Whatever new legal authorities we'll have during this next 3 weeks, if any, will probably have to be well underway by tonight.

Distribution:

TO: Dinah Bear

CC: Kathleen A. McGinty
CC: Ron Klain
CC: Martha Foley
CC: Barbara C. Chow
CC: Jennifer M. O'Connor
CC: Elena Kagan

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-Mar-1996 08:47am

TO: (See Below)

FROM: Kathleen A. McGinty
Council on Environmental Quality

SUBJECT: RE: letter to hatfield

fine on getting immediate authority that we need. but, in reaching to do that we cannot buy ourselves at least 3 more years of this and at least another 120 sales like first and last. currently, that's hatfield's price. i'm prepared to be overruled. but, i want it on the record on this go around with this mess as on the first go around on it, i disagree.

Distribution:

TO: T J Glauthier

CC: Dinah Bear
CC: Ron Klain
CC: Martha Foley
CC: Barbara C. Chow
CC: Jennifer M. O'Connor
CC: Elena Kagan

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-Mar-1996 08:48am

TO: (See Below)

FROM: CN=Ron Klain/O=OVP

SUBJECT: RE: letter to hatfield

Message Creation Date was at 28-MAR-1996 08:50:00

I generally agree with TJ's views. I am waiting to see a final draft of the letter; it did not come through last night on my fax.

As for signatory, my first vote is for Leon, as he carries most weight. If Martha thinks that inappropriate, then Katie should sign it, as the President's principal advisor on this issue.

Distribution:

TO: GLAUTHIER_T

CC: bear_d
CC: mcginty_k
CC: foley_m
CC: chow_b
CC: oconnor_j
CC: kagan_e

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-Mar-1996 09:00am

TO: (See Below)

FROM: CN=Ron Klain/O=OVP

SUBJECT: RE: letter to hatfield

Message Creation Date was at 28-MAR-1996 09:02:00

I obviously agree with katie that we cannot accept three more years of this as the price of any fix. And I still believe that pursuing contract cancellation -- if DoJ will do so -- is our best option. My prior agreement with TJ was on his process observation that we need to get everyone together, ASAP, to look at what the next few weeks will be like in the Northwest, what the relevant political players (i.e., Murray, Hatfield, Wyden, DeFazio, Kitzhaber) are likely to do, and what our options are in terms of communciations, politics, policy, etc. I would suggest that you, Katie, convene such a meeting, and invite relevant staffs in all of these areas (CEQ, OMB, OVP, Leg Aff, Pol Aff, Ingovtl, WH CoS, Counsel) and the relevant agencies (DoJ, Ag, Int). Right now, our problems are as much with our Communciations Strategy as they are with our legislative situation.

Distribution:

TO: MCGINTY_K

CC: glauthier_t
CC: bear_d
CC: foley_m
CC: chow_b
CC: oconnor_j
CC: kagan_e

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-Mar-1996 09:07am

TO: (See Below)

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: RE: letter to hatfield

On the point of authority - there is, of course, nothing in the current hatfield language that gives us the authority to get the purchasers to stop cutting trees until replacement timber is offered and accepted.

One piece of the authority USDA believes it needs - to avoid the need to put replacement timber through the auction process - is the subject of an emergency rule under the Secretary of Ag's authority. The rule is on the Secretary's desk and at OMB and is expected to be signed off by both parties today.

Distribution:

TO: Kathleen A. McGinty

CC: T J Glauthier
CC: Ron Klain
CC: Martha Foley
CC: Barbara C. Chow
CC: Jennifer M. O'Connor
CC: Elena Kagan

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-Mar-1996 09:20am

TO: (See Below)

FROM: Barbara C. Chow
Office of Legislative Affairs

SUBJECT: RE: letter to hatfield

The conference is scheduled to reconvene at 11:00 this morning. Is the language ready? I would still suggest that we attach the Murray language and indicate that is what it is. We did promise them languge and we will catch grief if we don't do it.

Distribution:

TO: Dinah Bear

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

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-Mar-1996 10:20am

TO: (See Below)

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: RE: letter to hatfield

Where the Hatfield letter stands now:

o i have changes from Ron and TJ incorporated into the letter except for one. Ron, you suggested adding the phrase "after the expiration of Section 2001(k) to the sentence, "We are fully prepared to honor contract terms, but to do so within the framework of environmental law." I don't know if you're aware that Justice filed a brief in these cases last week carrying the position that environmental law currently applies to the replacement timber sales. This is an issue that has not yet been decided by any court because it's not ripe yet, but last week's brief was the first articulation of that position in public.

o there are two other issues where I'm waiting for a little additional input from OMB and USDA, but hope to get both soon.

o we need a decision on who will sign the letter; TJ is working on getting that decision made.

