

NLWJC- Kagan

Counsel - Box 001 - Folder 003

Timber-memos, emails, etc. [3]

3/9/96 Timber mty - Lyons, Katie

Scott Timber - Says will start cutting in Mar 2006.  
Cutting all summer long.

NEPA wk - 3 to 6 mos  
Maybe for ESA - 2 yrs.

Timber Mtg - Interagency on Murray Hill 3/7 (Katie's office)

All ops - detailed technical comments ← Get from Donald  
But all supportive so much of way

Env gpts - generally in oppos to bill  
Especially negative grass roots gpts  
Want full repeal

One imp technical fix on audit timing -  
need 2 yrs minimum / 3 yrs later  
Bill now gives 1 yr.

Thomas - in - normal salvage process is better  
Bad technical problems w/ T. III  
Wish to get projected salvage cut  
To floor tomorrow  
Not serious until next wk?  
Most Dems sided up.  
Think they have 52 votes  
(Snow) (same Repubs as last)

Budget Act probs? Then need 60.

Violation -

↳ Because out of judgment fund

Full pkg of comments.  
How long to consolidate?

Lyons - lots of latitude in how to proceed in  
SR sales.

Thomas - Problem is salvage.

Lyons - Do need more latitude in sal. process -  
One prob - abil to appeal sal. sales already out  
the door.

KM? - sufficiency? But this stuff is done.  
Can't we just say - from now on.

Key items

1. One-yr. car replacement
2. Reopening sales already done

[45-day decisions in dist. Ct?]

Make absolutely clear that  
This is an optional route  
in the bill.

Tomorrow to Murray

Throw out a  
replacement timber/  
settlement

Timber Meeting 3/8/96 - write these folks

Moving to be supportive

Tell them there are some issues / 2's.

Get their take on vote count,  
also take from env. grps.

} Maybe some that  
will be changes of passage.  
Don't press these

Wyden - seems to want "non-sensitive"  
375 sales to go forward.

### MURRAY STAFFERS IN

Tues. morn.

Pos feedback from enviros - (to w/ 12 today  
NW Ecosyst Mgmt / Mountains / Headwaters /  
Crested Range / WBC / Wilderness Socy  
Editorial in NW papers

LCU - we say key vote.

Chaker, Roth, Tethers, Cohen  
Perhaps Sun  
Thompson

Reid - want switch  
Argue: it causes 10/100  
events.

Byrd - any questions?

Cost 50-100 m. Part is PAYGO. No offset in bill.

How to handle?

Hatfield - will try to get 60-vote print of order.

### Big-tek issue:

1. Clear about opt-in or running program under  
current auth.

Fine - we'll make it clear. Contemplate  
that there will be 2 salvage programs.

2. Appeals for sales cut The Gov.

NOT interested in why such a change at now

Someone else can do. We can't.  
TJ - We haven't finished our internal  
discussions.

3. Time frame for September - 3 wks / 1 yr  
"unless mutually agreed upon" -  
give some leeway for longer period

4. Clear abt geog scope -  
Make sure that suspension of 2001k  
doesn't affect Optic & sales.

5. Allow modification whenever have ability to terminate  
(~~no~~ unilaterally)

Effects letter. What to say?

Telecom Well. Burgers 3/8/96

They assume Ct has jurisdiction  
↳ (Enviros)

Relying on view that 318 applies to offers -  
as long as sales going forward in form  
w/ needed, 318 still applies.

Have not contemplated issue of expiration of  
statute.

~~Industry will make~~  
6066 - needed

along w/ fact of 318 survival.

Industry - make arg re finality of judgments.

— — Why do this -

① Oshy of division to take a position on merits of CBS.

② Ct looks to DOJ to advise him on what law is.

John didn't say anything on  
merits issue!  
What's the difference?!

# Timber - legal options mtg 3/6/96

2a. If b.f. likely out court, AG can enter into settlements.  
 Out of JF.  
 AG may have to veto.  
 In gd faith / afraid of law school -  
 Need gd faith disaf about what a stat  
 means or what a K requires.

2b. Subst timber sales.  
 Open bidding reqs. - face challenges from  
 enviros / timber purchasers / counties. Standing 2's  
 This will make it less likely that purchaser  
 will agree.

But assume they're willing - what's the  
 probs for us?  
 Need "notice/shading" interp that's bad for  
 us.

Mike -  
 ^ use emergency rulemaking -  
 do narrowly / focus on spot area.  
 How to get out of notice + comment?  
 Emergency exception??  
 Use 2001h??

Tim -  
 Exhausted situation -  
 Secretarial power to offer alter timber.  
 (w/out following law or competition)  
 -> Make a sole source award.  
 (May not exempt from env. laws)

Dispense w/ reqs. - Secy himself -  
 Use AT w/out giving them alter process.  
 based on Fur Mgmt Act  
 Need a

Need a way to define exhausted circs.  
 Would you need a rulemaking for this?  
 Emerg sit - same as need to involve secy's  
 auth - to forego NTC

deal  
 all  
 here.

- Poss to use 2001h to forego NTC too?

Someone will challenge - you can't provide AT under K.

But who has challenge?

Also - can we use "it for any reason"?

## GO BACK TO BUYBACK -

Michelle: Who will challenge us if we buyback?

Possible - counties.

Can you use termination cl. of K -  
not unless we're willing to make that  
arg in CT - which DOT does not.

We haven't appealed these sales - never  
come up w/ legal basis to w/hold  
them -

so when's the A-faith div ag  
as to the meaning of the stat?

## ALTERN TIMBER

• Prelim decision - ~~env. laws~~<sup>AT</sup> have to comply  
w/ env. laws.

Whistling Dixie? No purchase would  
accept? Takes 2 yrs, etc.

Options we believe we have

1) Mutual replacement w/out advert  
subj to env. laws  
admin appeal / JR

Jim Lyons -

Just said - need some time to work things out.

FS <sup>has</sup> - came up w/ options for alter volume  
that would make them whole.

Willing to give us some time.

Forest - has sat down - give them specific rep.  
timber

outside of sale unit.

then + available.

Env. comm. would find it <sup>more</sup> acceptable

Env law apply?

This vol. hasn't complied w/ laws yet.

But consistent w/ Forest Plan.

They want accept process that will lead to  
litigation.

2 big  
policy  
issues

5:30 - prelim talk

6:00 - conf call.

## 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-Mar-1996 03:46pm

TO: Kathleen A. McGinty  
TO: Martha Foley  
TO: T J Glauthier  
TO: Barbara C. Chow  
TO: Elena Kagan

FROM: Dinah Bear  
Council on Environmental Quality

SUBJECT: Enviro endorsements

We just got a package of paper from the enviros on Murray.

The following groups have signed off on a letter written to Senator Murray to "state our support for your recent proposed legislation to repeal the clear cut rider. We applaud your effort to restore the rule of law to our public forests."

The letter severly criticizes the Hatfield-Gorton language and expressed concern about particular provisions of Murray, but concludes that "We look forward to working w/you to address these concerns and to enact this important legislation."

Sincerely,

SIERRA CLUB  
NATURAL RESOURCES DEFENSE COUNCIL  
TROUT UNLIMITED  
PACIFIC RIVERS COUNCIL  
INLAND EMPIRE PUBLIC LANDS COUNCIL  
HEADWATERS  
COST RANGE ASSOCIATION  
WASHINGTON WILDERNESS COALITION  
DEFENDERS OF WILDLIFE  
SIERRA CLUB LEGAL DEFENSE FUND  
WILDERNESS SOCIETY  
PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOC.  
THE MOUNTAINEERS  
NORTHWEST ECOSYSTEM ALLIANCE  
KLAMATH FOREST ALLIANCE  
CALIFORNIA WILDERNESS COALITION  
TRI-STATE STEELHEADERS  
TROUT UNLIMITED

There is also a good press release from Wilderness calling for passage of Murray's bill (with a thank you to Furst for taking the lead in the fight to repeal the rider), and a press release blasting Hatfield-Gorton.

I'll get the paper around to all of you asap by fax or messenger; I'm headed over to work on the mark-up of the bill w/Chris Nolin.



# NEWS

## THE WILDERNESS SOCIETY

900 SEVENTEENTH STREET, N.W., WASHINGTON, D.C. 20006-2596 (202) 833-2300

For immediate release  
March 8, 1996

Contact: Jerry Greenberg 202-429-2608

### **WILDERNESS SOCIETY CALLS FOR PASSAGE OF SEN. MURRAY'S BILL TO REPEAL THE CLEARCUT RIDER**

Statement by Rindy O'Brien,  
Vice President, Public Policy

By introducing a bill to repeal the infamous clearcut rider, Sen. Patty Murray (D-WA) is standing up for the millions of Americans who care about our national forests but have been shut out of the process that decides their fate. First, and most important, the bill repeals the clearcut rider. Second, it restores environmental laws suspended under the rider. Third, it once again allows Americans to challenge irresponsible and destructive logging on national forests. For these reasons, The Wilderness Society calls on the Senate to approve Sen. Murray's bill.

Unfortunately, if approved, her legislation would be attached to an omnibus spending bill that is expected to contain a host of anti-environment riders. Many will be the same riders The Society has been fighting to defeat since the beginning of the 104th Congress. The Wilderness Society cannot and will not support a bill loaded with such anti-environment legislation even if it includes language to repeal the rider.

Meanwhile, in the House of Representatives, The Society is continuing to push for passage of Rep. Elizabeth Furse's (D-OR) bill to repeal the rider. We are pleased that a companion bill has been introduced in the Senate by Sen. Bill Bradley (D-NJ).

The conservation community is deeply grateful to Rep. Furse for taking the lead in the fight to repeal the rider. She deserves a special thanks from forest loving Americans everywhere.

# # #

March 8, 1996

The Honorable Patty Murray  
United States Senate  
111 Russell Office Building  
Washington, DC 20510

Dear Senator Murray:

We are writing to state our support for your recent proposed legislation to repeal the clear cut rider (Sec. 2001 of P.L. 104-19). We applaud your effort to restore the rule of law to our public forests.

The Hatfield-Gorton language in the appropriations bill does not restore environmental laws and safeguards for federal forest lands. Lawless logging will be allowed to continue in all the national forests. It allows the lawless logging of ancient forests to continue indefinitely by lifting the December 1996 deadline in the Rescissions Act. We strongly oppose the proposed Hatfield-Gorton amendment.

We remain concerned that some provisions of your bill may perpetuate the myth that a "forest health crisis" exists on the public lands, for which salvage logging and limiting environmental analyses and reviews is the proper response. Expediting timber salvage is highly questionable. Rushing to maximize short-term economic gains from salvage logging are often inconsistent with the long-range well-being of forest ecosystems.

We look forward to working with you to address these concerns and to enact this important legislation.

Sincerely,

Inland Empire Public Land Council  
Headwaters  
Coast Range Association  
Washington Wilderness Coalition  
Defenders of Wildlife  
Sierra Club Legal Defense Fund  
The Wilderness Society  
Pacific Rivers Council  
Pacific Coast Federation of Fishermen's Associations

The Mountaineers  
Northwest Ecosystem Alliance  
Klamath Forest Alliance  
California Wilderness Coalition  
Tri-State Steelheaders  
Trout Unlimited  
Natural Resources Defense Council  
Sierra Club



# THE WILDERNESS SOCIETY

March 8, 1996

United States Senate  
Washington, DC 20510

Dear Senator:

On behalf of the nearly 300,000 members of The Wilderness Society, I am writing to express strong support for Senator Murray's amendment to the FY 1996 Omnibus Appropriations Bill (S. 1594), which will repeal the clearcut rider (Sec. 2001 of P.L. 104-19). Senator Murray's amendment, co-sponsored by Senators Baucus, Bumpers, Feinstein, and Leahy, will restore the rule of law to our public forests.

As you may know, Senator Hatfield and Senator Gorton have inserted language into the bill which purports to fix the problems created by the clearcut rider. The Hatfield-Gorton language, however, does not restore environmental laws to our public forests, and it does not stop the illegal clearcutting of ancient forests in the Pacific Northwest. It reduces the government's flexibility to negotiate or terminate timber sale contracts, and extends the clearcut rider by lifting its December 1996 deadline. Far from a fix, the Hatfield-Gorton language will worsen the impact of the clearcut rider.

While Senator Murray's amendment does not address all the problems created by the clearcut rider and the Forest Service's salvage program, it is a positive step toward sound public policy for our nation's forests. By repealing the clearcut rider, this amendment restores environmental law to our forests, returns the right of appeal to citizens, and ensures full judicial review. The amendment makes significant improvements in the currently lawless salvage logging program, including a more accurate, scientific definition of salvage timber, reduces the impact of the salvage program on roadless areas, and provides for a study of salvage logging to guide future policy decisions.

(Over)

900 SEVENTEENTH STREET, N.W., WASHINGTON, D.C. 20006-2596  
(202) 833-2300

Senator Murray and her colleagues have taken a positive step toward advancing sound policy for our public forests. Most importantly, they seek to restore the rule of law and allow citizens to once again participate in decision making for the national forests. The Wilderness Society urges you to support the Murray amendment to S. 1594, the FY 1996 Omnibus Appropriations Bill.

Sincerely,



Rindy O'Brien  
Vice-President, Public Policy

P.S.: Unfortunately, if approved, Senator Murray's legislation would be part of the Omnibus Appropriations Bill, which is expected to contain a host of anti-environment riders. Many will be the same riders The Society has been fighting since the beginning of the 104th Congress. The Wilderness Society cannot and will not support a bill loaded with such anti-environmental legislation, even if it includes language to repeal the clearcut rider.

Attachments

*Fact Sheet*

## THE WILDERNESS SOCIETY

**THE FACTS ABOUT THE HATFIELD-GORTON  
"FIX" FOR THE SALVAGE LOGGING RIDER**

The Republican leadership has proposed to amend the salvage logging rider contained in Public Law 104-19, with language in the FY 1996 Omnibus Appropriations Bill. The Wilderness Society and other environmentalists strongly oppose the proposed Hatfield-Gorton amendment for the following reasons.

1. **The proposal does not restore environmental laws and safeguards for federal forest lands.** Lawless logging will be allowed to continue in all the national forests.
2. **It does not stop the illegal clearcutting of ancient forests in the Pacific Northwest.** Logging will only be halted if the timber companies elect to do so.
3. **It reduces the government's flexibility to negotiate or terminate timber sale contracts.** The government's only option is to provide substitute timber that is "satisfactory to the purchaser."
4. **It allows the lawless logging of ancient forests to continue indefinitely by lifting the December 1996 deadline in the Rescissions Act.**



The Wilderness Society  
900 Seventeenth Street, N.W., Washington, D.C. 20006-2596 ■ 202 833-2300

## Fact Sheet

THE WILDERNESS SOCIETY

# A CLEAR-CUT SHAME: EXPOSING THE SALVAGE LOGGING RIDER HOAX

Salvage logging -- once an obscure management practice in the national forests -- has become an extremely contentious political issue during the 104th Congress due to passage of the so-called "salvage logging rider," enacted on July 27, 1995 as Section 2001 of the 1995 Rescissions Act. This clearcut rider was promoted by special interests as an emergency response to a perceived "forest health crisis." It suspended all environmental laws for salvage sales, barred citizen appeals, limited judicial review, and directed that the sales go forward regardless of economic costs.

