

NLWJC- Kagan

Counsel - Box 001 - Folder 004

Timber-memos, emails, etc. [4]

# Withdrawal/Redaction Sheet

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Phone No. (Partial) (1 page)	01/02/1996	P6/b(6)

### COLLECTION:

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

### FOLDER TITLE:

Timber - memos, emails, etc. [4]

2009-1006-F  
kc687

### RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

Telecom Lois Schiffer 2/21/96

Cutting



Depends on k -  
modification/  
termination

Could not do across  
the board -  
need factual findings.



limited geographical scope

OR, WA, ID, MT

95% of complaints  
arise from here.

? forests in critical  
condition - national  
fire spring storm.

Overall profit - volume.

2 & 3's / Pines = ? =

Ellen - feels good about.

EXECUTIVE OFFICE OF THE PRESIDENT

21-Feb-1996 05:50pm

TO: (See Below)

FROM: Elena Kagan  
Office of the Counsel

SUBJECT: RE: Draft timber points

1. I agree with Dinah as to the number of days.
2. I wouldn't even say "inconsistent." I don't think we want to suggest -- whether the timber companies or the enviros are making the argument (or just the Ninth Circuit sua sponte) -- that the rider may affect the validity of the Forest Plan. And to the extent this language is meant to refer to the Hogan decision foreclosing judicial review of forest plan sales, I think we should resist the argument that this ruling is "inconsistent with" the forest plan. It's true that we intended for there to be judicial review of such sales, but any claim of "inconsistency" here at least implicitly suggests that we won't voluntarily comply with the Plan's standards and guidelines. Can we say something like "provisions that some would use to attack the forest plan"?

Distribution:

TO: Dinah Bear

CC: Thomas C. Jensen  
CC: Kathleen A. McGinty  
CC: T J Glauthier  
CC: Martha Foley  
CC: Jennifer M. O'Connor  
CC: Kathryn Higgins  
CC: Shelley N. Fidler  
CC: Ron Cogswell  
CC: Alice E. Shuffield  
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 05:58pm

TO:           (See Below)

FROM:        Martha Foley  
              Office of the Chief of Staff

SUBJECT:    RE: Draft timber points

I like Elena's formulation.

Distribution:

TO:   Elena Kagan

CC:   Dinah Bear  
      Thomas C. Jensen  
      Kathleen A. McGinty  
      T J Glauthier  
      Jennifer M. O'Connor  
      Kathryn Higgins  
      Shelley N. Fidler  
      Ron Cogswell  
      Alice E. Shuffield  
      Robert C. Vandermark  
      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

22-Feb-1996 10:34am

TO:           (See Below)

FROM:        Martha Foley  
              Office of the Chief of Staff

SUBJECT:     RE: Draft 2 - Timber points

I am still in the dark as to what item number 2 -- disrupting the Forest Plan stuff -- specifically refers. It seems like a dark and ominous statement and I don't know who we are lambasting for what.

Probably reflects my ignorance on the nuances, but can someone explain?

Distribution:

TO:   Thomas C. Jensen

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

22-Feb-1996 11:46am

TO:           (See Below)

FROM:         Dinah Bear  
              Council on Environmental Quality

SUBJECT:     RE: Draft 2 - Timber points

There are a couple of ways in which the option 9 provisions can be used to attack the Forest Plan Standards and Guidelines:

a) Under Hogan's rulings, all of the sales "in the area of" option 9 is shielded from judicial review. Rutzick made statements essentially saying that Congress wiped the slate clean of legal requirements for these sales, although he didn't argue (and has said since in writing) that he won't argue the administration doesn't have the authority to go ahead and apply the Plan standards as a matter of policy. Nevertheless, there is a fairly arcane legal argument by which an attorney representing timber interests could seek to have sales moved under the Plan w/o our Standards and Guidelines - and from the enviros point of view, of course, the fact that the sales are shielded from judicial review means there's no way to enforce the plan.

b) The rider specifically prohibits us from amending the Plan in anyway for the rest of this year to take into account the changes in the environmental baseline resulting from the release of the old growth sales. This leaves the Plan instantly vulnerable to injunction the first day after the rider expires.