Distribution:

TO: CN=Ron Klain/O=OVP

CC: MCGINTY_K
CC: glauthier_t
CC: foley_m
CC: chow_b
CC: oconnor_j
CC: kagan_e

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-Mar-1996 10:41am

TO: (See Below)

FROM: Kathleen A. McGinty
Council on Environmental Quality

SUBJECT: RE: letter to hatfield

our problem is with the dept of agriculture refusing to carry out orders and then blaming the white house for the mess we're in.

Distribution:

TO: CN=Ron Klain/O=OVP

CC: glauthier_t
CC: bear_d
CC: foley_m
CC: chow_b
CC: oconnor_j
CC: kagan_e

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-Mar-1996 09:55pm

TO: Elena Kagan

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: trees - why do we need them?

seriously, i'm sorry i didn't get back to you today. it was awful.

Among other things, USDA is now saying (both Anne and Jim L.) that they can never offer replacement timber if they have to follow environmental law. Huh? I thought this had been brought up numerous times, and in fact, we just filed a brief stating that env. law does apply to replacement timber.

Things are getting a bit tense on the USDA/CEQ front. To put it mildly. . . . .

The 4 o'clock conference call is to focus on the Klammath tribes case. The Forest Service is concerned that we'll overstate their current interpretation of how treaty rights affect forest management. Justice is concerned that treaty rights do apply. DOI is struggling with their trust responsibilities. Lois wants to transfer to Hogan (that should take care of all of the rest of the issues!).

I, on the other hand, am defecting to Mongolia. Have fun with this crowd!!!!

(seriously, if you can be on the conference call, call Jeff Garver at DOJ at 305-0481.)

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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-Mar-1996 09:25pm

TO: CN=Ron Klain/O=OVP

FROM: Martha Foley
Office of the Chief of Staff

CC: MCGINTY_K
CC: KAGAN_E
CC: CHOW_B

SUBJECT: RE: Timber -- Next Steps

Just got back from marathon meetings on CR. FYI, Hatfield was grousing about not having the language in a meeting with Gingrich and Dole this afternoon (to the confusion of Gingrich, who asked us what MH was talking about!). I explained and said it would be going up soon.

Anyway, has it gone up?

I also heard something about bootleg language going up from a dept???

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-Mar-1996 09:28pm

TO: (See Below)

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: letter to hatfield

I am faxing to all of you this evening another draft of the proposed letter to Hatfield. I've got calls into some of you to clarify some points. However, Barbara recommends moving it asap, given that conference resumes at 10:30 am and that Hatfield is already making the point that he hasn't heard back from us.

Two other points:

1. She recommends that we attach the Murray language on replacement and buy-back. Any concerns?

2. The signatory - Barbara recommends L.P.

I'll be here tonight as long as any progress can be made to move this along.

Distribution:

TO: Kathleen A. McGinty
TO: Ron Klain
TO: T J Glauthier
TO: Martha Foley
TO: Barbara C. Chow
TO: Jennifer M. O'Connor
TO: Elena Kagan

CANCELLATION OF TIMBER SALE CONTRACTS

(At beginning of meeting)

- I asked everyone here because there seems to be a dispute between the policy people at the White House (and also the USDA) and the legal people at the Justice Department as to whether to attempt to cancel certain timber sale contracts, under those contracts' termination clauses.

- As I understand it, the Vice President, as well as the Department of Agriculture, would like us to take that action. The Justice Department has resisted, saying the action is legally indefensible.

- I think the best thing to do is for everyone here to state their case -- to talk about whether cancellation is important as a policy matter; to talk about whether we can pursue that approach in a legally responsible manner that doesn't involve risk of contempt or sanctions.

(At end of meeting)

- It sounds as if we're in a very difficult situation from the standpoint of both policy and politics. We've had to release two sales (the First and Last sales) that are very environmentally sensitive. The purchaser has begun to harvest those sales. We're likely to see protests and lots of negative press coverage.

- The policy people at the White House and USDA believe it would help us if we tried to cancel the contracts on these sales. Of course, if the cancellation were successful, we'd have a way out of our problems. But even if it were not (as it probably won't be), our effort will allow us to say that we've taken every conceivable step to try to stop these sales. In addition, the effort to cancel -- which the environmentalists are demanding before we sign on to more controversial "fixes" -- may gain us greater freedom of action in pursuing administrative and legislative solutions.

- Given the importance of this action to the policy people, I think we should go ahead with this action unless it's sanctionable as a violation of professional obligations. Form what I've heard at this meeting, I don't think it reaches that level -- or anything close to it.

- There's no question that this will be a tough argument to make. If the contract term allowing for cancellation survived the timber rider, it would substantially (though not entirely) frustrate the purpose of the rider, which was to release sales withheld as environmentally harmful. In addition, the phrase "permit to be completed" gives support to the view that the Forest Service can't terminate the

contracts by way of their termination clause.