- **Contrary to popular mythology, there is no established connection between salvage logging and the health of America's forests. Salvage logging is nothing more than a means of expediting timber sales, including irresponsible sales which have been suspended because of the harm they would do to the environment.**
- **Salvage logging has become an increasingly dominant component of the national forest timber sale program. In 1987, salvage timber sales made up less than 10 percent of all timber sold from the national forests. By 1995, however, salvage logging accounted for 48 percent of the timber program.**
- **Under the clearcut rider, healthy, green trees are being sold as salvage timber. The definition of what constitutes a salvage timber sale is so broad that the U.S. Forest Service is selling large amounts of live, healthy trees as salvage in order to avoid compliance with environmental law and citizen review.**



The Wilderness Society  
900 Seventeenth Street, N.W., Washington, D.C. 20066-2596 ■ 202 833-2300

- **Salvage sales are also being used as an excuse to build roads into our country's last remaining roadless areas.** Though conservationists have long sought to protect roadless areas, a unique and finite resource in our forests, the Forest Service is taking advantage of the clearcut rider to log these areas while it has the chance.
- **Salvage sales are a financial disaster for the U.S. taxpayer.** Contrary to optimistic predictions made by proponents of the clearcut rider that these sales would bring in an average of \$220 per thousand board feet of timber, the average price of timber sold under the rider has been \$92 per thousand. Many salvage sales have received no bids at all; others have only been sold after the agency has added higher value, live trees
- **Environmental appeals and lawsuits have not held up legal salvage sales.** The supporters of the rider have charged that frivolous appeals and lawsuits have needlessly delayed salvage sales, but the vast majority of timber sales - 86 percent in 1994 - are never appealed, and any appeals must be resolved in 45 days.

The clearcut rider is an environmental and economic disaster for the national forests and the American public. It is a special interest, stealth tool for expediting irresponsible timber sales, and has been abused to the detriment of our environment and the treasury. Salvage logging is an inappropriate program for addressing perceived forest health concerns. In many ways, salvage logging poses more of a threat to our forests than a cure for their perceived problems.

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

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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.<sup>1</sup> 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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<sup>1</sup> 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.<sup>2</sup>

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<sup>2</sup> 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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<sup>2</sup>(...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.

THE WHITE HOUSE

WASHINGTON

March 5, 1996

MEMORANDUM FOR JACK QUINN  
KATHY WALLMAN

FROM: ELENA KAGAN *EK*  
SUBJECT: MORE ON TIMBER

A few more words on the latest timber crisis before you walk into your meeting with Harold, Katie, and John tomorrow:

You may recall that the enviros have a motion before Judge Dwyer asking him to withhold the First and Last timber sales (thereby effectively canceling Judge Hogan's injunction to release those sales). We thought we might have to file a pleading on that motion today. It turns out that Judge Dwyer set the briefing schedule so that we will not have to file until next week. But what happened today with respect to the content of the pleading is instructive.

Prior to this morning, I had understood that we would file a pleading taking no position on the question whether Judge Dwyer had jurisdiction over the motion (or on any other legal question), but noting that release of the sales would cause environmental harm. This morning, I received two draft motions - one along the lines just mentioned, the other noting jurisdictional objections to the enviros' motion. (There was later a third draft, which also noted jurisdictional objections, but in a manner slightly less hostile to the enviros' motion. All of these drafts are attached.)

At a meeting in the afternoon, Lois informed us (me and Dinah Bear, CEQ Counsel) that she felt very strongly that we should file the pleading with the objections to jurisdiction, and indeed that she considered this a litigation decision that was entirely DOJ's to make. She gave two reasons for favoring the pleading with jurisdictional objections: (1) to maintain our credibility before Judge Dwyer, and (2) because it is very important for her division to be in a position to say at oversight hearings that it always notes jurisdictional objections. I asked whether she thought she had an ethical obligation to note the jurisdictional argument. She responded that in ten more minutes she would have one.

Dinah and I told Lois that we didn't have authority to make this call -- on the one hand, that we didn't have authority to tell DOJ to file a pleading it didn't want to file; but on the other hand, that we didn't have authority to accede to a pleading that would impede the enviros' attempt to stop release of these sales. We said we would have to speak with you, Katie, and

Harold. At that moment, we discovered that Judge Dwyer had set the briefing schedule so that we did not have to file today, so today's crisis was averted.

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---

THE WHITE HOUSE

WASHINGTON

March 5, 1996

MEMORANDUM FOR JACK QUINN  
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SUBJECT: ANOTHER TIMBER UPDATE

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DOJ asked the attorney if both he and the purchaser would participate in a conference call tomorrow to discuss possible settlement options. (Presumably, the government's position would be represented by DOJ attorneys and USDA's Jim Lyons.) The attorney agreed to do so, and DOJ has scheduled the call to occur at 2:00, after we have our meeting on the extent of our legal authority to buy back the contract, provide replacement timber, etc.

I suppose that now that Dwyer has scheduled the enviros' ~~motion for next week, we could attempt to do what we wanted to do~~ last Friday: appeal to the Ninth Circuit for a stay of Judge Hogan's injunction pending Judge Dwyer's ruling. Justice, of course, would oppose taking this course. Moreover, I think filing such an appeal does not make much sense anymore: given the discussions we've already had with the purchaser -- and the commitment we have made to have still further discussions -- continued litigation would seem a bad-faith act. Given that the chances of success on the appeal are very low and that our real hope of solving this problem lies in settlement (assuming we have the legal authority to put together a decent offer), I would now advise foregoing the appeal.

*Handwritten note:*  
Elena Kagan  
March 5, 1996

Katie -

Tack thought you  
should also see those  
before the meeting today.

Ekena

cc: Dinah

THE WHITE HOUSE

WASHINGTON

March 5, 1996

MEMORANDUM FOR JACK QUINN  
KATHY WALLMAN

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THE WHITE HOUSE

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March 5, 1996

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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

05-Mar-1996 09:07pm

TO: Kathleen A. McGinty  
TO: Dinah Bear  
TO: T J Glauthier  
TO: Elena Kagan

FROM: Thomas C. Jensen  
Council on Environmental Quality

CC: Brian J. Johnson

SUBJECT: Murray bill

OK, I'm a latecomer and probably not welcome. But I do have a concern on the Murray bill that I want to raise.

I am worried about setting up a new "salvage" program that will run parallel to the existing "salvage" program. More particularly, it seems problematic to create a new program under law if we don't somehow try to show how it is intended to differ from, match, or otherwise relate to the existing programs under NFMA and FLPMA. I may be overreacting here, but I foresee chaos in the agencies as they try to figure out which authority governs which sales when.

Yes, I understand that the Murray approach is, well, "true salvage." But we've basically maintained that our current programs are also "pretty much true salvage." How do we explain what it is we won't do in terms of salvage once we enter the new world of Murray salvage. How do we avoid drawing unfortunate and unflattering comparisons to our current program?

I'm sorry to raise this without a proposed remedy. I'm thinking about this and will have more to say later, of course, but I did want to share the concern. There must be an answer.

RTs accrue before  
can be exercised  
after.

Koppelman

Rutledge - arg that stat expires  
Judge - likely to ask.

Notw/ in K1

Carries over to K3?

We want to say NO.

If that's true, ↑  
would have taken too long.  
stat would have been meaningless!

If J. doesn't give stay,  
we'll have to release insured. the  
real microlet sales

the others we can try to dick around w/  
But then, they may seek an injunction & we'll  
have to do everything too quickly.



THE WHITE HOUSE

WASHINGTON  
March 2, 1996

MEMORANDUM FOR JACK QUINN  
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: LATEST TIMBER CRISIS

Just as I was telling Lois Schiffer that the White House wanted her to seek a stay in the 9th Circuit of Judge Hogan's injunction to award the First and Last sales, Jim Lyons of the Department of Agriculture managed to get the purchaser of the sales to agree to a one-week grace period. Lois very much wanted to contact the attorney of the purchaser to get his approval, but was unable to reach him. Her office thus wrote a letter to the purchaser's attorney (which I approved and am attaching to this memo) relating the circumstances, indicating that the government would not yet release the sales, and asking the attorney to call next week. Assuming all goes well, we have until Friday to come up with some solution; if the attorney balks, we will face Monday or Tuesday the same situation we faced last Friday.

What happened on Friday raises two issues. The smaller one concerns what to do about these particular sales. The larger one concerns the relationship between DOJ and the White House in litigating these cases. I'll deal with the larger issue first.

I know that Lois and the rest of her office were extremely upset by the White House's "interference" on Friday. According to Lois, John Schmidt intends to call Harold and/or you to complain about the current state of affairs and to insist on some new way of handling communications between the White House and her office. I am not sure exactly what Lois has in mind, but she has said on several occasions that if Harold wants to make decisions on these matters, he should come to all the meetings where litigating strategy is developed; she also said something last night about the unfairness of the White House's demanding a change in course at the last minute when her office had long ago informed the appropriate persons (by which I think she meant me and the CEQ counsel) of the direction her office was taking.

I really don't understand this complaint very well. The reason why all these conflicts arise at the last minute is because they always concern what last-ditch efforts to make -- e.g., whether to appeal, seek cert, apply for a stay. And we have been very clear what general approach we want the Justice Department to follow: to litigate as aggressively as possible -- to file as many motions, to pursue them as far as possible, etc. -- consistent with ethical obligations and long-term goals. In this particular case, the CEQ counsel and I have long urged DOJ

*Handwritten notes:*  
Please - send me  
I'll deal with Harold  
Katie  
Jan  
Harold  
Randy

to do everything possible to aid the enviros' effort to impede the sales consistent with DOJ's longstanding (if stupid) position that there was no legal basis to withhold them; urging DOJ to apply for a stay pending disposition of the enviros' motion (on grounds of avoiding inconsistent injunctions) -- and then urging appeal from denial of the stay -- was perfectly consistent with what we've been saying.

The problem, rather than involving communications, involves real differences about who should have authority over these litigation decisions and, relatedly, what decisions should be made. Schiffer believes that we are trying to get involved in the minutia of litigation and that she must have ultimate control over such decisions as when to seek a stay, when to appeal, and so forth. She also thinks that the positions the White House pushes go too far -- that they risk alienating the courts and provoking sanctions and contempt orders against DOJ, Ag, and Interior.

The opposite argument is that the White House should be more than usually involved in these issues because (a) they are of great political importance, and (b) Schiffer's shop, left to its own (and the SG's) devices, will not litigate them as aggressively and imaginatively as possible. Schiffer's people (including Schiffer herself) talk about the danger of Rule 11 sanctions with respect to motions that attorneys from Williams & Connolly (you'll recall, my old firm) would file in their sleep. Schiffer thinks that DOJ cannot and should not litigate in the same way -- on these or any other cases -- as an aggressive private or public interest law firm would do. And her people are often real naysayers -- telling you the 15 things you can't do rather than finding the one you can. (Of course, part of this may be linked to resentment regarding the White House's role; maybe if they were left to themselves, they'd discover some can-do attitude.) All this may provide sufficient reason for the White House, when it seems important enough, to have a hand in -- even insist upon -- certain litigation decisions.

At any rate, it may be helpful for you, Harold, Katie, and John Schmidt to discuss the big picture here. Part of the reason we keep finding ourselves in these last-minute disputes is because people (most notably, Harold and Lois) have different understandings of the White House's appropriate role and authority.

As to these two sales, our options are not very extensive. Judge Dwyer probably will hear the enviros' motion on Wednesday. If he denies that motion, which he probably will, we will pretty much have run out of reasons for delaying compliance with Judge Hogan's order to release the sales. Two possibilities remain. One is to attempt to reach a consensual buy-back agreement with the purchaser. DOJ is currently investigating whether we have authority to do this. Although there are clearly people at DOJ who are dubitante, no one has yet made a convincing argument to

me that we lack such authority. If we do have authority, we will have to figure out where the money would come from. Ag may not have the money to make such a deal; it would be nice (though I do not know if it's possible) to get the money out of the judgment fund by way of settling a claim with the purchaser. At any rate, we should clearly pursue this option as aggressively as possible.

The other possibility is to attempt to invoke the clause in the contract that allows the government to terminate contracts when it finds significant environmental harm. DOJ is adamantly opposed to taking this step with respect to this or any other sale: it argues that the timber rider deprived us of authority to invoke this contractual provision. But the timber rider does not do this in explicit terms; to the contrary, the language of the statute suggests that the original terms of the contract remain in force. DOJ's argument is that if this particular term remained in force, it would make the entire rider a nullity: we could cancel all the sales Congress wanted us to go forward with. This is a strong argument against us, but I think there would be nothing wrong, in an appropriate case, from pushing this particular envelope. (Indeed, DOJ's position on this matter is a quite good example of its excessive caution.)

I think, however, that this is probably not the right case to test our ability to terminate. First, we are under injunction to "award and complete" these sales; before we did something like this, I think we would at least have to ask the court whether such an action would violate the injunction. Second, I suspect that Jim Lyons, in getting the purchaser to agree to a one-week extension, made certain representations as to the government's good faith desire to work out this problem. We at least should do everything we can to reach a consensual agreement with the purchaser before considering this option.

Could we talk about all this?



U.S. Department of Justice

Environment and Natural Resources Division

General Litigation Section

Washington, D.C. 20530

March 1, 1996

VIA TELEFAX

Scott Horngren  
Haglund & Kirtley  
One Main Place  
101 S.W. Main, Suite 700  
Portland, Oregon 97204

Re: Northwest Forest Resource Council v. Glickman,  
Civil No. 95-6244-HO (lead case), No. 95-6267-HO  
(consolidated case), No. 95-6384-HO (consolidated  
case) (D. Or.)

Seattle Audubon Society v. Thomas, CV-89-160-WD  
(W.D. Wash.)

Dear Scott:

This letter concerns the First and Last timber sales which are subject to the January 10 injunction of the District Court of Oregon. The defendants had represented that these sales would not be released until Judge Dwyer ruled upon SAS's motion to clarify and enforce its prior judgment. On February 23, 1996 Judge Dwyer denied SAS's motion to clarify and enforce judgment as to the First and Last sales. Accordingly, on February 28, 1996, we advised all parties that the Forest Service intended to issue award letters on these sales by the close of business on March 1, 1996. After receipt of SAS plaintiffs' filing renoting motions for summary judgment and permanent injunction against First and Last, and fearing potential conflicting injunctions, the federal defendants moved for a stay of the January 10 injunction as to First and Last.

Today in the late afternoon, Judge Hogan denied our request for a stay. We learned that your client, Alan Ford of Scott Timber Company, had met with our client, Under Secretary Jim Lyons. Mr. Lyons called us to advise that he had met with Mr. Ford, and that Mr. Ford had agreed to hold off the award of the First and Last timber sales for one week. We were advised that this agreement would be reduced to writing. We indicated that Mr. Ford should contact his attorney as soon as possible to

discuss the sales. In the meanwhile, we called your office, but were told that you were out, but would be back on Tuesday, March 5. We left a message for one of your partners to call, but, with the time difference, did not connect.

In light of Mr. Ford's statements to Under Secretary Lyons and our inability to reach you, the Forest Service will not today be sending out the award letters as per our letter dated February 28, 1996. Please call us as soon as possible upon your return to discuss this matter.

Sincerely,

Wells D. Burgess  
Michelle L. Gilbert  
Ellen M. Athas  
United States Department of Justice  
Environment & Natural Resources  
Division  
P.O. Box 663  
Washington, D.C. 20044-0663  
(202) 305-0460

cc: All counsel

THE WHITE HOUSE

WASHINGTON

March 5, 1996

MEMORANDUM FOR JACK QUINN  
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: MORE ON TIMBER

A few more words on the latest timber crisis before you walk into your meeting with Harold, Katie, and John tomorrow:

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March 11 - New date  
date.