Distribution:

TO: Martha Foley

CC: Thomas C. Jensen  
CC: Kathleen A. McGinty  
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CC: Jennifer M. O'Connor  
CC: Elena Kagan  
CC: Kathryn Higgins  
CC: Shelley N. Fidler  
CC: Ron Cogswell  
CC: Robert C. Vandermark  
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

21-Feb-1996 01:45pm

TO:           (See Below)

FROM:        Thomas C. Jensen  
              Council on Environmental Quality

SUBJECT:     POTUS interview

Apparently the POTUS is doing live television interviews into Seattle (and California cities) tomorrow evening. This could be a great venue for announcing a timber policy. In fact, it might be a little odd if he gives the interviews, says little or nothing on timber, then we have Glickman and Babbitt say big things on timber less than 24 hours afterwards. Odd, not intolerable, but definately a bit out of sync.

WH press wants talking points for the POTUS by 4:00 today. Any advice?

Distribution:

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

CC: Kathleen A. McGinty  
CC: Shelley N. Fidler  
CC: Dinah Bear  
CC: Brian J. Johnson

EXECUTIVE OFFICE OF THE PRESIDENT

21-Feb-1996 01:54pm

TO: (See Below)

FROM: Kathleen A. McGinty  
Council on Environmental Quality

SUBJECT: RE: POTUS interview

YIKES. whether or not he WANTS to announce the policy, we have to assume he will be asked. we need to accelerate this -- he needs to be prep'd to say something and we should decide if in fact he wants to offer it up.

Distribution:

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CC: Kathryn Higgins  
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CC: Elena Kagan  
CC: Barbara C. Chow  
CC: Shelley N. Fidler  
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

21-Feb-1996 04:53pm

TO:           (See Below)

FROM:         Brian J. Johnson  
              Council on Environmental Quality

SUBJECT:     FYI -- what the President said in Oregon

Folks,

FYI - I finally got a tape of the Pacifica News story that had tape of the President talking about repealing the timber rider. My intern transcribed it and it follows.

We've got pending calls from NPR to clarify this. "Did the President hear the question right? What's your policy?"

Brian

Source: Pacifica Network News

Date: 2-15-1996

Reporter: Elise Eden

"In a public addresses to Oregonians President Clinton failed to mention the logging issues that many feel are directly related to the recent floods in the state. But one reporter pressed the President on the issue"

Reporter: "Any chance now that you have seen the effects from all this [bill/ silt] that you might repeal the Salvage Rider?"

President: "We are trying to."

Reporter: "We hope you will, we don't want to see this get any worse."

President: "I think there is a lot of, you know, I think even some of the people who were for it realize all they did was create a lot of legal tangles."

Reporter: "You know their still cutting down the Umpqua were you have watersheds you're gonna lose the cutthroat trout. Those kinds of water sheds when you remove all the trees makes the flooding much worse."

President: "Much worse. I hope we can get some progress on it. It's interesting you said that - just yesterday I had a meeting on it - we're working on it."

"The Salvage logging rider, which the President signed, is a law that allows loggers to get around previously existing logging restrictions...."

[[story continues with interviews of locals...]]

Distribution:

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

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

21-Feb-1996 05:00pm

TO:           (See Below)

FROM:        Martha Foley  
              Office of the Chief of Staff

SUBJECT:     RE: FYI -- what the President said in Oregon

I think his reference to the courts tangling it up means that he was talking about the 318 stuff, not the salvage component per se.

Distribution:

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

11:00 -

Options on alternative timber.

1. Forest Service approach
2. Door slamming - statute expires

Justice Dept presentation

What happens if we don't provide alternative timber by expiration date?

Ellen: Tougher - They don't have a prop w/ their claim.

### Three questions

So far, we've said YES. ←

- 1) Std + guidelines apply to alternative timber?
- 2) K3 - oblig to provide alt timber - expire?
- 3) ASQ question

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 07:03pm

TO: (See Below)  
FROM: Jennifer M. O'Connor  
Office of The Chief of Staff

SUBJECT: RE: Draft timber points

I think we need a specific number of days or a range of days. I also think the first bullit is hard to understand. And I agree with Elena on the "inconsistencies" language.

I will speak with Harold some time tonight about POTUS doing this at his press interviews. I assume we still think that makes sense?