- On the other hand, we do have what seems to me a non-frivolous argument here. The rider specifically provides for "no change in originally advertised terms" of the contracts, and on its face that language includes the clauses allowing for cancellation. To say that the rider invalidates the cancellation clauses of the contracts requires that we essentially ignore that statutory language.

- From everything I've heard, I don't think we're going to win this case; indeed, I'd be very surprised if we did so. But I also don't think any judge would sanction us from going into court and making this case.

- I understand there's a real question about how to do this, given the existence of Judge Hogan's injunction. But it seems to me we can avoid the danger of contempt by, instead of cancelling the contracts, just going to Judge Hogan seeking a clarification of the injunction. We'd essentially be asking him whether his injunction, and the statute on which it was based, allowed cancellation under the original contract terms.

- So I would request that Justice pursue this approach. It seems to me the sort of extremely aggressive, but not sanctionable, advocacy these cases will sometimes demand.

Name	Date	
Helen Roland	12/9/99	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-Mar-1996 02:30pm

TO: CN=Ron Klain/O=OVP

FROM: Kathleen A. McGinty
Council on Environmental Quality

CC: FOLEY_M
CC: KAGAN_E
CC: CHOW_B

SUBJECT: RE: Timber -- Next Steps

we have been working on this since last nite. i think we are hitting most of the points that you make altho you may want to add more of the "thank you" part to the intro.

at this point, we have not actually "marked up" his bill. rather we have itemized and explained our problems with it. i was reluctant to try to "fix" his bill further by actually offering language. if you think we should do that, i would recommend that we instead consider sending the letter as it is and asking if hatfield agrees in concept with the points that we have raised. if so, then we can get down to legislative language. also, if we actually get into writing legis lang, we won't get it out today.

we will have something on the fax to you in just a couple of minutes.

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-Mar-1996 10:34am

TO: MCGINTY_K

FROM: CN=Ron Klain/O=OVP

CC: FOLEY_M
CC: KAGAN_E
CC: CHOW_B

SUBJECT: Timber -- Next Steps

Message Creation Date was at 27-MAR-1996 10:36:00

Katie: Your office should take the lead in coordinating our response to Hatfield's latest proffer. I think it should be two documents -- a cover letter (probably signed by Leon P) and a marked up version of the text.

In my view, the cover letter should make five basic points: (1) appreciate your help; (2) President's first preference, given how badly this thing is messed up, is the repeal and replace approach outlined by Sen. Murray; (3) if the Congress won't do that, we appreciate your offer, made to our staff, to give the Forest Service the authority to suspend any harvesting where that harvesting would cause "severe environmental damage," and to then negotiate replacement timber; (4) your language as present does not do that, but we have marked it up to allow that, and to fix it in other respects; (5) absent such fixes, we believe that the proposed language does more harm than good in helping to manage a sound forest policy.

Maybe there are other points, too. But in any event, we promised Hatfield we would get him something today, and we should meet that deadline. Thanks.

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-Mar-1996 08:07am

TO: (See Below)

FROM: Thomas C. Jensen
Council on Environmental Quality

SUBJECT: Meeting NOtice

The EOP/agency timber working group will meet today, Tuesday, March 26th, at 2:00 p.m. in the CEQ conference room.

The agenda will include:

1. Recent events

2. Litigation update

3. Law enforcement coordination

4. This seasons's murrelet surveys

5. Replacement timber

6. Other business

Thanks for your cooperation.

Distribution:

TO: Alice E. Shuffield
TO: FAX (9-720-5437, Greg Frazier)
TO: FAX (9-720-4732, Jim Lyons)
TO: FAX (9-208-6956, Ann Shields)
TO: FAX (9-208-4684, George Frampton)
TO: FAX (9-208-3144, Bob Armstrong)
TO: FAX (9-514-0557, Lois Schiffer)
TO: FAX (9-482-6318, Doug Hall)
TO: FAX (9-260-0500, Steve Herman)
TO: Kathleen A. McGinty
TO: Shelley N. Fidler
TO: T J Glauthier
TO: Ron Cogswell
TO: Mark A. Weatherly
TO: Christine L. Nolin
TO: Elena Kagan

THE WHITE HOUSE

WASHINGTON

March 24, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN EK

SUBJECT: NEW AND URGENT TIMBER CRISIS

At a meeting this weekend on timber issues, Ron asked that you set up a meeting Monday, to be attended by John Schmidt and Lois Schiffer, Jim Lyons (from USDA), Ron, Harold, Katie, Martha, me, and Dinah Bear. The purpose of the meeting is to discuss whether we should seek to cancel timber contracts governing the First and Last timber sales.

Justice opposes this course of action, insisting that it is legally indefensible and that it will land Secretary Glickman in jail for violating an injunction; White House people increasingly support the action, saying that it is politically necessary. My view is that we should go forward with the cancellation; although the courts probably will rule against us, the legal arguments supporting cancellation are not frivolous; moreover, these arguments can be made within a procedural setting that does not subject anyone to charges of violating an injunction.