Timber Interagency Meeting 3/5/96

1. Hatfield/Gorton/Murray.

2. Litigation Update

a) Hogan ~~stay~~ stay extension

Timber ind said - stat expires; so ~~no~~ no ext. of stay.

Timber ind - file brief Mar 15.

Another hearing -  
March 22.

Hogan - I'll not pocket veto statute - not undermine  
Cuy's intent.

→ So our pos. was right.

We now know that's the critical issue.

Worst part - if denies, we'll have to act  
quickly ~~to go to~~ 9th Cir.

b) First + Last

↓  
Lawyers - not yet contacted us.

Purchaser's

↓  
by us - purchaser not anxious to operate.

↓  
Will talk to him today.

↓  
Jim following up w/  
purchaser today

Wells: distinguish the award/operating sale

~~Wells~~

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-Mar-1996 07:36pm

TO:           Dinah Bear

FROM:         Kathleen A. McGinty  
              Council on Environmental Quality

CC:           Thomas C. Jensen  
CC:           Elena Kagan

SUBJECT:     RE: statutory date for replacement timber

ok. if you're ok, i won't hold this up. thx.

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-Mar-1996 07:56pm

TO:           (See Below)

FROM:        Kathleen A. McGinty  
              Council on Environmental Quality

SUBJECT:     timber fyi

Distribution:

TO:   Elena Kagan  
TO:   Dinah Bear  
TO:   Shelley N. Fidler  
TO:   Thomas C. Jensen  
TO:   Michelle Denton

CC:   T J Glauthier

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-Mar-1996 07:42pm

TO:            Barbara C. Chow

FROM:          Kathleen A. McGinty  
                Council on Environmental Quality

CC:            Martha Foley  
CC:            T J Glauthier

SUBJECT:       RE: Timber salvage

ok. the problem here is that we do not have the bill at this point. we have seen earlier versions, but they are moot almost immediately upon printing -- murray's staff is getting heavily lobbied and is significantly rewriting. we need the bill so we CAN opine.

having said that, i have to reiterate that it is not acceptable for us to continue to entertain that we would come out somewhere other than in support of murray (assuming that she will take whatever changes we need in the bill).

daschle's office called me to say that they were indeed pushing murray's bill as the substitute to hatfield's provision and that they were successfully lining up support including moderate r's.

as you also know, the likelihood is that peter defazio will introduce the bill on the house side.

there is therefore some chance that we could actually pass something here so i would urge that our posture switch immediately to support of repeal and replace and going great guns to get this bill in as good a shape as possible.

meanwhile, the press is ringing our phones off the hook. we can hold them at bay with the --- "we have not seen the final language" for right now, but, of course, since she is introducing it tomorrow that excuse is lost.

you should know that the pnw press is reporting that murray is working on this bill "at the president's request."

i think we urgently need a meeting with leon on this to force a decision. we will need to have a position on this tomorrow or we will get pummeled in the pnw press.



(p.s. on a note to me in my weekly report, the president asked why we had not decided to be supportive of murray's approach and said "if we are mute, the announcement i made out there will look like hypocracy.")

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-Mar-1996 08:23am

TO:           Dinah Bear

FROM:         Thomas C. Jensen  
              Council on Environmental Quality

CC:           Kathleen A. McGinty  
CC:           Elena Kagan

SUBJECT:     RE: statutory date for replacement timber

Dinah,

I absolutely agree with the proposed position on expiration of our obligations regarding replacement timber. To argue otherwise would not only do us in with Hogan, but the timber guys would never believe our rhetoric regarding satisfaction of their contract rights.

Tom

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-Mar-1996 05:50pm

TO: Kathleen A. McGinty

FROM: Dinah Bear  
Council on Environmental Quality

CC: Thomas C. Jensen  
CC: Elena Kagan

SUBJECT: RE: statutory date for replacement timber

Will, hopefully none of these sales will ever be out the door - these are the murrelet sales. If Hogan denies the stay, we've already said we'd appeal - but it would be heck of a lot of easier if he's just extend the stay until we get a decision on the merits from the Court of Appeals.

In terms of the sales we are releasing (or if we ultimately lost on these sales and the law is still in place), the government's obligation for the original sales is simply to award and allow the sales to be completed by the end of the fiscal year (not calendar year - that applies to the salvage and option 9 sales.) There's nothing in the law that forces the purchasers to actually harvest them by Sept. 30th.

If we said replacement timber can't be extended past Sept. 30th, then we're putting ourselves in the box of having to come up with all the replacement timber sales by then.

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-Mar-1996 04:47pm

TO:           (See Below)

FROM:        Thomas C. Jensen  
              Council on Environmental Quality

SUBJECT:     MEETING REMINDER

The EOP/agency timber working group will meet as regularly scheduled tomorrow, Tuesday, March 4, 1996, at 2:00 p.m. at the CEQ conference room (722 Jackson Place).

The agenda will include:

1.       Recent events update - chair  
          Murray Legislation - Bear  
          Hatfield/Gorton Legislation - Bear
2.       Litigation update - Justice
3.       Timber contract issues - Bear
4.       Administration oversight of salvage sales - chair
5.       Tracking 2001(k) sales scheduled for release - Bear
6.       New Information - Bear
7.       Other business - chair

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)

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-Mar-1996 05:35pm

TO:           Dinah Bear

FROM:         Kathleen A. McGinty  
              Council on Environmental Quality

CC:           Thomas C. Jensen  
CC:           Elena Kagan

SUBJECT:      RE: statutory date for replacement timber

i don't feel that i have a sufficient grasp of the plusses and minuses -- e.g. even if we don't get an extention of the stay, how many of the sales will be out the door by the end of the year and do they go away at the end of the year or will they still be cut cause they now belong to the purchaser??

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-Mar-1996 04:05pm

TO:            Kathleen A. McGinty  
TO:            Thomas C. Jensen

FROM:          Dinah Bear  
              Council on Environmental Quality

CC:            Elena Kagan

SUBJECT:      statutory date for replacement timber

Lois and Peter just called with a point that they need clearance on prior to tomorrow's timber meeting (in fact, tonight, if possible).

As you know, Judge Hogan ruled against us on the "known to be nesting" issue but also issued a 60 day stay of the injunction, which runs out at the end of this month. Our arguments in front of the Court of Appeals is scheduled for May 9th, so we obviously have a gap in the coverage of the stay. We filed a motion w/Judge Hogan to extend the stay until the 9th Circuit rules, and he has just scheduled oral argument on that motion for noon tomorrow EST.

Hogan has expressed concern earlier about the necessity for meeting our obligations to the purchasers by the time the old growth provision expires. The affirmative duty to release these sales clearly does expire at the end of this fiscal year, but it is unclear as to whether the authority, duty or obligation to offer replacement timber extends beyond that. A cogent argument can be made either way.

Justice wants to be able to state to Judge Hogan that we interpret the statute to allow us to offer replacement timber past the Sept. 30th date. They believe - with, I think, good reason, that Hogan will be more likely to extend the stay if he believes there is sufficient time to make the purchasers whole should we win the "known to be nesting" argument on the merits.

There has been some discussion of this issue at the Tuesday meetings and with individual timber participants. The general sense Tom and I have is that the better position on replacement timber is to extend the time period past Sept. 30th (but also to say that env. laws will apply - an issue that need not be addressed in tomorrow's arguments.) FYI, virtually every legislative iteration that we have seen on the subject of replacement timber - from Hatfield to Murray - would also extend

the time period past Sept. 30th.

In short, I recommend we concur with DOJ's recommendation to interpret the statute in a way that allows us to offer replacement timber past the end of FY 96.

Elena is making a similar recommendation to Jennifer and Harold.



THE WHITE HOUSE  
WASHINGTON

3. No live circuit behavior Judge  
Dwyer ?

---

6. Motion for stay non-  
meritorious

Dwyer hearing -  
- affid-ent harm  
- recitation what happened/  
no view.

Telecom on timber 2/27/96

legal auth to offer rep. timber  
not 2001kZ  
purchaser agreed

/ buy back

Under K Disputes Act,  
can buy back  
assuming indiv purchaser agrees.

If doesn't agree? Do a tkg - answer  
in damns.

F/L - purchasers  
will cut trees in  
next 2 yrs unless  
we do something -  
e.g. provide an  
altern (rep timber)

Absence of auth to do give altern vol. --  
Secy may not opt over \$10,000 w/ comp. bidding.  
dispose timber  
long-standing interp.

Refuse to allow/ do a tkg.  
Respond in damns.

but have to relms -  
thru approp it's breach  
of K. Anyway around this?

~~anyway around this?~~  
~~anyway around this?~~  
~~anyway around this?~~

Altern timber has  
to go thru  
all env. tests -  
no one will  
agree to this  
anyway.

or what ast using  
termination provision  
of K. (any - rider around  
the use of provision)

F/L -

intending to expedite motion  
NOT seeking TRO. - can't  
trying to get hearing on as early as poss.

10:30 - K provisions

↙  
Hatfield pros - REP/ incl. k(k) sales.  
↑  
- operate the cuts timber unit...  
- suffic for rep. timber  
- can't use optic 9

Buy-out/

What are we getting here?  
We have this.

to pay judgments  
not otherwise provided for  
by law

K Disputer Act?

↳ another stat source of funds.

Met w/ Murray Staff 2/29

Hatfield language - buyback/replacement  
at buyers' discretion?  
incl. extension of sublc on 318. ??  
we think not

Vehicle - prob get omnibus bill - not CR

2 issues

- 1) old statute falling
- 2) no pub partic in salvage

Salvage draft - very rough. Subst changes.

losing the  
clearness of  
repeal here.

{  
}

Mr  
T1 - section 3 seems unnc.  
Section 2 - how do they  
relate?

T2 - <sup>st</sup> Why expedite?

T3 - Det prob unacceptable to  
environs: dead & dying.

limits on where this Act applies.

32 - control to environs.

Leg lang - today

float bill to friends tonight - incl ggs.  
meet w/ Murray tomorrow.  
roll out early next wk.

1. First + Last

Skidell - Mar 6 up - not show moti-

Motiv w/ Hogen - delay until then

Terminatio provinces - K. ??

Legal dispute

Buyback - consensual

Authenticity?

Settlement - ~~show~~ of K claim?

Attitude

Voluntary ag at near price?

See if WIDA can pay.

Approp funds?

If not, JF

Do this list

If not - pursue modif strategy.

Make it ~~hard~~ so  
that they'll  
have to spend lots,  
so they'll agree  
with time out.

Don't give up.

Kirschner - really imp.

UMQUA - very sensitive - [maybe not as bad  
as 4 enjoined]

degrees of env. harm.

also - lot sales cut after announcement  
totally undermine  
dissipate a lot of goodwill.

absolute disaster political

Koppelman -

Lynn Thinks they can work out a delay  
w/ purchasers.

(Purchasers generally want rep timber;  
not \$. But will not give rep timber w/out  
accounting w/ env. law.)

Call back in an hr.

Telecon w/ P. Koppelman

Telephone conference -

Patrick Goldman /

Gilbert or Burgess

Talked to Needler - 9th Cir. "Ridiculous"  
motion in a 5-day extension.

[Is that the only reason?]

5 day stay  
that takes 5  
days to prepare?

THE WHITE HOUSE

WASHINGTON  
March 2, 1996

MEMORANDUM FOR JACK QUINN  
KATHY WALLMAN

FROM: ELENA KAGAN *EK*  
SUBJECT: LATEST TIMBER CRISIS

Just as I was telling Lois Schiffer that the White House wanted her to seek a stay in the 9th Circuit of Judge Hogan's injunction to award the First and Last sales, Jim Lyons of the Department of Agriculture managed to get the purchaser of the sales to agree to a one-week grace period. Lois very much wanted to contact the attorney of the purchaser to get his approval, but was unable to reach him. Her office thus wrote a letter to the purchaser's attorney (which I approved and am attaching to this memo) relating the circumstances, indicating that the government would not yet release the sales, and asking the attorney to call next week. Assuming all goes well, we have until Friday to come up with some solution; if the attorney balks, we will face Monday or Tuesday the same situation we faced last Friday.

What happened on Friday raises two issues. The smaller one concerns what to do about these particular sales. The larger one concerns the relationship between DOJ and the White House in litigating these cases. I'll deal with the larger issue first.

I know that Lois and the rest of her office were extremely upset by the White House's "interference" on Friday. According to Lois, John Schmidt intends to call Harold and/or you to complain about the current state of affairs and to insist on some new way of handling communications between the White House and her office. I am not sure exactly what Lois has in mind, but she has said on several occasions that if Harold wants to make decisions on these matters, he should come to all the meetings where litigating strategy is developed; she also said something last night about the unfairness of the White House's demanding a change in course at the last minute when her office had long ago informed the appropriate persons (by which I think she meant me and the CEQ counsel) of the direction her office was taking.

I really don't understand this complaint very well. The reason why all these conflicts arise at the last minute is because they always concern what last-ditch efforts to make -- e.g., whether to appeal, seek cert, apply for a stay. And we have been very clear what general approach we want the Justice Department to follow: to litigate as aggressively as possible -- to file as many motions, to pursue them as far as possible, etc. -- consistent with ethical obligations and long-term goals. In this particular case, the CEQ counsel and I have long urged DOJ

to do everything possible to aid the enviros' effort to impede the sales consistent with DOJ's longstanding (if stupid) position that there was no legal basis to withhold them; urging DOJ to apply for a stay pending disposition of the enviros' motion (on grounds of avoiding inconsistent injunctions) -- and then urging appeal from denial of the stay -- was perfectly consistent with what we've been saying.

The problem, rather than involving communications, involves real differences about who should have authority over these litigation decisions and, relatedly, what decisions should be made. Schiffer believes that we are trying to get involved in the minutia of litigation and that she must have ultimate control over such decisions as when to seek a stay, when to appeal, and so forth. She also thinks that the positions the White House pushes go too far -- that they risk alienating the courts and provoking sanctions and contempt orders against DOJ, Ag, and Interior.

The opposite argument is that the White House should be more than usually involved in these issues because (a) they are of great political importance, and (b) Schiffer's shop, left to its own (and the SG's) devices, will not litigate them as aggressively and imaginatively as possible. Schiffer's people (including Schiffer herself) talk about the danger of Rule 11 sanctions with respect to motions that attorneys from Williams & Connolly (you'll recall, my old firm) would file in their sleep. Schiffer thinks that DOJ cannot and should not litigate in the same way -- on these or any other cases -- as an aggressive private or public interest law firm would do. And her people are often real naysayers -- telling you the 15 things you can't do rather than finding the one you can. (Of course, part of this may be linked to resentment regarding the White House's role; maybe if they were left to themselves, they'd discover some can-do attitude.) All this may provide sufficient reason for the White House, when it seems important enough, to have a hand in -- even insist upon -- certain litigation decisions.

At any rate, it may be helpful for you, Harold, Katie, and John Schmidt to discuss the big picture here. Part of the reason we keep finding ourselves in these last-minute disputes is because people (most notably, Harold and Lois) have different understandings of the White House's appropriate role and authority.

As to these two sales, our options are not very extensive. Judge Dwyer probably will hear the enviros' motion on Wednesday. If he denies that motion, which he probably will, we will pretty much have run out of reasons for delaying compliance with Judge Hogan's order to release the sales. Two possibilities remain. One is to attempt to reach a consensual buy-back agreement with the purchaser. DOJ is currently investigating whether we have authority to do this. Although there are clearly people at DOJ who are dubitante, no one has yet made a convincing argument to

me that we lack such authority. If we do have authority, we will have to figure out where the money would come from. Ag may not have the money to make such a deal; it would be nice (though I do not know if it's possible) to get the money out of the judgment fund by way of settling a claim with the purchaser. At any rate, we should clearly pursue this option as aggressively as possible.