Distribution:

TO: Dinah Bear  
CC: Martha Foley  
CC: Elena Kagan  
CC: Thomas C. Jensen  
CC: Kathleen A. McGinty  
CC: T J Glauthier  
CC: Kathryn Higgins  
CC: Shelley N. Fidler  
CC: Ron Cogswell  
CC: Alice E. Shuffield  
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

22-Feb-1996 03:13pm

TO:           Elena Kagan  
TO:           Dinah Bear  
  
FROM:         Martha Foley  
              Office of the Chief of Staff  
  
SUBJECT:     RE: timber -- chance of lawsuit

I will try to catch him on this, but I'm never sure that I will do it in time. Can you or Elena make sure Katie, too, is fully aware of this so that she can mention if they discuss with POTUS?

Also, what would the effect of the TRO be? Just to stop the suspension but not to mandamus us to do anything specific? In other words, could it be worse than making us do what we are now doing and seek to suspend?

## Lean-timber

### 1. Repeal old growth sections / buybacks

} subst. speaking - little diff from old proposal.

↖ correct prob already been created  
↘ hence our local commitments  
(ot lumber - will just cut)

expedite altern timber sales? at least say:  
we'll be w/ you if need.

### 1.5. Voluntary settlements

### 2. Salvage

Arg out: statute sets up ~~protection for~~ salvage program  
ground toward volume.  
no auth for suspending prog, espec given  
that this will cut into ability to meet volume  
targets

Arg in  
we have auth to  
req the consideration  
of env. impacts  
before releasing  
any sale.

↓  
that's essentially  
what we're doing  
here.  
(But - how to be  
can-by-car?)

| We have discretion to follow env law  
So we can say:

use disc. to make part of env. eval.  
whether we're cutting green trees  
Req: part of env consid - impact of sale on  
green trees.

Decision to req. such consid. could be defended.

Perfectly legit to say no sales can go forward  
until we've figured out impact of sales on  
green trees

don't just say "suspension of program"

no auth to hold  
up a sale until  
we've considered  
its env. impact

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

23-Feb-1996 02:29pm

TO:           (See Below)

FROM:        Thomas C. Jensen  
              Council on Environmental Quality

SUBJECT:     Second Draft Timber Options

The WP 5.2 file attached is the second draft of the timber options paper.

You should be advised that Cong. Dicks and Sen. Murray and their staffs are actively discussing policy options at this time. Though matters are less than fully clear, it appears that they are headed toward agreement on a position supporting repeal of the green provisions, elimination of the sufficiency provisions on the salvage section, and establishment of a long-term forest health law.

You may send comments back to me via e-mail.

Distribution:

TO: Kathleen A. McGinty  
TO: T J Glauthier  
TO: Martha Foley  
TO: Jennifer M. O'Connor  
TO: Elena Kagan  
TO: Kathryn Higgins  
TO: Ron Klain  
TO: Ray Martinez  
TO: Kris Balderston  
TO: Shelley N. Fidler  
TO: Barbara C. Chow  
TO: Dinah Bear

CC: Alice E. Shuffield  
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

22-Feb-1996 02:58pm

TO:            Martha Foley

FROM:          Elena Kagan  
                Office of the Counsel

SUBJECT:      timber -- chance of lawsuit

Dinah and I just wanted to make double-sure that Leon is aware that if we do the suspension, the industry will file suit immediately and a court may well issue a temporary restraining order within the week. It's hard to estimate the probability of a TRO, but given the composition of the federal bench, I'd put it in the 30 to 50% range.

EXECUTIVE OFFICE OF THE PRESIDENT

22-Feb-1996 09:45pm

TO: (See Below)

FROM: Dinah Bear  
Council on Environmental Quality

SUBJECT: SALVAGE-LOGGING LAW: Impacts spread across the country.

SALVAGE-LOGGING LAW: IMPACTS SPREAD ACROSS THE COUNTRY

Much of the debate over the salvage-logging law has centered on old-growth stands freed for logging in the Northwest, but the law has "created a patchwork of logging cuts, frustration and rage" stretching to Michigan, Alabama, Kentucky and North Carolina. Salvage logging is planned or underway in 35 of the 37 states where national forests exist; about one-fourth of the logging will occur east of the Rocky Mountains.

Enviro groups say the US Forest Service, under pressure from Congress to "get out the cut," has used the law as a pretext to sell off healthy trees. They have filed 16 lawsuits in six states, accusing USFS of reclassifying timber sales in pristine, sensitive areas as "salvage" solely to get around enviro laws. Federal judges have heard eight cases so far and have tossed out all eight, citing the salvage law's broad exemptions.