Background

You may recall that we recently awarded the First and Last sales, notwithstanding their extreme environmental sensitivity. In the Justice Department's view, we had run out of legal bases for withholding these sales; moreover, we believed that Jim Lyons might be able to reach an agreement with the purchaser, involving the provision of less environmentally harmful but still valuable timber. These settlement efforts have now collapsed, primarily because we could not guarantee that environmental groups would forego challenging the provision of replacement timber. The purchaser has now begun to harvest; the trees he is cutting are more than 1,000 years old; and there may well be large-scale protests and lots of press coverage starting next week.

In the meantime, Senator Hatfield is urging that we accept a new timber rider, which supposedly would prevent situations like this one by making timber swaps easier to accomplish. We cannot accept Hatfield's rider in its current form because of its effect on sales where murrelets are nesting; whereas current law prevents any harvesting of these sales (though also imposing an obligation on the government to provide replacement timber), the new rider allows such harvesting until the government comes up with replacement timber acceptable to the purchaser. If this problem were fixed, however, the Hatfield rider would present us

with a serious policy issue. The rider would make timber swaps easier because it includes "sufficiency language" -- language that prevents a challenge to the provision of replacement timber on grounds that it violates environmental law. But we generally have joined the enviros in opposing sufficiency language, and they will be upset if we retreat from this principle, even to prevent bad sales from going forward.

The combination of the First and Last sales and the Hatfield rider have put us in a real bind. We look as if we are doing nothing to prevent harvesting; at the same time, we look as if we are refusing to sign on to legislation that would give us the means to do something. Even our friends are deserting us. Wyden and DeFazio just issued a blistering press release demanding that we find a way to do a timber swap on the First and Last sales, whether administratively or via the Hatfield rider.

In this context, the idea of cancelling the contracts on the First and Last sales arose again this weekend. I say "again" because this idea has been around for a long time; the enviros have urged us often to take this step. At Saturday's meeting, Ron and Martha expressed the view that we should now take this action. Cancelling the contracts, even if unsuccessful, would make it seem as if we're doing something to try to prevent the First and Last sales from going forward. Moreover, taking this action would make it easier for us (should we wish to do so) to sign on to legislation involving sufficiency language; we then could present this decision as the only remaining way to prevent sales like First and Last from going forward.

Legal Issues Involving Cancellation

Every timber sale contract contains a clause permitting termination of the contract upon a determination by the Forest Service that continuation of the contract would cause serious environmental degradation or resource damage. (Each contract also states the measure of damages in the event of termination.) There is no question that harvesting the First and Last sales would cause serious resource damage. The critical question is whether the cancellation clause remains operative given the enactment of the timber rider.

The critical portion of the timber rider directs the Secretary to "act to award, release, and permit to be completed . . . with no change in originally advertised terms" certain timber sale contracts previously offered or awarded but not released because of fear of environmental harm.

The Justice Department, in arguing that this language effectively overrides the cancellation clause in the sale contracts, points to the language "permit to be completed." DOJ argues that this language bars the Secretary from interfering (for example, by invoking the cancellation clause) with the completion of a covered timber sale contract. DOJ also argues

that if the cancellation clauses remain in effect, the entire purpose of the timber rider would be frustrated. That purpose was to force the government to release sales it had found to be environmentally harmful. If the government retains the ability to terminate all such sales via the cancellation clause, the rider would be rendered functionally inoperative.

The opposing view focuses on the reference to "originally advertised terms" of the affected contracts. This language, the argument runs, preserves all terms of the original contracts, including the cancellation clause. The statute doesn't say to return to the original contract minus the cancellation clause; it says to return to the original contract (which includes the cancellation clause). Of course, the continued efficacy of the clause would allow the Secretary to prevent most of the affected sales from going forward, in contravention of Congress's apparent intent. One response to this argument is that it doesn't matter what Congress meant; it matters what Congress said, and Congress said that the original contract terms remain in effect. Another possible response is that the rider still has meaning because it forces the Secretary to invoke the termination clause if he wishes to prevent a sale from going forward, which may affect the measure of damages to be awarded. (If there is no difference, with respect to damages, between invoking the termination clause and simply withholding the sale, as the Secretary did prior to the timber rider, this argument becomes quite weak.)

Were I a judge, I would adopt the argument of DOJ noted above that enactment of the timber rider effectively invalidates the cancellation clause of the contracts. I think most judges would rule in this manner, and I am sure Judge Hogan will do so. I do not think, however, that the opposing argument is frivolous. I cannot imagine a judge sanctioning a party for raising this argument, or even wanting to do so. In short, directing DOJ to defend cancellation of these contracts would not force it to violate any ethical obligation.