The other possibility is to attempt to invoke the clause in the contract that allows the government to terminate contracts when it finds significant environmental harm. DOJ is adamantly opposed to taking this step with respect to this or any other sale: it argues that the timber rider deprived us of authority to invoke this contractual provision. But the timber rider does not do this in explicit terms; to the contrary, the language of the statute suggests that the original terms of the contract remain in force. DOJ's argument is that if this particular term remained in force, it would make the entire rider a nullity: we could cancel all the sales Congress wanted us to go forward with. This is a strong argument against us, but I think there would be nothing wrong, in an appropriate case, from pushing this particular envelope. (Indeed, DOJ's position on this matter is a quite good example of its excessive caution.)

I think, however, that this is probably not the right case to test our ability to terminate. First, we are under injunction to "award and complete" these sales; before we did something like this, I think we would at least have to ask the court whether such an action would violate the injunction. Second, I suspect that Jim Lyons, in getting the purchaser to agree to a one-week extension, made certain representations as to the government's good faith desire to work out this problem. We at least should do everything we can to reach a consensual agreement with the purchaser before considering this option.

Could we talk about all this?



## U.S. Department of Justice

## Environment and Natural Resources Division

General Litigation Section

Washington, D.C. 20530

March 1, 1996

VIA TELEFAX

Scott Horngren  
Haglund & Kirtley  
One Main Place  
101 S.W. Main, Suite 700  
Portland, Oregon 97204

Re: Northwest Forest Resource Council v. Glickman,  
Civil No. 95-6244-HO (lead case), No. 95-6267-HO  
(consolidated case), No. 95-6384-HO (consolidated  
case) (D. Or.)

Seattle Audubon Society v. Thomas, CV-89-160-WD  
(W.D. Wash.)

Dear Scott:

This letter concerns the First and Last timber sales which are subject to the January 10 injunction of the District Court of Oregon. The defendants had represented that these sales would not be released until Judge Dwyer ruled upon SAS's motion to clarify and enforce its prior judgment. On February 23, 1996 Judge Dwyer denied SAS's motion to clarify and enforce judgment as to the First and Last sales. Accordingly, on February 28, 1996, we advised all parties that the Forest Service intended to issue award letters on these sales by the close of business on March 1, 1996. After receipt of SAS plaintiffs' filing renoting motions for summary judgment and permanent injunction against First and Last, and fearing potential conflicting injunctions, the federal defendants moved for a stay of the January 10 injunction as to First and Last.

Today in the late afternoon, Judge Hogan denied our request for a stay. We learned that your client, Alan Ford of Scott Timber Company, had met with our client, Under Secretary Jim Lyons. Mr. Lyons called us to advise that he had met with Mr. Ford, and that Mr. Ford had agreed to hold off the award of the First and Last timber sales for one week. We were advised that this agreement would be reduced to writing. We indicated that Mr. Ford should contact his attorney as soon as possible to

discuss the sales. In the meanwhile, we called your office, but were told that you were out, but would be back on Tuesday, March 5. We left a message for one of your partners to call, but, with the time difference, did not connect.

In light of Mr. Ford's statements to Under Secretary Lyons and our inability to reach you, the Forest Service will not today be sending out the award letters as per our letter dated February 28, 1996. Please call us as soon as possible upon your return to discuss this matter.

Sincerely,

Wells D. Burgess  
Michelle L. Gilbert  
Ellen M. Athas  
United States Department of Justice  
Environment & Natural Resources  
Division  
P.O. Box 663  
Washington, D.C. 20044-0663  
(202) 305-0460

cc: All 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

01-Mar-1996 03:53pm

TO:           (See Below)

FROM:         Dinah Bear  
              Council on Environmental Quality

SUBJECT:     Murray bill

I just had a brief chat with Marla - she was getting back to me confirming out meeting at 4 tomorrow. I didn't attempt to characterize our position at all; this was in the context of an earlier "technical assistance" conversation.

However, she did have news - it looks very likely that DeFazio will sponsor the bill in the House. In fact, DeFazio's staff (Jeff Stier sp?) wants to come tomorrow afternoon also.

She also said the enviros are giving them hell on a couple of provisions, and that one of those - one I mentioned to all of you this afternoon (the rebuttable presumption theory for compliance w/env. laws.) has already dropped out.

Distribution:

TO: Kathleen A. McGinty  
TO: Martha Foley  
TO: T J Glauthier  
TO: Barbara C. Chow  
TO: Christine L. Nolin  
TO: Thomas C. Jensen  
TO: 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

29-Feb-1996 11:39am

TO:           bear\_d  
TO:           jensen\_t  
  
FROM:         curt\_smitch

SUBJECT:     Lunch meeting with Jim Lyons and timber industry people

Dinah & Tom, I am passing along a message FYI. It is from my field supervisor in Oregon. It is instructive.

Curt

Forward Header

---

Subject: Lunch meeting with Jim Lyons and timber industry people  
Author: Russ Peterson at 1PO~PFO1  
Date: 2/28/96 5:15 PM

Craig,

Thanks for the message. I'm passing it on the Curt and others for their information. I guess the positives are that some in industry seem flexible and that Jim Lyons wants a solution to be acceptable to us and NMFS. I think that compatibility of replacement volume with the provisions of the Forest Plan is the main thing that we would want. Paul has some ideas on how best to "credit" harvest volume. You may want to discuss the situation with him and pass the combined thoughts on to Don Ostby if he is the focal point in Douglas County to finding a solution.

Russ

Forward Header

---

Subject: Lunch meeting with Jim Lyons and timber industry people  
Author: Craig Tuss at 1PO~MAIN  
Date: 2/28/96 3:58 PM

At noon today I attended a brown bag lunch with Jim Lyons, Mike Lunn (Siskiyou Forest Supervisor), Don Ostby (Umpqua Forest Supervisor), Nancy Graybill, Bob Williams, Howard Sohn, Allyn Ford and D.R. Johnson. I was invited by D. Ostby. Discussion focused on the salvage rider and the replacement volume issue. This meeting was put together by Ostby who has been working with these industry folks to find a "workable solution to a sticky situation". Some discussion had taken place prior

to the lunch but I was not able to attend that portion.

Jim Lyons began the discussion by asking each of the timber industry people what their major issues and concerns were and what recommendations they could provide.

Allyn Ford said he wants certainty in regards to getting this volume. He is willing to get it from places other than the original sale site, but is not willing to see the sales "bought back". His mill needs the inventory of logs, availability of the logs in the next one to two years, and logs that approach "old growth dimension" (of like value and quality) to help them through this interim period when they are retooling their facilities to meet the future. He really needs to know what is going to happen with these sales within the next 30 days, because the clock is ticking and he does not want to have the issue drag on and the door close (salvage rider end) before his company can get their sale executed.

Howard Sohn said the same thing and added he is willing to take replacement volume from outside the sale boundary, outside the administrative unit boundary, outside the state boundary, outside the international boundary, or from the log market. He also mentioned that the original time frame to get these sales done was about 12 months and now they are looking at 7 months. Bottom line is that they need the logs and are willing to get them anywhere, just as long as they can lock them up.

D.R. Johnson was more strident, he opened by saying that the current sales should be okay the way they are designed. He does not feel bad that he is taking these trees. D.R. reiterated that "by back" of the sales is a untenable solution. He did not go as far as to say he was willing to accept replacement volume but did say he was willing to work with the Forest Service to find a solution.

All three made the point that the solution should come from the local people (forest supervisors), not from D.C. and that the solution had to be fairly quick (next couple of weeks). The idea of certainty permeated the discussion and messages. They feel that the salvage rider gives them certainty, and they want any future solution to maintain that certainty. They were very interested in how or who would be the vehicle to get a legislative and administrative solution on the ground.

Jim Lyons mentioned that there are several ways to get a deal done (i.e. a C.R.) in the near future and that the Oregon and Washington Delegation was working on the possibilities right now. He said hearing the concerns and ideas was valuable. He said that he has time on the CEQ meeting agenda next tuesday (3-5) to discuss this trip and the various ideas that people have mentioned. He mentioned that he is meeting with Paula Burgess tomorrow.

He also mentioned that any solution would have to have FWS and NMFS agreement and support.

The bottom-line message I took from the meeting is that the timber industry sees their momentum waning and that to maintain their certainty they need to get a solution quickly. The industry is only concerned about the September 30 date as it pertains to guaranteeing that these sales will be executed. They are willing to let the trees stand into next year, as long as they know they will get them (or

replacement volume for them). If they do not get a solution in the next couple of weeks they will go ahead and cut the trees (thereby insuring certainty, as D.R. put it).

Please contact me if you need more info, or have questions.

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-Feb-1996 08:11pm

TO: (See Below)

FROM: Thomas C. Jensen  
Council on Environmental Quality

SUBJECT: RE: More on Hatfield/Gorton

Katie and Co.

Our position on Hatfield should turn on the sufficiency provision. We should avoid villifying him, but make it clear that we're adamantly, forever, inextricably opposed to any extension of sufficiency language. Bad law. Bad policy. Bad boys. This IS our position on the green sales. Brian should be directed to communicate the view that we're separated from the language we've seen from Hatfield's office by the notion that great forests like great nations should be governed by the rule of law. (OK, a bit much).

My point is that our high ground is pretty clear of is that our high ground is pretty solid. I think we've nothing to lose by drawing a bright line between us and those folks who want to evade the laws.

Tom

Distribution:

TO: Kathleen A. McGinty

CC: Brian J. Johnson  
CC: Dinah Bear  
CC: T J Glauthier  
CC: Martha Foley  
CC: Barbara C. Chow  
CC: Christine L. Nolin  
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

29-Feb-1996 08:18pm

TO:           (See Below)

FROM:         Dinah Bear  
              Council on Environmental Quality

SUBJECT:     timber meeting - tommorrow

Rob will be contacting each of you shortly to try and schedule a meeting tommorrow on the following topics associated with the timber rider issue:

- o         how to respond to the Hatfield language on replacement and buyback;
- o         the Murray proposal (I will be getting around the legislative language to each of you this evening or tommorrow am - they wanted comments tonight, but we are telling them we can't get comments to them until Monday am at the earliest);
- o         response to sales that may be harvested between now and passage of possible legislation.

Distribution:

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

CC: Robert C. Vandermark

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-Feb-1996 09:31pm

TO:           (See Below)

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

SUBJECT:     RE: Timber strategy

Tom, this could be the right course, but we'd better be sure we've examined it from all vantage points first. If we go the Murray route, we're going to get some strong reactions in the House, especially from people in other parts of the country (like Taylor) who do not want their salvage program done away with.

I've put a couple of options together in discussions with Martha and Dinah, in the hopes that we will have a meeting tomorrow with Harold and/or Leon. In addition to the current options of "repeal old growth and fix salvage" vs. Murray's "repeal and replace", is there an option of "repeal old growth and only in the NW replace the salvage program with a new pilot"?

Distribution:

TO: Thomas C. Jensen

CC: Kathleen A. McGinty  
CC: Martha Foley  
CC: Barbara C. Chow  
CC: Jennifer M. O'Connor  
CC: Elena Kagan  
CC: Dinah Bear  
CC: Brian J. Johnson

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-Mar-1996 07:36am

TO: (See Below)

FROM: Thomas C. Jensen  
Council on Environmental Quality

SUBJECT: RE: Timber strategy

TJ,

Yes, Cong. Taylor (whose family runs the largest private timber company in NC) will be unhappy. So, too, the Alabamans and others. But I think we should make them offer a regional exception.

I don't object to it strongly on any basis other than political perception. We shouldn't be in the position of implicitly endorsing sufficiency for one part of the country, but not others. It's indefensible politically. We may end up with that course, but let's let someone else take the blame this time.

Tom

Distribution:

TO: T J Glauthier

CC: Kathleen A. McGinty  
CC: Martha Foley  
CC: Barbara C. Chow  
CC: Jennifer M. O'Connor  
CC: Elena Kagan  
CC: Dinah Bear  
CC: Brian J. Johnson

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-Mar-1996 08:06am

TO:           (See Below)

FROM:        Kathleen A. McGinty  
              Council on Environmental Quality

SUBJECT:     RE: Timber strategy

i think we are really asking for trouble here. we have the most prominent democratic member of the regional delegation moving to be quite visible here and investing a tremendous amount of political capital to try to fix this mess for us. i can't imagine that we would even consider being opposed to her. who the hell is going to move our bill then? we are already to the right of the only other democrat in the region who has tried to fix this thing. are we going to find a democrat who will go even futher to the right and take patty murray on?? i really hope we are not going to spend alot of time spinning our wheels on this. as we should all know by now, there is little direct political capital we are willing to invest in this -- we damned well better than just hitch our wagon to a credible star. we have got to get this damned thing fixed NOW so the president of the united states can campaign in two of his most important states. coming out in opposition to patty murray is no way to get there.

Distribution:

TO:   Thomas C. Jensen

CC:   T J Glauthier  
      Martha Foley  
      Barbara C. Chow  
      Jennifer M. O'Connor  
      Elena Kagan  
      Dinah Bear  
      Brian J. Johnson

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-Feb-1996 04:52pm

TO:           (See Below)

FROM:        Thomas C. Jensen  
              Council on Environmental Quality

SUBJECT:     Timber strategy

During today's meeting with Sen. Murray's staff, I heard an apparent difference of opinion -- a significant difference of opinion -- on the question whether we're likely to support the Murray approach on timber salvage, that is, the repeal and replace approach.

It strikes me that we will get no benefit from doing or supporting anything that deviates much from her approach. I'm particularly concerned that we not send an implicit signal that we're happy with/comfortable with/willing to live with/resigned to sufficiency language. Yes, we have some measure of faith in the processes we've established, but nobody else does.

There is no sector of the environmental community, rational or otherwise, that can afford to let us slide on sufficiency. They will have to campaign against us. Their campaigning on that point will obscure and sharply devalue our moves on green sales.

It seems patent to me that the Administration has to be "against" sufficiency, even if we are tolerant of or actively supportive of a salvage program in the Northwest or elsewhere. To do otherwise will virtually eliminate any political benefit we may receive from the President's Saturday statement. I'd hate to have wasted all that good work.

With that in mind, why shouldn't we simply catch a ride on Sen. Murray's coattails on salvage? We could at least support her general approach, while also emphasizing our faith in our own process (at least its capacity for redemption). I have trouble seeing why we would have a different "salvage" policy from hers. Particulary given the very difficult burden we'd have justifying or winning support for anything uniquely our own. We'd certainly make her mad, and win little or no support elsewhere.

Distribution:

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-Feb-1996 05:07pm

TO:           (See Below)

FROM:        Martha Foley  
              Office of the Chief of Staff

SUBJECT:     RE: Timber strategy

I missed enough of the meeting because I came in late and b/c the speaker phone periodically blacks out some sound that I am hesitant to comment.

However, for myself, I would like to see what she produces in terms of enviro support and member support before we leap on -- talking a matter of days here.

Tom, I am not sure why you are concerned that we are "for" (or will be perceived as for) sufficiency. We clearly are not. Can you elaborate?