Congress defined salvageable timber as trees that were dead, dying, sick or tilting, threatened by disease or insects, or "associated" with other trees that met the definition. The Dept. of Justice's Peter Coppelman, whose office defends USFS in enviro lawsuits: "You could probably cut down every tree in the national forests under that definition. But is the Forest Service taking advantage? The answer, I believe, is no."

The timber industry, on the other hand, accuses the gov't of dragging its feet, making logging uneconomical. Sen. Slade Gorton (R-WA), "the law's main backer," believes it has failed to do what he intended: create more jobs and end enviro disputes.

GORTON IS FIRM: NO REPEAL

Gorton aide Heidi Kelly said a Senate bill to repeal the law, expected to be introduced soon (GREENWIRE 2/9), would not get past Gorton, who chairs the Senate Interior Cmte.: "There will be no repeal of the salvage rider -- not in this Congress." But she added: "There probably will be some changes made. Otherwise, the rider is not going to do what Congress intended it to" (Knight-Ridder/Colorado Springs GAZETTE TELEGRAPH, 2/21).

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

22-Feb-1996 10:15pm

TO:           (See Below)

FROM:        Kathleen A. McGinty  
              Council on Environmental Quality

SUBJECT:     RE: SALVAGE-LOGGING LAW: Impacts spread across the country.

well, there's our "proof" that there are real concerns out there that would justify a suspension of the program.

however, this is bad because it undermines our position of suspending this only in wash and oregon.

this underscores my concern that we are not yet ready for prime time on this and that we need to take some more time to develop our position further.

an additional note of caution -- i just spoke again to paula burgess of governor kitzhaber's staff. she has alerted me that she really needs to check if the governor would be comfortable even with repeal of the old growth provisions. she says he, of course, thinks this whole thing is a mess and that we need to act. but, she says he had been focusing mainly on just stopping the environmental damage (and had in mind primarily aggressively going after replacement timber). they really have not talked about the "repeal" word. she thinks he might be there and might well be ok, but she really needs to check. i will either hear from her late tonight (if the governor calls her at home), OR i will not be able to hear from here til 1pm tomorrow (she has a 9 am (her time) mtg with the gov tomorrow). this makes me a bit nervous about the president telling reporters on the plane that he will push repeal of old growth at a minimum.

Distribution:

TO:   Dinah Bear

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

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

23-Feb-1996 09:23am

TO:           (See Below)

FROM:        Martha Foley  
              Office of the Chief of Staff

SUBJECT:     RE: SALVAGE-LOGGING LAW: Impacts spread across the country.

You know, re murray, the Gov., members etc, I am getting to the point of saying you can't please all of the elected officials all of the time, and the President of the United States should say what he thinks is right and that's that.

Distribution:

TO:   Kathleen A. McGinty

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

Timber Lumbergency Mtg 2/27/96

Review of salvage?

Fact concerns

Inkum Approp bill purchase of this land (Hotfield?)  
Vetoed.

Gads / Hayes - input to Murray's staff - technical assistance

Other folks might try to put things on vehicle  
after the CR - have to figure out how to respond  
to these.

Masting / high ladder - 9th Cir briefs due in 2 days

SAS - Thomas - extended inj on enjoined sales -  
until 9th Cir decides.

First + Last - & he could do on these. Hagan had  
enjoined.

Enviros - going back to Dwyer - want them enjoined  
just like other enjoined sales.

Need decision on this immediately

First + Last -

Sales ready to be awarded

No basis for releasing.

Enviros - attempt to revive 5-yr-old motion

Grounds for motion - already decided by Boyle/Dwyer.

They haven't asked for TRO/PI - May if we say we'll release.

Set for Mar 22

Wed aft -

First/Last -

what to do.

conf call

Any discussions on  
poss. modifications?

~~Thurs aft -~~

Murrelets -

2 9's

What to do abt cores not directly w/in ot's under but close.  
Written to pay up to do surveys if stay is extended.

## **REPEAL OLD-GROWTH SALES**

We have agreed generally to announce that the sections of the logging rider that involve old-growth timber (i.e. 318, Option 9) should be repealed.

The overreaching by the Courts and the potential harm to trees, birds, fisheries, tourism, leave us no choice but to seek repeal. There is broad political support for this move. In the current situation citizens have no recourse to environmental laws or to the courts to protect irreplaceable resources.