Complications Resulting from Judge Hogan's Injunction

DOJ rightly notes that at this point we are not dealing with a simple matter of statutory interpretation. The government is currently under an injunction, issued by Judge Hogan, "to immediately award, release, and permit to be completed" the First and Last sales. If the Forest Service cancels the contracts on these sales, Judge Hogan might find the government to have violated his injunction and might subject the responsible officials (Jim Lyons? Dan Glickman?) to sanctions for civil, or even criminal, contempt.

The way to avoid this outcome is to seek a clarification of the injunction, rather than simply to cancel the contracts. Effectively, we would go to Judge Hogan, make an argument that both the rider and his injunction permit us to invoke the cancellation clause, and ask for his permission to act upon that

understanding. Assuming he rejects our interpretation, we then could take that ruling to the Ninth Circuit (while also seeking a stay from Hogan and/or the appellate court).

Recommendation

Assuming an attempt to cancel the contracts is important for policy reasons, I recommend urging (and, if necessary) directing DOJ to take that action, by means of filing a motion with Judge Hogan seeking clarification of his injunction.

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-Mar-1996 08:52am

TO: Elena Kagan

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: whoops - meant ato copy you

woke up this am realizing i hadn't copied you on this - sorry - had thought waiting until you had a chance to read this am, but Katie wanted it out soon as possible. Hope you agree with not very short summary. Will call after staff mtg. and budget mtg.

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

19-Mar-1996 09:36pm

TO: Martha Foley
TO: T J Glauthier
TO: Jennifer M. O'Connor
TO: Barbara C. Chow

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: Timber rider decisions

Katie asked that I summarize the results of discussions that took place this afternoon and evening involving two difficult issues related to the timber rider.

1. "First" and "Last" sales: these are the 2 sales on the Umpqua National Forest that were withdrawn by the Forest Service in 1990 for failure to meet the requirements of the original Sc318. They are considered to be some of the most damaging sales outside of the murrelet sales - and would severly impact runs of Coho salmon and cuthroat trout (both of which are proposed for listing under the Endangered Species Act). Judge Hogan has issued an injunction ordering us to release the sales.

Jim Lyons has had several discussions over the past few days with representatives of Scott Timber who hold these sales and with the environmental plaintiffs to develop a package of replacement timber that would meet the purcahsers' needs and avoid having to release these units. Despite some very preliminary progress, Scott timber moved cutting equipment on the sale unit today. Jim has now gotten Scott to agree to hold off on cutting for one more day, and Jack Ward Thomas was directed tonight to proceed to develop a replacement timber offer over the next 24 hours. That timber will be in the matrix area of the President's Forest Plan in an area near Scott's mill. Jack also raised the issue of replacing that timber out of the Plan with additional timber, but was directed not to deal with the issue at this time, as we may be able to make up the volume at a later point. These sales contain approximately 11 million board feet. Meanwhile, Justice and USDA lawyers are working on a rulemaking that would be necessary to give the Forest Service the authority to offer replacement timber directly to the purchaser without going through the normal bidding process.

It is certainly possible that at the end of the day (tommorrow),

Scott timber will still decide to proceed with cutting. We will develop a statement for possible White HOuse use that would explain that we have no other choice but to release the sales, what we tried to do avoid that and explain why the Hatfield/Gorton language that's being proposed is an unsatisfactory solution.

2. The murrelets sales: these are the sales tied up in the litigation over the question of how to determine whether marbled murrelets, a threatened seabird, are "known to be nesting". We argued our case in front of Judge Hogan and lost. Judge Hogan then granted a 60 day stay of his injunction to release these sales. We appealed his decision to the 9th Circuit, which has set oral argument in May. Unfortunately, Hogan's stay runs out on Monday and the timber companies are arguing that they want to harvest the sales immediately - prior to the 9th Circuit decision - because the statute expires on Sept. 30th and if they wa~~n~~t too long, they won't be able to get all of their timber.

Argument on this issue is set for Friday on front of Judge Hogan. Justice developed several options for consideration. Their recommendation - in the context of winning the stay motion on front of Judge Hogan - was to proactively offer replacement timber for all of the sales we claim under "known to be nesting". Their rationale was that this would offer Judge Hogan - or, alternatively, the 9th Circuit - some comfort that the needs of the purchaser, would be met, and thus the stay would be extended, increasing the probability of saving the murrelets nesting trees. However, there are a number of difficulties identified with related to making a commitment of this magnitude (240+ million board feet) which could in essence extend the life of the timber rider past this fiscal year.

Katie's direction on this point was to confine our argument on the motion to extend the stay to the considerable harm that would befall the birds should the trees fall before the 9th Circuit has a chance to issue their decision, to affirm that we would consider contract rights that were developed under the rider to last past Sept. 30th (but NOT the sufficiency language) and to state that we would (of course) honor those contract terms. (One implication of this could be that we buy-back sales under the contract terms after Sept. 30th). In short . . . . to fight hard for the stay motion based on the equities to the birds, but to avoid anything that would extend the life of the timber rider.