Distribution:

TO:   Thomas C. Jensen

CC:   Kathleen A. McGinty  
      T J Glauthier  
      Barbara C. Chow  
      Jennifer M. O'Connor  
      Elena Kagan  
      Dinah Bear  
      Brian J. Johnson

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-Feb-1996 05:32pm

TO:           (See Below)

FROM:        Thomas C. Jensen  
              Council on Environmental Quality

SUBJECT:     RE: Timber strategy

Martha,

I'm not concerned that we are for sufficiency language now.

Unfortunately, the environmental community, or most of them, are deeply skeptical of our commitment on this issue. They do not grant us the benefit of the doubt when interpreting our messages. To the contrary, their inclination is to assume that we're going to sell them out. They don't trust us.

I am concerned that, if we show any reticence toward "repeal" of the salvage portion (however appropriate that may be as a matter of substance or policy), we will be characterized and condemned as supporters of "lawless logging" and sufficiency. If that happens, I think we lose much of the good will and good politics we have gained or will gain by supporting repeal of the old growth provisions.

I don't think we have the luxury of making fine points in this environment. If our choice is between "repeal and replace" and "a carefully graduated approach for maximizing public benefits over the remaining 10 months of the rider" or some other principled but less than simple package, I think we'll get slammed by everyone.

Even if we disagree with some of the details of Murray's approach to salvage, I think we should generally endorse it -- because it gets rid of sufficiency. That's what we should say we're against, not salvage logging. I think that leaves us with room to work to help others win substantive improvements, if needed.

Distribution:

TO: Martha Foley

CC: Kathleen A. McGinty

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-Feb-1996 07:13pm

TO:           (See Below)

FROM:         Dinah Bear  
              Council on Environmental Quality

SUBJECT:     More on Hatfield/Gorton

Hatfield's press release regarding this language states that, "We have been working with the White House to build greater flexibility into the salvage law." It goes on to argue that the language does give us that flexibility and that it addresses the concerns raised recently by the President. It also states that he has received input from Administration officials.

A story running in today's Oregonian repeats Hatfield's statements to the effect that this proposal will give the administration what it needs, while quoting an anonymous WH official as looking at it negatively - that it could make things worse. Furse and enviros are quoted criticizing it and the timber industry is cited as suggesting the industry could accept the language.

I am told by USDA that Hatfield personally feels he has done what the Administration has asked for, and that if we reject his language, we're not acting in good faith.

Distribution:

TO: Kathleen A. McGinty  
TO: T J Glauthier  
TO: Martha Foley  
TO: Barbara C. Chow  
TO: Christine L. Nolin  
TO: Thomas C. Jensen  
TO: Brian J. Johnson  
TO: 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

29-Feb-1996 07:36pm

TO:           (See Below)

FROM:        Kathleen A. McGinty  
              Council on Environmental Quality

SUBJECT:     RE: Timber strategy

no disagreements with you on this at all. in fact, it would be disasterous for us to be to the right of murray on salvage -- she is already to the right of all of the other initiatives on this (furse, bradley) save gorton.

in my mind this is an issue, however, because at present we simply do not have clearance from harold or leon on a repeal and replace on salvage. we only said on sat that we were reviewing options in consultation.

Distribution:

TO:   Thomas C. Jensen

CC:   T J Glauthier  
CC:   Martha Foley  
CC:   Barbara C. Chow  
CC:   Jennifer M. O'Connor  
CC:   Elena Kagan  
CC:   Dinah Bear  
CC:   Brian J. Johnson

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-Feb-1996 07:51pm

TO:           (See Below)

FROM:         Brian J. Johnson  
              Council on Environmental Quality

SUBJECT:     RE: More on Hatfield/Gorton

FYI,

I'm sure I'm the source for that story. A couple of points:

First, the way he paraphrased my statement of the type of concern we have was kind of funny ("...restore power to ...reject sales outright") although Dinah tells me it's ok.

Second, the story doesn't really say that the WH Official said Hatfield would make it worse, it says "...foes of the rider say the proposal could make matters worse and that it fails to address the central issue: the suspension of environmental laws." In fact, I didn't say the Hatfield proposal would make it worse -- I didn't know that until Dinah's message about the murrelet thing. I was just expressing concern.

Third, apart from all that, the story isn't half bad.

Fourth, note that the Murray spokesman quote is centered directly on sufficiency: "...there is a growing disaffection with the current policy of operating without environmental laws." From a communications point of view, I'd \*love\* to be able to reduce our policy to that. (Except "disaffection" is a crappy word.)

Brian

Distribution:

TO:   Dinah Bear

CC:   Kathleen A. McGinty  
CC:   T J Glauthier  
CC:   Martha Foley  
CC:   Barbara C. Chow  
CC:   Christine L. Nolin  
CC:   Thomas C. Jensen  
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

29-Feb-1996 07:52pm

TO: (See Below)

FROM: Kathleen A. McGinty  
Council on Environmental Quality

SUBJECT: RE: Timber strategy

tj/martha---any luck in getting leon's ear and/or arranging a meeting with him to get sign off on the repeal/replace strategy?? we need to move asap (what else is new???) . thx.

Distribution:

TO: Martha Foley

CC: Thomas C. Jensen  
CC: T J Glauthier  
CC: Barbara C. Chow  
CC: Jennifer M. O'Connor  
CC: Elena Kagan  
CC: Dinah Bear  
CC: Brian J. Johnson

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-Feb-1996 07:55pm

TO:           (See Below)

FROM:        Kathleen A. McGinty  
              Council on Environmental Quality

SUBJECT:     RE: More on Hatfield/Gorton

but, point still remains that hatfield is getting a big jump on us in putting a spin on his bill and making us look unreasonable. i would like a cleared position on hatfield so we could background some reporters (and some democrats .... (like dicks, for example)) on it to explain our opposition.

Distribution:

TO:   Brian J. Johnson

CC:   Dinah Bear  
CC:   T J Glauthier  
CC:   Martha Foley  
CC:   Barbara C. Chow  
CC:   Christine L. Nolin  
CC:   Thomas C. Jensen  
CC:   Elena Kagan

EXECUTIVE OFFICE OF THE PRESIDENT

28-Feb-1996 05:48pm

TO: Jennifer M. O'Connor

FROM: Elena Kagan  
Office of the Counsel

SUBJECT: timber sales

Do you recall the First and Last timber sales?

These were two "real 318" sales (total: 11,800 mbf) that the Forest Service voluntarily withdrew in 1990 after Judge Dwyer enjoined four very similar sales from going forward. Judge Hogan ruled that these two sales fell within the scope of his decision on Section 318 and ordered the government to release them. At the time, environmental groups had a motion pending in Judge Dwyer's court requesting him to prevent the two sales from going forward. Because of this motion, DOJ decided it should not release the sales prior to receiving a ruling from Judge Dwyer. Last week, Judge Dwyer ruled that he could not withhold the two sales and that DOJ must comply with Hogan's injunction. (The good news is that he is continuing to withhold the four previously enjoined sales pending the Ninth Circuit's decision on Hogan's ruling.) This means that DOJ now is facing an injunction from Judge Hogan to release the sales and a declaratory judgment from Dwyer that it must comply with the injunction. Timber industry lawyers have already threatened contempt.

The Justice Dept is going to tell the environmental groups today that it plans on releasing these two sales within 48 hours. This will give the groups time to go back to Dwyer and seek expedited consideration of their motion regarding the two sales and a temporary restraining order preventing the sales' release. DOJ then would go back to Judge Hogan and ask for a stay pending Dwyer's decision on these matters. (Of course, Dwyer may summarily deny the enviros' motion, leaving us with no grounds to petition Hogan.)

DOJ also is considering the position it should take on the enviros' motion in Judge Dwyer's court. As you may recall, both DOJ and the Forest Service have stated on prior occasions, stretching back to early 1995, that there are no legal grounds on which to withhold the sales. DOJ does not believe it can now switch sides and support the enviros' legal argument. DOJ is considering, however, (1) whether it can decline to take a legal position on the enviros' motion (rather than opposing it), and (2) whether it can file a factual affidavit listing the environmental harms involved in releasing the sales.

I have urged Justice to take actions (1) and (2) above. I do not think there is much more Justice can do, given its prior statements about the absence of any legal basis for withholding these sales. (Given that DOJ has never contested

release of these sales, and in fact has indicated that there is no legal basis

for withholding them, DOJ also cannot appeal the Hogan/Dwyer decisions.) You should know, however, that the release of these sales will probably get a fair amount of publicity, especially coming right after the President's "admission of error" on the timber rider.

Let me know ASAP if you and/or Harold have any views on all this; and of course, call me if you have any questions.

1/17 skip - needs to happen  
today - no fid to UCLDF -

Now looking at options -  
how aggressive to be.

First/Last

Under inj from Hojer

Timber atty - wanted sale.

attoria to contempt + moti-

FS - ready to award w/in day.

20T - give UCLDF 48 hrs notice -  
have to award by FRI

give OP to ash ~~to~~ H. Dwyer -  
| expedited rev of moti-  
| TPO.

If D. gives hearing (Mon/Tue)  
= we'll go back to H. - ask for change -  
pending D.

Policy call - UCLDF  
perhaps not oppose the moti-

2 concerns:

- 1. Ashward.
- 2. It's an arguing 318 - revised in this  
purpose - rule on 318's orig stes.

we're not agreeing -  
just not opposing.

along w/ - file declarati- on hearing.

This will get publicity -

DJ fine Dwyer -  
so that follow inj  
from Hojer

■±■■■■ ±±±± ± ±

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-Feb-1996 08:50pm

TO:           (See Below)

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

SUBJECT:     RE: timber fact sheet, draft

The substance of the document looks ok to me. My understanding is this is a "fact sheet" to give agencies, Members on the Hill, etc., who ask so they know what our policy is. Is that correct?

Distribution:

TO:   Brian J. Johnson

CC:   Kathleen A. McGinty  
CC:   Barbara C. Chow  
CC:   Dinah Bear  
CC:   Thomas C. Jensen  
CC:   Martha Foley  
CC:   Shelley N. Fidler  
CC:   T J Glauthier  
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

27-Feb-1996 01:58pm

TO:           (See Below)

FROM:        Martha Foley  
              Office of the Chief of Staff

SUBJECT:     RE: timber stmt

I am not a press person so I avoid judging what is OK and what is not. But LEP's view (to me) was that another statement would raise a lot of questions -- how is this different than what he said etc. Could you do the same in a letter?

Distribution:

TO:   Thomas C. Jensen

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

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-Feb-1996 02:06pm

TO:           (See Below)

FROM:         Dinah Bear  
              Council on Environmental Quality

SUBJECT:     RE: timber stmt

We could do the same in a letter - from our viewpoint, the issue is not the vehicle so much as getting the policy down on paper and OUT. The problem is that the press stories are often ambiguous about how much repeal we're after, and omit several key points that were already cleared in the press release. Such as:

- o       the President calling on the companies that hold the 318 sales not to proceed cutting the trees but rather to negotiate with us for replacement timber;

- o       calling on the timber industry leaders to work with us to resolve this situation.

It makes it harder to implement that policy when there's nothing on paper that says that is our policy. There was a great deal of concern expressed by USDA and others that there would be a rush to harvesting immediately after the announcement, that we needed to be loud and clear about what our policy is and how we plan to deal with the purchasers. We're in that timeframe right now and will do our best, but would be greatly assisted by paper. Any paper.

Distribution:

TO: Martha Foley

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

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

27-Feb-1996 03:55pm

TO:           (See Below)

FROM:         Brian J. Johnson  
              Council on Environmental Quality

SUBJECT:     timber fact sheet, draft

Folks,

Here are talking points, done from the statement.

If we want, we could change the title to "fact sheet" and fax it out. CEQ could get it to industry, labor, enviros,; Leg could get it to questioning members; and I could fax it to questioning media.

(Ignore the formatting; because of the quirky way email translates wordperfect, it will have question marks instead of bullets, which -- I hope -- are not necessary.)

Brian

TIMBER RIDER TALKING POINTS  
February 27, 1996

"The timber rider, as it applies to old-growth forests, has...undermined our balanced approach to growing the economy, having responsible logging, and preserving the environment."

President Clinton  
February 24, 1996

- ? The President is calling on Congress to act now on the timber rider.
- ? First, the old growth provisions must be repealed. We are losing ancient forests. We are losing valuable fish runs. Wild places that people in the Northwest and across America want to protect are being lost forever.
- ? Second, in addition to repeal, we need to be able to address a number of the old growth sales the courts have already forced us to release. Therefore, the President is calling on Congress to give us broader flexibility in offering replacement timber, and for extreme cases, buyout authority.
- ? Third, we need to take a hard look at the salvage program. The salvage program has to be based on sound science. It has to meet environmental laws. The President directed the agencies to meet these standards; however, we have heard many concerns about the salvage program. We have to restore peoples' confidence and their ability to hold public officials accountable. To accomplish these goals, we will work with the Congressional delegation, industry, labor and environmental groups to review our options, including repeal.
- ? We're concerned that the prospect of new legislation might cause some companies that hold old growth sales contracts to mistakenly rush out and cut the trees. They don't need to do this. We will honor their contract rights. The President is calling on those companies to hold off on any more cutting until we find another way to honor their contract rights. And the Administration is asking the leaders of the timber industry to help us resolve this conflict.
- ? Senator Murray is working on this kind of legislation. The Administration will work with Senator Murray, Senator Wyden, Senator Bradley, Congressman Dicks, Congresswoman Furse, Congressman DeFazio, others in the Northwest delegation, the

Governors and all the stakeholders to get forest management back on track and to restore the balanced and reasonable approach under my Northwest Forest Plan.

Distribution:

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

Name	Date
<i>Polina Kalaid</i>	<i>12/6/99</i>

*Conrad*

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-Feb-1996 04:40pm

TO:           (See Below)

FROM:         Robert C. Vandermark  
              Council on Environmental Quality

SUBJECT:     Senator Murray's Timber Bill

Katie McGinty is meeting with Senator Murray's staff, Ric Ilgenfritz and Marla Marvin, to go over the Senator's Timber Bill on Thursday, February 29th at 9:30am in room 350 OEOB. You are all invited to attend this meeting. Please let me know as soon as possible if you are able to attend. I can be reached at x6-5147 or through email. Thank you.

Distribution:

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

CC: Alice E. Shuffield

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-Feb-1996 10:18am

TO: (See Below)

FROM: Kathleen A. McGinty  
Council on Environmental Quality

SUBJECT: timber stmt

i would really like to move us along immediately in releasing the statement that we held back on saturday. press office held it back (understandably) cause they did not want to interfere with our main saturday event and message. BUT, we now need to move it --- we are getting innumerable calls from the press, the governors offices, the delegation, etc. all wanting clarification on exactly where we stand. moreover, there are important parts of our stmt that did not get into the oral things we said -- like that we will make good on our contracts and find replacement timber as a preference to buy outs, etc. all of these things are very important to rounding out our msg.

i mentioned this to leon at sr. staff this am. he was agreeable that we should get the stmt out -- tho he seemed to suggest that maybe we should consider a different form (e.g. a letter to the hill).

what say all of you??? thx.

Distribution:

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

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-Feb-1996 10:41am

TO:           (See Below)  
FROM:         Dinah Bear  
              Council on Environmental Quality

SUBJECT:     RE: timber stmt

i think we need to get something out ASAP for immediate reading and guidance on our position. A letter to the hill probably makes sense after we know more about where we stand with the Murray bill, both timing and substance.