## **NEED ADDITIONAL BUYOUT AUTHORITY**

Some of those sales have already been released, however, and to save those trees we need additional authorities to buy out sales that might be troublesome. Rep. Furse's repeal legislation does not include this authority.

## **NEED TO AGGRESSIVELY PURSUE VOLUNTARY SETTLEMENTS WITH PARTIES**

Some of the owners of sales can and will voluntarily modify sales to prevent the worst environmental damage.

## **SALVAGE ISSUE**

A separate issue is what, if anything to do about the salvage part of the rescissions rider.

The rescissions act gives us the right to "manage" the salvage sales consistent with environmental laws and forest management plans. We are getting tremendous criticism from the left with allegations suggesting:

1. The Forest Service is labelling "green" sales as salvage;
2. Trees are not even being "tagged" as salvageable and whole lots are being clear-cut in the guise of salvage;
3. The Forest Service is choosing to open up roadless areas in the guise of salvage;
4. Sufficiency language prevents redress from even egregious problems.

## **OPTIONS FOR ADDRESSING SALVAGE PORTION OF RIDER**

1. Temporary suspension of Salvage portion of rider -

We could suspend the salvage program for thirty (or more) days to appoint an independent panel to review how we are administering the program. Legal issues are being vetted. Because of a glut of timber and the flooding, Jim Lyons thinks no sales are planned to be released in March.

TJ proposes that after the thirty day period we have an independent panel review all

**problem sales. He proposes, therefore, that we actually manage the salvage program. However, some others believe it is unlikely we can, indeed, successfully "manage" the salvage program. The Forest Service is not looking out for us.**

**While this solution will be temporarily well received by the enviros, they will then pressure us to extend the suspension, complain about our review.**

## **2. Forest Health legislation**

**Patty Murray wants us to support her forest health bill. We have not seen it. It will truncate reviews, reduce access to courts, allow more cutting.**

**We also have our own forest health bill. It needs updating and review as it was drafted hastily as a possible alternative to the logging rider. And, we have administratively implemented some of its provisions.**

**Forest health also equates with more timber production, so environmentalists will not applaud this action.**

## **3. Straight repeal of entire rider with no accompanying or alternative option.**

**This is clearly where the environmentalists are right now. Grassroots groups have begun this mantra, radio ads and rallies will pick it up this week, and only Rep. Furse, and Senator Bradley currently endorse this action. Governor Kitzhaber, Senator Murray and Senator Wyden all choose other avenues to change.**

## **MESSAGE**

**Whatever the choice - our primary message must be:**

**Forest policy should be predictable and fair. Environmental protections should be a vital part of forest management. Harvest levels should be sustainable. Agencies should be accountable for their actions. Most of all, the people who own the forests need to know their values count and their voices are being heard.**

Name	Date
<i>Robin Roland</i>	<i>12/4/99</i>

*Council*

Source: Pacifica Network News

Date: 2-15-1996

Reporter: Elise Eden

"In a public addresses to Oregonians President Clinton failed to mention the logging issues that many feel are directly related to the recent floods in the state. But one reporter pressed the President on the issue"

Reporter: "Any chance now that you have seen the effects from all this [bill/ silt] that you might repeal the Salvage Rider?"

President: "We are trying to."

Reporter: "We hope you will, we don't want to see this get any worse."

President: "I think there is a lot of, you know, I think even some of the people who were for it realize all they did was create a lot of legal tangles."

Reporter: "You know their still cutting down the Umpqua were you have watersheds you're gonna lose the cutthroat trout. Those kinds of water sheds when you remove all the trees makes the flooding much worse."

President: "Much worse. I hope we can get some progress on it. It's interesting you said that - just yesterday I had a meeting on it - we're working on it."

"The Salvage logging rider, which the President signed, is a law that allows loggers to get around previously existing logging restrictions...."

[[story continues with interviews of locals...]]