Sorry this is so lengthy; please call me at 5-5754 if anyone wants even more details.

(?)

If we lose (K1) → have to meet env laws - this won't that's tough. They'll get $

If we win (K3) → replacement timber obtg. have to meet env laws will take time

replacement

DOT conf call - 3/1/96

Invoke termin clauses? — Takes place after award.

Probably not. "Notw/standing any provisions of law,

Certainly could make argument that can invoke.
No change in orig adv terms - includes abil to suspend sale.
Arg can be made, the prob won't succeed.
Judge will excl. env terms from "orig adv"

Michelle - issue decided in context of his bidder.
Me - we're appealing that. We're hardly bound by Hogan's view.

Cohen - terms of injunction preclude rulg this argument?

- Award

-

Stay pending dispos.

Motion for clarification - invoke termin clauses.

He has not decided this specific q.

leg it arg. - inj unclear - doesn't inclu "pars to orig terms"
never raised
unclear inj meant to preclude omitted cl of stat?

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

19-Mar-1996 10:15am

TO: (See Below)

FROM: Thomas C. Jensen
Council on Environmental Quality

SUBJECT: Meeting Notice

The EOP/Agency timber policy working group will meet as regularly scheduled today, Tuesday, March 19th, at 2:00 p.m. in the CEQ conference room (722 Jackson Place).

The agenda will include:

1. Recent events update
   - Review of legislative situation
   - Other

2. Litigation update and issues
   - First and Last sales
   - Murrelet case

3. New information issue

4. Other business

Thanks for your cooperation.

Distribution:

TO: Alice E. Shuffield
TO: FAX (9-720-5437, Greg Frazier)
TO: FAX (9-720-4732, Jim Lyons)
TO: FAX (9-208-6956, Ann Shields)
TO: FAX (9-208-4684, George Frampton)
TO: FAX (9-208-3144, Bob Armstrong)
TO: FAX (9-514-0557, Lois Schiffer)
TO: FAX (9-482-6318, Doug Hall)
TO: FAX (9-260-0500, Steve Herman)
TO: Kathleen A. McGinty
TO: Shelley N. Fidler
TO: T J Glauthier
TO: Ron Cogswell
TO: Mark A. Weatherly
TO: Christine L. Nolin

THE WHITE HOUSE

WASHINGTON

March 8, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN EK

SUBJECT: TIMBER MATTERS

There have been some developments on the First and Last sales, one of which requires your attention.

1. On Friday, we released these sales to the purchaser, thereby complying with the injunction of Judge Hogan. We still had one legal option: to ask the Ninth Circuit to grant a stay of Hogan's injunction pending disposition by Judge Dwyer of a motion, brought by environmental groups, relating to the same two sales. By Friday, however, we had engaged in sufficiently serious settlement discussions with the purchaser as to make continued litigation counterproductive. Our real hope of solving this problem lies in settlement, and appealing at this time stood a real chance of derailing ongoing discussions.

2. We have begun the process of figuring out what we can offer the purchaser, consistent with both the law and our policy objectives. There are basically two questions here: (1) whether we can offer money and (2) whether we can offer replacement timber and, if so, on what terms (most critically, we will have to determine as a matter of both law and policy whether we can offer replacement timber that does not itself comply with environmental laws.)

The USDA people (most notably, Jim Lyons) really want to put together some kind of deal. Katie will have some hard calls to make about how much we can offer. The DOJ people are being, as usual, wholly unhelpful; having them at meetings is like lugging around a ball and chain behind you. I suspect, given ideas that USDA lawyers, the CEQ counsel, and I have offered about available legal authorities, that DOJ will eventually get in line. Perhaps USDA guys should get so far out in front -- in terms of making commitments and so forth -- that DOJ will have to catch up. But this is of course a tricky business, and DOJ resistance may raise problems.

3. Most immediately, we have to decide what kind of pleading to file in response to the enviros' motion in Judge Dwyer's court. (This motion has continuing relevance; although we have released the sales, the relief requested by the enviros would force the purchaser to forego any cutting.)

As I told you in a recent memo, DOJ had told me that it would

decline to take any position on the legal questions raised by the motion, noting only that release of the sales would cause environmental harm. Such a pleading would be consistent with the stance DOJ previously has taken with respect to these sales. Now, however, DOJ wants to file a pleading raising jurisdictional objections to the enviros' motion. (I am attaching the draft pleading.) DOJ argues that (1) it is important for government lawyers always to raise jurisdictional objections and (2) it will damage our credibility in front of Judge Dwyer if we avoid this question.

I think these arguments are very weak; given our desire to litigate these cases as aggressively as possible, I don't understand what DOJ thinks it's doing. (You'll recall that Lois admitted there was no ethical obligation to make this jurisdictional objection.) On the other hand, I don't think it much matters what we do here, because the chances of Judge Dwyer's granting the enviros' motion are, in any event, extremely small. That motion in face has jurisdictional problems, as well as problems on the merits. What do you think?; do we make this an issue?