Distribution:

TO: Kathleen A. McGinty  
CC: Martha Foley  
CC: T J Glauthier  
CC: Barbara C. Chow  
CC: Jennifer M. O'Connor  
CC: Elena Kagan  
CC: Thomas C. Jensen  
CC: Shelley N. Fidler  
CC: Brian J. Johnson

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-Feb-1996 11:38am

TO:           (See Below)

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

SUBJECT:     RE: timber stmt

I think a press statement would be strange this far after the fact -- I don't think it would get press. A letter to the Hill would make more sense -- or a letter to agencies or to the Governors -- or some other form of correspondence that we can hand out to people who want to know our position.

Distribution:

TO:   Kathleen A. McGinty

CC:   Martha Foley  
      T J Glauthier  
      Barbara C. Chow  
      Elena Kagan  
      Dinah Bear  
      Thomas C. Jensen  
      Shelley N. Fidler  
      Brian J. Johnson

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-Feb-1996 01:36pm

TO:           (See Below)

FROM:        Martha Foley  
              Office of the Chief of Staff

SUBJECT:    RE: timber stmt

LEP was negative on a statement in a different conversation yesterday. But he said that if there was confusion we should clarify somehow. The how was unclear. Memo to affected agencies?

Distribution:

TO:   Kathleen A. McGinty

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



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

J. G. Gumm

February 23, 1996

5

MEMORANDUM TO THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

CC: LEON PANETTA

RE: CEQ WEEKLY REPORT

*K. McGinty*

---

TONGASS NATIONAL FOREST

Today, we filed a proposed settlement in federal court in Alaska in the lawsuit that resulted in considerable timber being enjoined from harvest on the Tongass National Forest and has been the subject of part of the Tongass rider on the Department of the Interior appropriations bill. Our proposed settlement will release from the injunction an estimated 105 million board feet (mmbf) of timber. If approved by the court, approximately 92 mmbf would be available to small, independent timber operators and about 13 mmbf would go to the Ketchikan Pulp Co.

We have worked closely with Governor Tony Knowles' (D-AK) office to achieve a result that will unlock needed timber supply for independent operators. The plaintiffs, a coalition of environmental groups, commercial fishermen and tourist operators, were keenly aware of the importance of this proposed settlement to us and to the Governor and worked hard to achieve success, as did our Department of Justice and U.S. Department of Agriculture officials. While we expect the Alaska delegation to criticize the proposed settlement as inadequate, we believe others will view our efforts as a good faith sign of our commitment to fulfilling our timber obligations to independent contractors in Southeast Alaska in a manner that is compatible with the needs of other users of the forest and protection of wildlife.

EVERGLADES MEDIA REACTION

Editorial comment on the Everglades restoration announcement has been very favorable. The New York Times, Washington Post, USA Today and Atlanta Constitution all ran highly positive editorials. The Miami Herald -- probably the most important opinion -- called the plan "as farsighted as it is breathtaking." We are not aware of any negative editorials.

Press coverage of the Everglades restoration announcement was thorough and largely favorable. ABC News ran a thorough and very positive story on the restoration -- the perfect

interruption to Monday night's pre-primary GOP infighting. The New York Times scooped the others with an early, positive story that focused on the restoration plan rather than sugar. The Miami Herald had a longer story, similar in tone. Some of the wire service and local coverage portrayed a only shouting match between the environmentalists and sugar; it was predictable, but still disappointing.

Attached is the main Miami Herald story and editorial.

#### NORTHWEST

The Oregonian reported on Sunday, February 18, that forest product companies reported another profitable year in 1995. Thirteen publicly traded companies with significant operations in region fared well overall in 1995. The forest-products industry has done well for several years in a row in the region, as a result of the increasing lumber prices and then because of the soaring paper market. The article is attached for your review.

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

*Coursed*

# SAVING ONE OF 'AMERICA'S TREASURES'

**T**he core of the Everglades plan that Vice President Gore announced on Monday is to quickly buy 250,000 acres of farms and pastures on the edge of the River of Grass.

That land would be flooded to form marshes and reservoirs. They would hold water needed for two things: nourishing the Everglades during the dry season and replenishing the underground drinking water supplies of South Florida's cities. Some of the marshes would also filter out pollution from water running off farm fields into the Everglades.

## THE PURCHASES

More than 100,000 acres of farmland south of Lake Okeechobee; undeveloped land along the eastern boundary of the Glades in Dade, Broward and Palm Beach counties; and farm fields and other low-lying areas around Everglades National Park.

## THE CONTROVERSY

Critics attack two elements of the plan — the one-cent-a-pound tax on sugar and huge bite being taken out of sugar farms. Sugar interests want a smaller chunk to be turned into marshes.



■ **SAWGRASS**  
Would get cleaner water it needs



■ **CITIES**  
Aquifers supplying drinking water would recharge faster



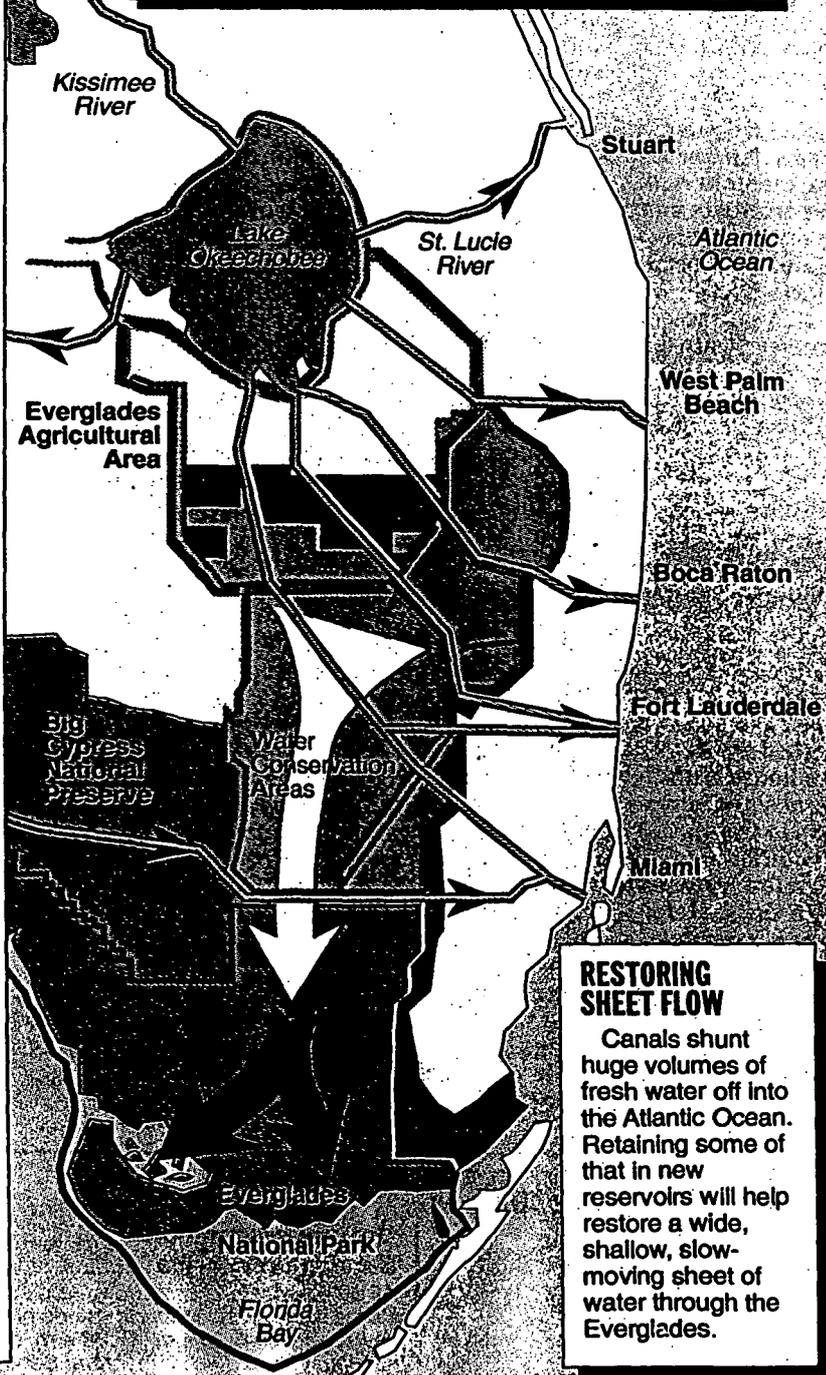
■ **SUGAR**  
Would lose productive land and jobs



■ **WILDLIFE**  
Would get healthier habitat

## LEGEND

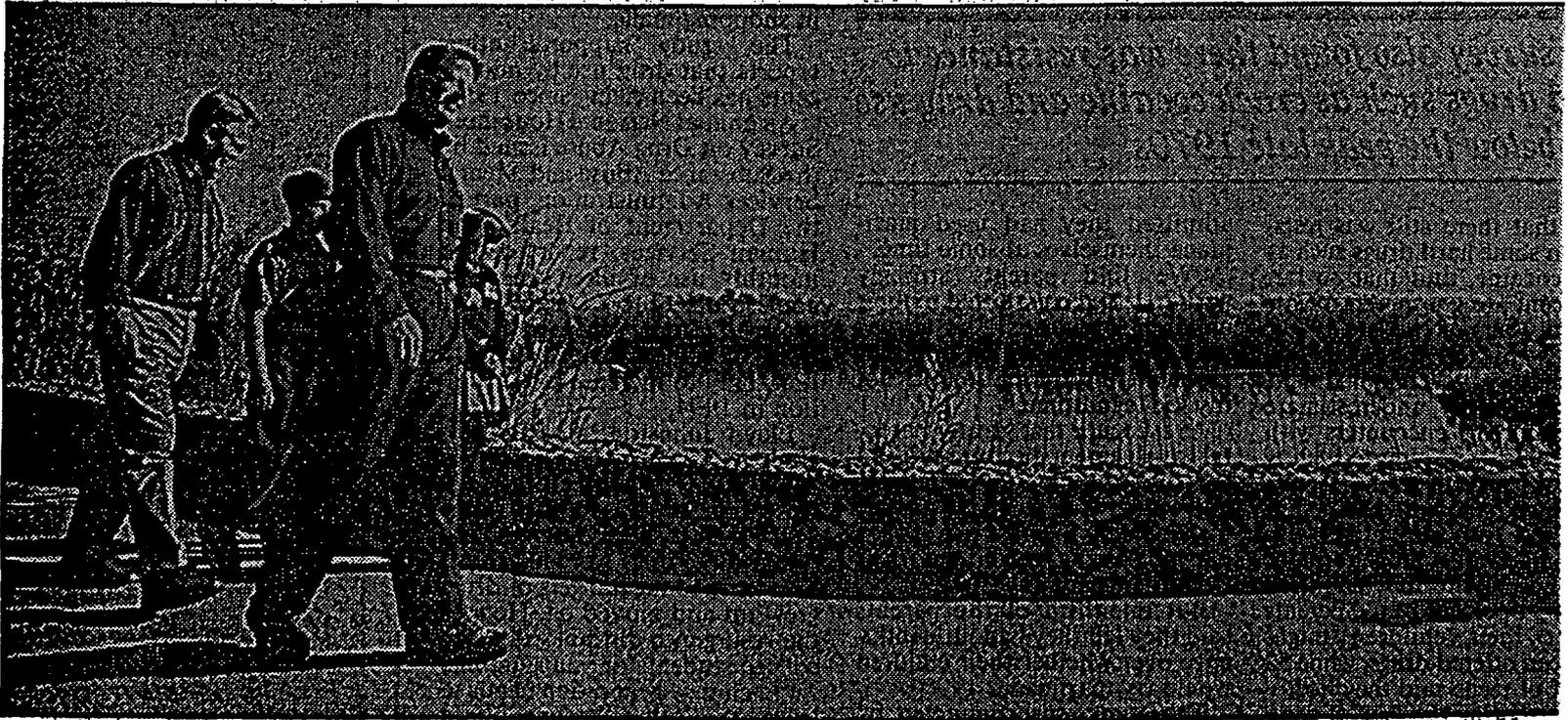
- Canals
- Levees
- Proposed acquisitions (Buffer areas east of the Everglades represented here as a general zone)
- Remaining Everglades Agricultural Area (Primarily sugar production)
- Existing state marshes and reservoirs
- National parks and preserves



## RESTORING SHEET FLOW

Canals shunt huge volumes of fresh water off into the Atlantic Ocean. Retaining some of that in new reservoirs will help restore a wide, shallow, slow-moving sheet of water through the Everglades.

# Gore offers plan, hope for Everglades



JEFFERY A. SALTER / Herald

**WALK IN THE PARK:** Lt. Gov. Buddy McKay, left, and Vice President Gore stroll with South Miami Heights Elementary students Wade Walker, 11, and Yanellis Perez, 10, Monday on a walkway at Everglades National Park.

# Big Sugar will fight proposal and its tax

## EVERGLADES, FROM 1A

Florida sugar growers — a tax they say they could not pass on because they must compete with sugar produced in other states.

Sugar companies, who win more battles than they lose in Washington, say there is no scientific basis for the plan, which they say will cost 40,000 jobs. They say Gore's plan is "the dream of radical environmentalists" determined to put sugar companies out of business forever.

Overall, the planned Everglades restoration calls for more than 420,000 acres in Dade, Broward and Palm Beach counties to be restored as wetlands. That would equal 11 percent of those counties' total land area. About half that land already is in government ownership.

Gore's speech clearly anticipated a possible battle over the plan with conservatives in Congress. Lawmakers must agree to the proposed sugar tax. They must also approve other aspects of the funding as part of the overall federal budget.

Gore emphasized the project's bottom line: The importance of the Everglades not only as an environmental treasure but a keystone to the region's long-term economy. The health of Florida Bay, he said, is worth almost \$100 billion the next seven years to the Florida Keys alone.

"In South Florida," he said, "the environment is the economy and the economy is the environment."

### Cheers from environmentalists

About 200 environmentalists and government officials heard Gore deliver the news. And when he announced that a penny-a-pound tax on the sugar industry — which is accused of polluting the Everglades — would be part of the plan, a group of about 100 invited dignitaries rose from their chairs and cheered: "Bravo! Bravo!"

Gore made the announcement

at one of the Everglades most scenic spots, the Anhinga Trail.

Behind him, towering sawgrass leaves danced in the cool breeze, birds sang, sunlight sparkled and three photogenic alligators took well-timed swims in Taylor Slough for news photographers.

Standing next to Gore was a woman who knew the slough well, Carol Browner, head of the Environmental Protection Agency. As a girl growing up in South Miami, she roamed the Everglades with her family, visiting Anhinga Trail often.

The big question ahead was whether Congress, which had been trying last year to sell off some parks and buy less land, would go along with a proposal that calls for buying more than 200,000 acres of farmland and pastures at the edge of the Everglades.

The land purchases are considered crucial by many scientists and bureaucrats planning the restoration. The land would be turned into reservoirs for storing vast amounts of water and restored as marshes to provide wildlife habitat.

### Farmland controversial

But a large, important component is very controversial: 100,000 to 200,000 acres of farmland in the core of an agricultural area south of Lake Okechobee.

Gore called that area "the heart of the Everglades." Buying those farms would create a reservoir that would allow water to flow in a vast sheet through the Glades to Florida Bay. The reservoir and marshes would mimic the role played by Lake Okechobee before the canals were dug and farms built.

Sugar growers are fiercely opposed to giving up that much land. They are already required under a previous agreement with the federal government to turn over 40,000 acres of farmland into marshes to clean up dirty water flowing off farm fields. They have also offered an alter-

native that would involve turning over a fraction of what the federal government wants.