Distribution:

TO: Kathleen A. McGinty  
TO: Thomas C. Jensen  
TO: Martha Foley  
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TO: Kathryn Higgins  
TO: T J Glauthier  
TO: Elena Kagan  
TO: Barbara C. Chow  
TO: Shelley N. Fidler  
TO: Dinah Bear

## ADMINISTRATION POLICY ON LOGGING RIDER TALKING POINTS

- The Administration is convinced that the "logging rider" has to be changed.
- Ancient forests are being clearcut. Critical habitat for fish and wildlife is being destroyed. Wild places that almost everyone in the Northwest and the country want to protect are being lost forever. This has to stop.
- The logging rider has reopened wounds that were just beginning to heal. It is dividing people and communities. This has to stop.
- In addition to the problems with the old growth provisions, a significant number of concerns have been raised regarding implementation of the salvage logging program.
- The Northwest deserves better. Forest policy should be predictable and fair. Environmental protections should be solid. Harvest levels should be sustainable. Agencies should be accountable for their actions. Most of all, the people who own the forests need to know that their values and their voices are being heard.
- This Administration's Northwest Forest Plan is the right way to run federal forests in the Northwest. We have to get back to that plan. We also have to make sure that the salvage program meets the President's directive to obey environmental law.
- We have to change the logging rider. The Administration believes that we must:  
[Insert policy option when selected]
- The Administration wants to work with the companies that hold contracts for old growth timber to make sure that their property rights are honored. But we want to find means to fulfill their rights without any more environmentally harmful logging.
- We call on companies with controversial sales to forbear from any further cutting until we have a full opportunity to explore together alternative means of fulfilling their rights, whether through replacement timber under the Forest Plan, financial compensation, or other mutually acceptable means.
- We call on the leaders of the timber industry to take responsibility for ensuring that no more ancient forests are cut under the logging rider.
- We will work with Senator Murray, Senator Wyden, Senator Bradley, Congressman Dicks, Congresswoman Furse, and others in the Northwest delegation to win passage of these changes. We know there will be opposition. But we are determined to get Northwest forest management back on track and to restore the balanced and reasonable approach that is achieved under the Northwest Forest Plan.

Name	Date
<i>Patricia Roland</i>	<i>12/6/99</i>

*Council*

## **MEMORANDUM TO LEON PANETTA**

**FROM HAROLD ICKES**

**SUBJECT TIMBER POLICY RECOMMENDATION**

### **Summary and Introduction**

After extensive consultation internally and with Senator Murray, Representative Dicks, Governor Kitzhaber and others, the staff recommends that the President adopt and announce the following policy regarding the logging rider: The Administration will:

1. Support legislation that will repeal the "old-growth" sections of the logging rider;
2. Support legislation that will provide funding and authorities for buy-back and replacement timber; and,
3. Commit to address problems with and improve the salvage section.

In explaining our position, we need to emphasize those points that may help deter any additional cutting of old-growth timber. In this regard, we should pledge to ensure that holders of old-growth sales will be given access to replacement timber or buy-backs. We should insist that the leaders in the industry show leadership immediately on this matter.

### **Description of Recommended Option**

Under this approach, the Administration would support:

1. Repeal of those provisions of the logging rider that pertain to old-growth sales and the Northwest Forest Plan (these are the provisions the courts have interpreted so broadly);
2. Legislation to provide new buy-back authority and expanded flexibility to provide replacement timber to address environmentally problematic sales already released; and,
3. Improvement of the salvage program by working with Senator Murray, Senator Wyden, others in the delegation, the governors, and stakeholders to define an appropriate fix.

We would not call at this point for repeal of the salvage program, but neither would we foreclose that course.

Senator Murray and Governor Kitzhaber seem very interested in being seen as leaders on the salvage issue and we see no problem with providing them with a favorable platform for their ideas, including Sen. Murray's pending "salvage" legislation.

## **PROS**

- Probable support from Sen. Murray, Sen. Wyden, Governor Kitzhaber, Cong. Dicks.
- White House and agency staff agree that this is the most logical and reasonable approach as a matter of policy
- May be seen by general public as “balanced”
- No patent flip-flop from previous support for salvage program

## **CONS**

- May be criticized by environmental community because it falls short of full repeal of all provisions of the rider
- May be criticized by labor interests because of the perceived threat to jobs.
- Cong. DeFazio does not support repeal of the old growth provisions, but does support allowing replacement timber under Option 9.
- Timber sale holders may react to Presidential announcement supporting repeal by accelerating logging.

Under this approach, the President would sharply criticize the impacts of the logging rider. He would emphasize the environmental damage and social conflict, the renewed gridlock, and the erosion of public confidence in the forest management process. He would emphasize problems in the “old-growth” arena, but also note concern over possible problems with the salvage program.