DRAFT - VERSION 4 THE HONORABLE WILLIAM L. DWYER

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

SEATTLE AUDUBON SOCIETY, et al., Plaintiffs, v. JACK WARD THOMAS, et al., Defendants.	Civil No. C89-160-WD FEDERAL DEFENDANTS' RESPONSE TO PLAINTIFFS' RENOTED MOTION FOR SUMMARY JUDGMENT AND INJUNCTION AS TO FIRST AND LAST TIMBER SALES

Plaintiffs have refiled the following motions in this action: SAS' Motion for Summary Judgment and Permanent Injunction Against the Last Timber Sale, filed September 5, 1990, and SAS' Motion for Summary Judgment and Permanent Injunction Against the First Timber Sale, filed September 17, 1990. These motions alleged that these Timber Sales violated the provisions of Section 318 of the Department of the Interior and Related Agencies Appropriations Act, 1990, 103 Stat. 745 ("Section 318").

The Government is sympathetic to the intent of plaintiffs' motion. These timber sales are identical in form to the four sales with respect to which the Court continued its earlier injunctions pending decision by the Ninth Circuit (on appeal from the decision of the District Court of Oregon) regarding whether these sales are covered by Section 2001(k) of the

Rescissions Act of 1995. Order on SAS' Motion to Clarify and Enforce and WCLA's Motion to Clarify or Vacate (Feb. 23, 1996). (" Clarify Order "). This Court has reached its own conclusion that all of the six sales involved in the prior proceedings in this Court would be inconsistent with the Northwest Forest Strategy. See Order on Motions Heard on November 1, 1995, p. 8 ("all six sales in question would be illegal but for Section 2001(k)(1); they are located in late-successional reserve areas, as defined by the Northwest Forest Plan.") The Court has further concluded, as to the similarly situated enjoined sales, that if they are "irrevocably awarded for logging" prior to the Ninth Circuit's ruling on the scope of Section 2001(k), that "the harm would be irreparable." Clarify Order p. 3.

These offers for these sales were cancelled by the Government in 1990 in light of the Court's rulings in what the Government termed "an identical matter" - section 318 challenges to the Nita and South Nita Sales - that entered summary judgment and granted injunctive relief to the plaintiffs. See Defendants' Memorandum in Response to SAS' Motion for Summary Judgment and Permanent Injunction in Re First Timber Sale (10/3/90) (Dkt. #670), p. 2. The Forest Service advised the Court that these two sales would not be reoffered as part of Section 318 timber sale program, and the Court struck the motions as moot. Minute Order (10/16/90)(Dkt# 675).

The First and Last Timber Sales lie within a Late Successional Reserve and a Key Watershed as those terms are

defined in the Northwest Forest Strategy. Attached declaration of Claude C. McLean dated March 5, 1995, para. 7. At the time of preparation of the Strategy, the Forest Service had no intention of pursuing the award of these sales. Id.

Thus, defendants agree that the sales could not have proceeded under Section 318, and that the equities concerning their sale and operation, in the context of the total history of the Northwest old-growth controversy and its resolution in the Northwest Forest Strategy upheld by this Court, strongly argue that they not be released.[1] Indeed, defendants would not award the contracts but for the outstanding injunction issued by the District Court of Oregon directing them to award the sales in the same form as originally constituted.

At the same time, defendants have repeatedly represented to the Courts that they would not take a legal position on these sales. In its role as an officer of this Court, the Department of Justice is compelled to point out that plaintiffs' motion raises serious issues regarding the jurisdiction of this Court to act in this matter. These concern the expiration of Section 318, and the finality of this Court's judgment. We speak to these issues below.

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[1] The Government is further sympathetic with the posture in which plaintiffs find themselves. Arguably, plaintiffs made a decision not to pursue further proceedings against the sales, following the Court's decision on mootness, on the basis of a representation by the Forest Service that the sales would not be reoffered. Under intervenors' interpretation of Section 2001(k), Congress has nullified that representation. The result will doubtless discourage settlement of similar actions in the future.

1. Expiration of Section 318. Plaintiffs' motion appears to assume that this Court presently has jurisdiction to entertain an action under Section 318. Apparently, plaintiffs rely on the proposition that because the sales will go forward in the form originally offered, Section 318 still applies to them. See plaintiffs' Renoting of Motions for Summary Judgment and Permanent Injunction against the First and Last Timber Sales, p. 3.

The statute states:

> Timber sales offered to meet the requirements of subsection (a) of this section shall be subject to the terms and conditions of this section for the duration of those sale contracts. All other provisions of this section shall remain in effect until September 30, 1990.

Section 318(k).