"This is a multibillion dollar, big-government land grab," said Jorge Dominicus, vice president of the sugar company, Flo-Sun Inc. Flo-Sun, controlled by the Fanjul family, owns much of the land in the area being considered for the federal purchase. "This is going to end up costing Florida taxpayers and destroying jobs.

"Once people hear about this boondoggle, they're going to think the \$200 hammers the government's been buying were cheap."

In addition to planning to buy sugar fields, the administration proposal calls for raising an additional \$245 million for the restoration over the next seven years by imposing the one-cent tax on every pound of Florida sugar. (Earlier attempts to impose a larger tax on the industry failed.) The newly proposed tax would be added to the \$165 million to \$322 million the sugar industry agreed to pay for the cleanup under a previous agreement.

"The farmers think the Clinton Administration has stabbed them in the back," said Bob Buker, the vice president of U.S. Sugar Corp. "We agreed to a \$300 million tax and blew off 60 square miles of our farmland and now he wants more."

But Gore said the levy on sugar would be a small part of a generous federal subsidy given to farmers under the farm program. He characterized the tax, which would need Congressional approval, as part of an effort to have everyone contribute to environmental solutions.

The other proposed Everglades spending won't break the budget.

"It is in the balanced budget plan and other things are not, because saving the Everglades is a priority for the United States of America," Gore said. "It is just that simple."

Polls have shown that the envi-

cont.

4

with voters. Polls registered a strong negative reaction to efforts by Congressional Republicans to weaken environmental laws last year.

But the only member of Congress to hear the announcement in person was Rep. Peter Deutsch, D-Pembroke Pines. Deutsch said that he could not predict the fate of the proposed penny tax, but Congress is friendly to the environment.

"People are sort of one-upping each other to be the best for the environment," Deutsch said. "I'm all for that."

### Senators noncommittal

Florida's two senators, Bob Graham, a Democrat, and Connie Mack, a Republican, were noncommittal on the sugar tax. They said they were more focused in passing this year's farm bill, which includes \$200 million for the Everglades.

The most urgent part of the program is buying the land — particularly in growing South Florida suburbs. Col. Rock Salt, chairman of the South Florida Ecosystem Restoration Working Group said.

"If we don't move fast, sprawl will consume what's left of the Everglades," he said.

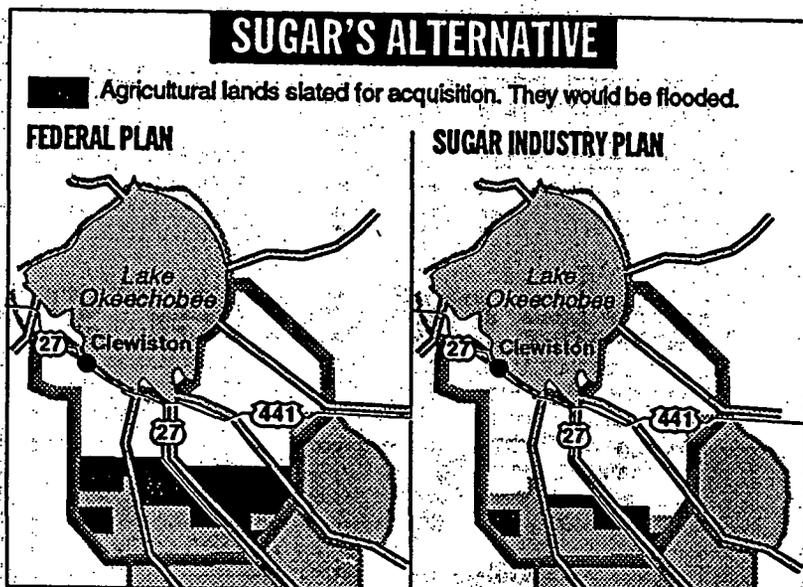
The \$100 million that the federal government would contribute for buying land is significant, equaling the total spent nationally this year by the agency that buys most of the land for environmental purposes, the Department of the Interior, George Frampton, the assistant secretary of Interior.

If the federal money comes through as the administration proposes, it could be available for beginning land purchases as early as next fall, said Frampton, who is coordinating federal restoration efforts in South Florida.

Even without the sugar tax, Frampton said, the proposed federal and state funding will be more than enough to complete land buying within four years. He put the total cost of buying all the remaining private land needed for the restoration — just over 200,000 acres — at about \$350 million.

"All the plans that have been in the works for 10 years are coming together," Frampton said. "We're all of a sudden at the take off point."

*Herald staff writers Carol Rosenberg in Washington and Mark Silva in Tallahassee contributed to this report.*



PATTERSON CLARK / Herald Staff

# 1995 profitable for forest-products companies

■ Gains dropped for lumber-only concerns, and The Oregonian's annual index of the industry points to a general downturn in 1996

By PETER D. SLEETH  
of The Oregonian staff

Publicly owned forest-products companies operating in the Northwest chalked up another profitable year in 1995, but 1996 likely will see downturns in both paper and lumber markets.

An index of forest-products companies compiled annually by The Oregonian shows profits increased by 125 percent in 1995 from 1994, among the 13 publicly traded companies with significant operations in the region. Revenues increased by 19 percent for the same period.

Investors fared less well as the cyclical turn of the businesses saw most stocks stall or drop in value.

Stock in Portland-based WTD Industries Inc. dropped a whopping 66 percent, marking the worst performer in the index, while Boise Cascade Corp. leapt ahead 29 percent in value, for the best performance. Overall, the stock prices of the 13

companies dropped by 10 percent.

Revenue per employee — a measure of efficiency — increased by 9 percent.

The figures were not adjusted for inflation.

The companies covered by The Oregonian's forest-products index are the Weyerhaeuser Corp.; Plum Creek Timber L.P.; Willamette Industries Inc.; Louisiana-Pacific Corp.; WTD Industries Inc.; Pope & Talbot Inc.; James River Corp.; Longview Fibre Inc.; International Paper Inc.; Georgia-Pacific Corp.; Boise Cascade Corp.; T.J. International Inc.; and Crown Pacific Partners L.P.

The forest-products industry has done well for several years in a row in the region, first buoyed by increasing lumber prices and then aided by a soaring paper market.

In 1995, the dynamics began to change. First, lumber prices began to lag early in the year — only to be countered by paper-price increases for companies with production in both areas.

"Those with large wood products exposure, for them '95 wasn't as good as '94," said Larry Katz, an analyst with Pacific Crest Securities

## PROFIT IN PAPER

Soaring paper prices saved the Northwest's forest products industry in 1995. Declining lumber prices hurt companies without paper or pulp-making operations. The 13 publicly traded companies with significant operations in the region fared well overall in '95.

### COMPOSITE PERFORMANCE MEASURES

	Revenue	Net Income	Employees	Revenue per employee	Stock price
1994	\$57.1 billion	\$1.9 billion	248,999	\$2.2 million	\$398.82
1995	\$67.7 billion	\$4.2 billion	243,074	\$2.4 million	\$357.37
% change	+19%	+125%	-2%	+9%	-10%

The Oregonian

in Portland.

The soaring paper prices of 1995 are beginning to wane.

"Everybody's sales will be down in '96," Katz said.

Most major forest-products companies have paper and lumber operations, primarily to help offset the counter cyclical nature of the two industries. Those firms that didn't have paper operations were hurt the worst in 1995.

Seattle-based Plum Creek Timber L.P. saw its profits drop from \$112.2

million in 1994 to \$110.7 million in 1995, after three years of spectacular increases in net income. Plum Creek is a timber company with no paper operations.

Similarly, WTD's profits dropped 41 percent to \$3.7 million. Crown Pacific Partners, a Portland based timber-only operation, saw its earnings climb 381 percent in 1995 to \$17.3 million. The company's 1994 earnings, however, were hit with a one-time charge as the company went public, distorting its earnings

“ Those with large wood products exposure, for them '95 wasn't as good as '94. The soaring paper prices of 1995 are beginning to wane. Everybody's sales will be down in '96.

Larry Katz,  
an analyst with Pacific Crest  
Securities in Portland

for the year.

Companies with major paper operations were the good news story of 1995. Net income at the Boise Cascade Corp. soared to \$351.9 million in 1995 — its first profit after four years of losses. Revenues increased by 23 percent and employment crawled forward by 7 percent to 17,820 employees.

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# The Miami Herald

TUESDAY, FEBRUARY 20, 1996

## Hope for the Everglades

### Gore offers plan for \$1.5 billion rebirth; sugar firms rip tax

By CYRIL T. ZANESKI  
Herald Staff Writer

**EVERGLADES NATIONAL PARK** — Signs of the Everglades rebirth might be seen within a decade.

There would be abundant clean water flowing south through restored sawgrass marshes, great flocks of wading birds returning to their long-abandoned nesting grounds and a healthy Florida Bay luring tourists who will fish and pump billions of dollars into the region's economy.

Vice President Al Gore painted that pretty picture Monday morning as he announced a \$1.5 billion grand plan for doubling the pace of restoration of South Florida's battered natural environment.

The Everglades revival may well be the world's most ambitious and expensive environmental restoration project.

Gore's announcement would make it a national priority for the first time — committing the federal government to picking up

*'It is in its purest sense, an investment in Florida's future. And an investment in America's future.'*

VICE PRESIDENT AL GORE

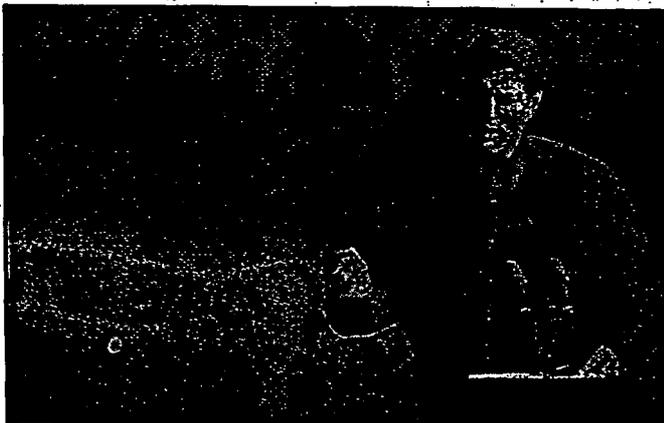
half the cost of the project.

"What we are committing to is more than a restoration plan," Gore said. "It is in its purest sense, an investment in Florida's future. And an investment in America's future."

It will not happen without a fight.

Gore's plan would have the government slice away a huge section of the state's sugar growing region, flood it, and use it for marshes and water storage reservoirs. It also would impose a penny-a-pound tax on the remaining

PLEASE SEE EVERGLADES, 4A



JEFFERY A. SALTER / Herald Staff

**A NATURAL SETTING:** Al Gore describes U.S. proposal for dramatically improving the flow of vital water into Everglades.

# The Miami Herald

8A THE HERALD, TUESDAY, FEBRUARY 23, 1996

## Big aid for the Everglades

The tranquility of Everglades National Park was fractured yesterday. And had the three alligators gliding across the pond at the entrance to the Anhinga Trail understood that the noise

rolling across the sawgrass was Vice President Al Gore pledging \$400 million in federal funds to accelerate Everglades restoration, they would have approved wholeheartedly. So, too, would have the stately herons stalking breakfast, and the little brown water snake, which — cowed by the crowd of applauding state and local luminaries — sought refuge under a boardwalk bridge.

The park, the remaining Everglades, the Arthur R. Marshall Loxahatchee National Wildlife Refuge, Lake Okeechobee, and the Kissimmee River long have needed the comprehensive commitment outlined by Mr. Gore: \$400 million in four years — \$1.5 billion over seven years — to buy land to store water, to push park and Florida Bay research forward, to reconstruct the South Dade drainage system, and to finish restoring the Kissimmee.

Though Everglades planning is coming together in an election year, the vision is sound, carefully researched over many years of trying "to save" individual parts of South Florida's ecosystem. South Florida's future depends on protecting the region's freshwater supplies. That in turn depends on protecting the Everglades.

The commitment to establish 100,000 acres of irrigation-storage ponds, as well as filtration marshes, in the Everglades Agriculture Area is as farsighted as it is breathtaking. It ensures that agriculture will have the water that it needs even as the Everglades are reconnected to Lake Okeechobee and restored.

How to pay for it all, however, remains in question. The Clinton administration's \$400 million down payment is already incorporated in the pending federal budget for the current year and 1997. It challenges Everglades farmers to come up with an additional \$245 million over seven years and proposes a penny-a-pound "market assessment," or tax, to do it.

That's a fivefold increase in the present 0.2-cents-a-pound assessment, which the House previously voted to increase. It is the same tax that Florida Sens. Bob Graham and Connie Mack

**IN CLINTON-GORE PLAN**  
Their proposal for Everglades restoration is big. The fight to finance it will be big as well.

sought last year to tap to finance purchase of land that the Talisman Sugar Corp. wants to sell. Messrs. Graham and Mack abandoned that effort in favor of striking a deal with Senate Majority Leader Bob Dole, the

front-running Republican candidate to oppose Mr. Clinton in November, to stash \$200 million for Everglades land purchases in the Senate farm bill.

Sugar growers over the weekend excoriated the proposed penny tax — perhaps too quickly. In their minds, taxing sugar to buy sugar land is a venal, backdoor, unconstitutional confiscation. Those are words familiar to South Floridians who have for months been bombarded by TV and radio ads for and against a two-cents-a-pound tax.

In Mr. Gore's lexicon, however, a one-cent tax represents a "fair share" from an industry that for years has benefited not only from the drainage system that so disrupted the natural flow of water through the Everglades, but also from federal restrictions on sugar imports. These quotas keep domestic prices above production costs, ensuring growers a profit. Federal officials say that their economic studies show that a one-cent tax should put no one out of business.

When growers come down to Earth, they may find that there is room to negotiate. There are, after all, admitted water-storage benefits for farmers, and worse threats ahead, as the House reconvenes next week to take up the farm bill. Florida Republican Rep. Dan Miller, for example, is still pushing his amendment to abolish all sugar supports.

How Everglades restoration is funded is less important than funding it — and funding it *adequately*. Sugar is more compatible with Everglades restoration than many other crops — a point that Mr. Gore and Environmental Protection Agency Administrator Carol Browner both make.

The Clinton administration has delivered a vision and a comprehensive restoration plan and offered a challenge. If there are better ways of paying for what should — nay, *must* — be done, lay them on the table now. It is time to rescue the national treasure that is the Everglades — while there are still alligators and wading birds to excite the imagination and to attest to a future for all in South Florida.

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-Feb-1996 04:28pm

TO:           (See Below)

FROM:         Robert C. Vandermark  
              Council on Environmental Quality

SUBJECT:      Senator Murray's Timber Bill

Katie McGinty is meeting with Senator Murray's staff, Ric Ilgenfritz and Marla Marvin, to go over the Senator's Timber Bill on Thursday, February 29th at 9:30am in room 350 OEOB. You are all invited to attend this meeting. Please let me know as soon as possible if you are able to attend. I can be reached at x6-5147 or through email. Thank you.

Distribution:

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

CC:           Alice E. Shuffield

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-Feb-1996 05:37pm

TO:           Elena Kagan

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

CC:           Dinah Bear  
              Christine L. Nolin

SUBJECT:     revised timber language

As I understand it, the draft timber language has been revised to reflect the current policy of repealing the 318 and Option 9 provisions, while retaining the buy-back authority.

DOJ is providing us with the revised language on disk, which I will get to TJ this evening. I assume that you have seen this language and have no other changes to make. Ted Boling has recommended that we allow the agencies to review the language; however, no one has instructed us to send it out for inter-agency clearance.