The Conference Report states as follows concerning the duration of the statute:

> In developing the amendment, the managers have sought to balance the goals of ensuring a predictable flow of public timber for fiscal year 1990 and protecting the northern spotted owl and significant old growth forest stands. In reconciling these often conflicting goals, the managers have limited all provisions in this subsection to fiscal year 1990, except that the timber sales offered under this section in fiscal year 1990 are covered by its terms and conditions throughout the length of the timber sale contracts. Sales offered under this section but not awarded and withdrawn after October 1, 1990 under normal Forest Service and BLM procedures may not be reoffered in subsequent fiscal years under the terms of this section.

H. Conf. Rep. No. 101-264, 101st Cong., 1st Sess. 87 (1989)

A reasonable interpretation of Section 318(k) is that Section 318 survives only with respect to those offers which actually result in sales contracts. Since the offers for the sales in question did not result in an award of contract, it would appear that Section 318 is not available as a basis for a claim that this Court presently has power to enjoin these sales. This position would seem to be reinforced by the fact that the offers for these sales were cancelled by the Forest Service. See Plaintiffs' Memorandum in Support of Motion to Clarify and Enforce Judgment (Oct. 3, 1995) pp. 17-18. As indicated by the Conference Report quoted above, Congress did not intend to permit such sales to be reoffered under Section 318 following the expiration of the statute.

3. Finality of Judgments. Unlike the situation with the four enjoined sales, there is no outstanding injunction or order with prospective application as to the First and Last sales upon which the Court can hinge its jurisdiction. Indeed the Court may have determined this matter already in its February 23, 1996 Order. See Order on SAS Motion to Clarify and Enforce, etc., Feb. 23, 1996, pp. 3-4.

One basis upon which the Court might entertain these renoted motions consistent with the rule regarding finality of judgments is to treat them as a motion under Rule 60(b)(6) to vacate the Court's earlier judgment dismissing them as moot.[2]

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[2] The pertinent provisions of 60(b)(6) state that for "any other reason justifying relief from the operation of the (continued...)

The rule is available to provide relief to parties who were confronted with extraordinary circumstances that excused their failure to follow ordinary paths of appeal. In re Pacific Far East Lines, Inc., 889 F.2d 242, 250 (9th Cir. 1989). Applying the rule to this case would require the Court to find that the Forest Service's representation that the sales would not be reoffered, and the subsequent passage of 2001(k) (purportedly, under intervenors' construction of the statute, nullifying that representation) constituted "extraordinary circumstances" by reason of which plaintiffs were unfairly foreclosed from exercising their rights of appeal (from the Court's judgment dismissing the actions as moot). The situation would be analogous to one where the parties entered into a settlement upon

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[2](...continued)
judgment," a court may relieve the party of a" final judgment, order or proceedings." Fed. R. Civ. P. 60(b). Unlike subsections (1)-(3) of Rule 60(b), there is no statutory time limit on bringing a (b)(6) motion. The rule merely requires that it be brought "within a reasonable time," and the Ninth Circuit has declared this to be a factual determination committed to the sound discretion of the trial court judge. Fed. R. Civ. P. 60(b)(6). See U.S. v. Alpine Land & Reservoir, Co., 984 F.2d 1047, 1049 (9th Cir. 1993), cert. denied, 114 S.Ct. 60 (1993. See also In re Pacific Far East Lines, Inc., 889 F.2d 242, 249 (9th Cir. 1989). The Court clearly has the authority to treat plaintiffs' motion as a Rule 60(b)(6) motion. See Cisneros v. United States, 994 F.2d 1462, 1466 n.4 (9th Cir. 1993). The Supreme Court has set forth the general guidelines for application of Rule 60(b)(6):

> The Rule does not particularize the factors that justify relief, but we have previously noted that it provides courts with "authority to enable them to vacate judgments whenever such action is appropriate to accomplish justice, while also cautioning that it should only be applied in "extraordinary circumstances."

Liljeberg v. Health Services Acquisition Corp. 486 U.S. 847, 863-64 (1988) (citations omitted).

legal and factual bases that subsequent developments fundamentally altered, requiring equitable relief. See In re Pacific Far East Lines, Inc., supra; see also 7 Moore, Federal Practice § 60.27[2] (1995) (discussion, and cases cited n.53).

However, were the Court to reopen proceedings upon such a basis, it would still have to determine whether it had jurisdiction to grant affirmative relief, in this case to grant summary judgment and enter an injunction against the First and Last timber sales pursuant to Section 318. Cf. Fairfax Countywide Citizens Association v. County of Fairfax, Virginia, 571 F.2d 1299 (4th Cir. 1978), cert. denied, 439 U.S. 1047 (once proceedings are reopened pursuant to a Rule 60(b)(6) motion, district court not empowered to act without independent ground of federal jurisdiction). Thus, the Court would still have to consider whether it had jurisdiction to enjoin sales for violation of a statute under which they can no longer be offered.