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-Feb-1996 06:00pm

TO:           Ruth D. Saunders

FROM:         Dinah Bear  
              Council on Environmental Quality

CC:           Elena Kagan  
CC:           Christine L. Nolin

SUBJECT:      RE: revised timber language

I have seen the language, as has Elena, and have no problems with it.

Hhowever, as to interagency review, we don't think we want or need to circulate DOJ's language right now. The discussions at the end of last week were not premised on the idea of going forward with our own bill, but rather, after reviewing Murray's bill, probably endorsing that. Even as I e-mail, there is a meeting being scheduled with TJ, Katie, Martha, Chow, etc. and Murray's staff for later this week. My understanding was that we would probably review her draft bill this week and that there was at least a likelihood that she would introduce it very shortly (like this week) and that we might well want to endorse that bill, as opposed to introducing our own. And I understand that they already have our language and are amenable using our administrative toolbox section.

In other words, at the appropriate time, I think what we'll want to circulate is the Murray bill.

Obviously, if there's a glitch along the way, we will want to have our language to fall back on, but circulating it right now would cause considerable confusion, not the least of which with Murray.

If TJ has a different perception, we'll get he and Katie to talk about this.

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

27-Feb-1996 09:41am

TO:           (See Below)

FROM:        Thomas C. Jensen  
              Council on Environmental Quality

SUBJECT:     DeFazio letter

Have you folks seen the [insert adjectives at will] letter from Cong. DeFazio to, I gather, his constituents, on the logging rider? The one in which he essentially blames the POTUS for all the problems and states that we'll never be able to fix it? If not, I'll send you a copy. It is really something.....

Distribution:

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

CC: Michelle Denton

THE WHITE HOUSE  
WASHINGTON  
February 22, 1996

*Handwritten notes:*  
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MEMORANDUM FOR JACK QUINN  
KATHY WALLMAN  
FROM: ELENA KAGAN *EK*  
SUBJECT: TIMBER UPDATE

Leon chaired a meeting today on timber to settle (finally) on a combined legislative and administrative policy, prior to the President going to the Northwest. Participants at the meeting decided on a course of action regarding old-growth timber sales. They also achieved substantial consensus on salvage sales, but postponed a final decision until tonight or tomorrow.

The policy on old growth is (1) to repeal the relevant sections of the timber rider (i.e., all sections not involving salvage) and (2) to support legislation giving the agencies authority to buy back sales that the courts already have forced us to release. You'll recall that some months ago we developed a narrower policy, involving not a wholesale repeal of the rider's old-growth provisions, but a set of amendments to them (as well as buyback authority). It has become increasingly clear over the last month or so that this approach had little chance of actually succeeding and less of gaining us political advantage. Katie led the effort to move us in the direction of outright repeal of the old-growth provisions. There was no dissent at today's meeting.

The proposed policy on salvage is to suspend the salvage program for 30 or so days, while an independent panel engages in a review of how we are administering the program. (The enviros have complained about many aspects of the program, though no one has a good sense of whether these complaints are legitimate.) Leon seemed very enthusiastic about this proposal, and he said the President was enthusiastic as well. While the suspension is proceeding, we will determine whether we wish to support or sponsor legislation amending the salvage provisions.

I informed Leon at the meeting of possible legal consequences of a suspension of the timber program. The timber industry will sue us immediately and seek a temporary restraining order. There's a quite good chance that we will lose, though a loss (especially at the TRO stage) is not a certainty. If we do lose, the remedy probably will be limited: the court will order us to lift the suspension and begin once again to administer the salvage program. There is little chance that the court will order us to take any further administrative action (e.g., to release specific sales). (DOJ knows that we are considering this option and is comfortable signing pleadings in support of it.)

Let me know if you have any thoughts.

THE WHITE HOUSE

WASHINGTON

February 24, 1996

MEMORANDUM FOR JACK QUINN  
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: LATEST TIMBER UPDATE

Since my last memo, we have changed our timber policy twice.

You'll recall that a couple of days ago, we decided to (1) seek repeal of the timber rider's old-growth provisions, and (2) suspend the salvage program while undertaking an impartial study of its administration. Senator Murray and others from the Congressional delegation disliked the proposal to suspend the salvage program; they also warned that the unions would respond adversely. In addition, as I noted in my last memo, this approach would have resulted in immediate litigation, which we might well have lost.

As a result, we decided yesterday morning that the President, rather than announcing a new policy, would merely sharpen his criticism of the timber rider. Over the course of the day, however, the agencies, as well as some members of Congress, expressed the view that this approach would not satisfy the demand in the Northwest for action on this subject.

At a meeting yesterday evening, we arrived at our final (for now) policy: (1) seek repeal of the rider's old-growth provisions, and (2) confer with the Congressional delegation, industry, and environmental groups to determine appropriate reforms to the salvage program. The President will announce this policy today while he is in Washington State.

*Handwritten signature/initials*



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

*J. Quinn*

February 16, 1996

MEMORANDUM TO THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

CC: LEON PANETTA

RE: CEQ WEEKLY REPORT

*K.A. McGinty*

*2/16/96*

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FERC

The Federal Energy Regulatory Commission (FERC) has prepared a Draft Environmental Impact Statement (DEIS) on a proposed rule that would allow electric utilities to sell wholesale electricity nationwide through open access transmission. Comments from the public and from EPA and DOE are due next week.

This issue is sensitive for the Administration since it could potentially pit the interests of the industrial Midwest against the Northeast. On one hand, open access could bring lower electricity rates for consumers if low-cost Midwestern fossil fuel plants provided less expensive power nationally. On the other hand, Northeasterners believe this increased production will produce significantly greater levels of pollution such as nitrogen oxides that would be transported in their direction.

FERC's DEIS did not show a significant threat from incremental transported pollution, but EPA disagrees and recommends that mitigating actions be taken. We have begun to hear from Senators from both sides of the issue as well as most of the Northeastern governors expressing concerns.

CEQ is currently leading a process to try and achieve Administration consensus on a proposal that would be a win-win for the Northeast and the Midwest. However, presently there is still disagreement among agencies on the best way to achieve this and the DEIS is likely to continue to be controversial while FERC considers its final rule.

FLOODS AND TIMBER AND FISH

The floods in the Pacific Northwest are adding to the pressures we have faced to repeal the timber salvage rider. There is widespread concern, expressed in Oregon, Washington, and California newspapers as well as on National Public Radio that the salvage rider exacerbates historical over-cutting and has contributed to landslides and other adverse impacts of the

recent flood. Fisherman, too, have been voicing strong concerns that damage to rivers and streams -- and therefore to the already endangered fish populations -- is exacerbated by logging which, in turn, has been exacerbated by the rider.

### MORE TIMBER

Additional letters urging repeal of the rider have come in from state and local officials. The Mayor of Yachats, Oregon wrote after the city council voted in favor of a resolution urging you to repeal the rider. In addition, Jennifer Belcher, the Washington State Land Commissioner urged your support for repeal, expressing her concern that the rider will bring down your forest plan and all of the other initiatives we have taken in partnership with landowners in the region (ex. habitat conservation plans, the "4(d)" rule, etc.).

You may recall that Governor John Kitzhaber (D-OR) wrote you in opposition to the salvage rider two weeks ago.

On the national level, Republicans for Environmental Protection has sent a letter to all Republicans House members, asking them to help repeal the timber salvage rider by cosponsoring H.R. 2745 by Representative Elizabeth Furse (D-OR). The group called the rider "abysmal" and quoted several newspapers about the problems with the rider. "The GOP's attack on the environment flies in the face of common sense," said the letter. "It may well backfire in the next elections. And it is just plain wrong."

I believe we need to announce your position on this very soon and will be working with the Chief of Staff's office toward that end in the beginning of next week. You must articulate a position on this prior to your visit to the State of Washington next week (if this is still on your schedule). On this front, Senator Patty Murray (D-WA) has a proposal on this that I believe we can get behind. She would like your support. Her approach calls for repeal but couples with a new initiative on salvage similiar to what we had proposed prior to the salvage rider.

### TONGASS SETTLEMENT

According to government negotiators, we are close to - but not yet at - a final proposed settlement with the plaintiffs in the litigation that has resulted in 280 mbf of timber being enjoined from harvest on the Tongass National Forest. We hope to reach final agreement with the plaintiffs over the weekend and also expect to receive one or more counteroffers from industry intervenors. Assuming we reach agreement with plaintiffs, we would file the proposed settlement in court in Alaska this coming Friday. As soon as we reach final agreement with the plaintiffs and have the intervenors final answer, we will make a public announcement of the proposed terms.

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

*Counsel*

## FORD FOUNDATION

Recently the Intergovernmental Advisory Committee of the Ford Foundation traveled to Pacific Northwest to learn more about the Forest Plan Economic Adjustment Initiative. The Ford Foundation was impressed with the efforts that combine ecosystem and community economic goals, praised your leadership in this regard, and is exploring options to support this innovative program.

## ENVIRONMENTAL MAIL

You have received 12,000 petitions and veto pens from Sierra Club supporters, since December of 1995, urging you to continue to veto any legislation that threatens the health and safety of the American people. The mailing requests a veto of any EPA bill that reduces agency funding and any Interior appropriations bill that opens ANWR drilling, the Tongass to increased clearcutting, and public lands to more mining.

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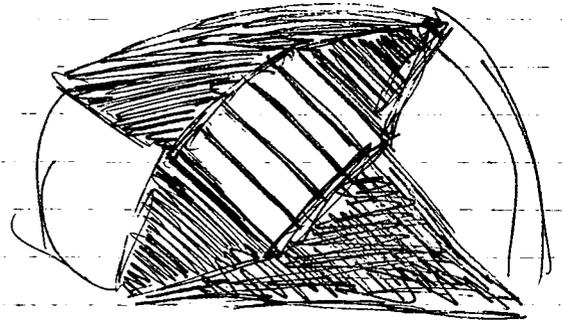
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SENT BY:

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**DEPARTMENT OF AGRICULTURE  
OFFICE OF THE GENERAL COUNSEL  
WASHINGTON, D.C. 20250-1400  
Facsimile Transmission Cover**

**DATE:** February 13, 1996 **Number of pages (including this page):** 1

**FROM:** Michael J. Gippert **Phone:** (202) 720-2063  
Assistant General Counsel **Fax:** (202) 690-2730  
Natural Resources Division

<b>TO:</b>	<b>Fax</b>	<b>Speed Dial</b>
Jim Gilliland	USDA OGC 720-8666	[014]
Brian Burke, Mark Gaede	USDA 720-4732	[015]
Lois Schiffer, Peter Coppelman	DOJ 514-0557	[043]
Gray Reynolds, Dave Hessel	FS-WO 205-1758	[027]
Dinah Bear	CEQ 456-0753	[047]
Jeff Handy	OGC-Ptd 503-326-3807	[011]
Bob Simmons	OGC-SF 415-744-3170	[012]
Sue Zike	FS R-6 503-326-7742	[036]
Jerry Hofer	FS R-6 503-326-2469	[035]
Wells Burgess, Ellen Athas, Michelle Gilbert	DOJ 272-6815	[045]
Al Ferlo	DOJ 514-4240	[044]
Karen Mouritsen, Kris Clark	DOI-Sol 219-1792	[052]

**Message:**

Today's CEQ meeting has been cancelled, but we still need to discuss a few Rescissions Act matters which cannot wait until next week, such as:

(1) The Ninth Circuit's denial of our request for a stay pending appeal of the "next high bidder" issue" leaves in place Judge Hogan's 1/10/96 order to "immediately award, release, and permit to be completed all sales subject to section 2001(k) as declared in this order." Will the government make further attempts to obtain a stay pending appeal? What should the Forests do with responses from qualified bidders?

(2) Judge Hogan's order leaves the Forest Service in a difficult position regarding the First, Last and Gatorson timber sales. Should the Forests receive direction from the Department about whether or not to release the sales?

We would like to have a conference call at 2:00 EST, 11:00 PST, to discuss these issues. We have 10 conference lines at 1-800-403-1043, participant code #275190.

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NO

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

21-Feb-1996 05:02pm

TO:           (See Below)

FROM:         Martha Foley  
              Office of the Chief of Staff

SUBJECT:     RE: Draft timber points

I don't see major problems here but would appreciate others' comments.

By the way, what does the phrase "undermine or are inconsistent with the Forest Plan" mean?

Also, we would probably want to mention Patty Murray by name and maybe others.

Distribution:

TO:   Thomas C. Jensen

CC:   Kathleen A. McGinty  
CC:   T J Glauthier  
CC:   Elena Kagan  
CC:   Jennifer M. O'Connor  
CC:   Dinah Bear  
CC:   Kathryn Higgins  
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CC:   Robert C. Vandermark  
CC:   Christine L. Nolin

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

21-Feb-1996 05:21pm

TO:           (See Below)

FROM:         Dinah Bear  
              Council on Environmental Quality

SUBJECT:     RE: Draft timber points

[obviously] the "undermine or inconsistent" language is confusing, but I would suggest just going with "inconsistent" and leave it at that. The industry is NOT currently attacking the plan through these provisions; indeed, Rutzick has denied ever thinking about it (whether we believe him is not the point.) Actually, the subset of enviros who have always opposed the plan are more likely to be the successful plaintiffs in attacking the plan itself, if we're not allowed to supplement.

The other option 9 issue that has been in court is the issue of judicial review and Hogan's finding that the rider shields all sales within the area of option 9 from judicial review. That has lead both Rutzick and enviros to say (correctly, under Hogan's ruling) that implementation of the plan is now strictly a matter of policy. The Administration intended it to be a matter of law (or more accurately, judicially reviewable rulemaking).

In short, I would just leave it at "inconsistent". "Undermine" will provoke denials, speculation and unhealthy thinking.

Distribution:

TO:   Elena Kagan

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CC:   Robert C. Vandermark

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

21-Feb-1996 05:27pm

TO: (See Below)

FROM: Dinah Bear  
Council on Environmental Quality

SUBJECT: RE: Draft timber points

DOJ is working on the analysis, but I just had a conversation with the attorney who's in charge of the research, and the early answer is we can suspend - and in fact, perhaps even suspend the contracts that have already been issued. (We probably won't get the later analysis until the am because of the need to review both BLM and FS contracts; we should get general analysis within the hour.)

As to the # of days, if there's an overall decision to be specific (I don't know that we need to be that specific in tlk. pts. as opposed to the actual mechanism of suspension), I would suggest at least exploring 45 instead of 30 days, just based on the logistics of getting anything done. I don't get the sense that 15 days would make a legal difference, but if the suspension is supposed to occur asap it will take a little time for both the Forest Service and BLM (or whoever) to develop the mechanism for doing whatever is going to be done.

Distribution:

TO: Elena Kagan

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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

21-Feb-1996 05:15pm

TO:           (See Below)

FROM:        Elena Kagan  
              Office of the Counsel

SUBJECT:     RE: Draft timber points

1. I'm also concerned about saying that provisions of the rider "undermine or are inconsistent with the forest plan." It sounds as if we're conceding what we in fact are vigorously contesting in court: that provisions in the rider force changes in, or otherwise affect the validity of, the Forest Plan. Could we instead say something like: "Repeal the provisions that some in the industry are using [or "may use"] to attack the forest plan"?

2. Instead of saying that we are suspending the salvage program for "enough time" etc., could we put in a specific number of days? We now have Justice considering the question, but my suspicion is that we'll be on a sounder legal basis if the suspension is for some definite time period.

Distribution:

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