The President would also refer to the example set by the Seventh American Forest Congress (now underway in Washington, DC) as representing the type of broad cooperation and consensus-seeking that should characterize forest policymaking.

The White House  
Office of the Press Secretary  
February 24, 1995

## TALKING POINTS ON LOGGING IN THE NORTHWEST

"I am convinced that the "logging rider" has to be changed. In particular, the provisions on old growth need to be repealed. Ancient forests are being clearcut. Critical habitat for fish and wildlife is being destroyed. The logging rider has reopened wounds that were just beginning to heal because of my Northwest Forest Plan. It is dividing people and communities.

"In addition to the problems with the old growth provisions, a significant number of concerns have been raised regarding implementation of the salvage logging program. We have to make sure that the salvage program meets my directive and this Administration's commitment to obey environmental law. We may need to repeal that provision, too.

"This Administration's Northwest Forest Plan is the right way to run federal forests in the Northwest. We have to get back to that plan. That is why I am calling for legislation that will:

1. **Restore the peace.** This means repealing the old growth provisions. Under my Forest Plan, we got timber moving again in the Northwest and ended the years of court gridlock. But the courts' interpretations reignited those battles. There are now about 20 cases pending. We need to end the court gridlock and return to the Forest Plan. We also need legislation that provides new authority to buy back or replace timber sales that harm the environment.
2. **Restore public involvement.** Even where agencies are doing a good job, people need to know that they can hold those agencies accountable. It's critical to maintaining trust in government. People need to know that they'll be involved, be able to participate in decisionmaking about their forests. Repealing the old growth provisions will restore this important public participation.

"In addition, we need to take a close look at the salvage program. We support legitimate, legal, reasonable salvage. In fact, we agree with many in the timber industry that there are real problems in the forests, and that salvage harvests done right are a part of the solution. But the public can't be shut out of the process. And we've got to uphold the law.

"We're concerned that the prospect of new legislation might cause some companies that hold old growth sale contracts to mistakenly rush out and cut the trees. They don't need to do this and they shouldn't. The Administration will work with the companies that hold contracts for old growth timber to make sure that their contract rights are honored. But we have to find a way to fulfill their rights without causing any more environmentally harmful old growth logging.

"I understand that Senator Murray is working on exactly this kind of legislation. We will work with Senator Murray, Senator Wyden, Senator Bradley, Congressman Dicks, Congresswoman Furse, others in the Northwest delegation, the Governors and all the stakeholders to get Northwest forest management back on track and to restore the balanced and reasonable approach that's set up under my Northwest Forest Plan."

- 30 -

[Note: If you are asked about "sufficiency language" you should reply by saying that we support repeal of sufficiency language as part of the repeal of the "old growth" provisions. We will deal with the sufficiency language in the salvage section when we, Senator Murray and others reach accord on how to deal with the overall "salvage" program.]

[Also, if asked, you should not endorse or criticize Senator Murray's pending legislation. We have not seen it yet, although we are very interested in working with the Senator.]

Name	Date
<i>Colin Roland</i>	<i>12/6/99</i>

*Comma*

4.11

February 23, 1996

MEMORANDUM FOR LEON PANETTA

COPIES:           MICHAEL McCURRY  
FROM:             HAROLD ICKES  
SUBJECT:          LOGGING ANNOUNCEMENT

Attached are two documents: 1) talking points for the President in his conversation with the Seattle Post-Intelligencer reporter on the plane; 2) a draft press statement to release prior to that interview.

Katie McGinty spoke with our political contacts out in Washington who expressed concern that this particular reporter has some relationships with other reporters that could cause the rest of the press corps in Washington to react negatively to the President if he shares this news only with the Seattle Post-Intelligencer reporter. Thus, they recommend that we release a statement to the press prior to the President's interview. The current thinking is that a statement from Mike might be better. I leave this to you and Mike.

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

20-Feb-1996 09:23am

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 on Tuesday, February 20th, at 2:00 p.m. in the CEQ conference room, 722 Jackson Place.

The agenda will include:

1.       Recent event update - Chair
2.       Litigation update - Justice
3.       Replacement timber - Chair
4.       Other business - Chair

Distribution:

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

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

16-Feb-1996 10:06pm

TO:           (See Below)

FROM:         JensenTC

SUBJECT:     Re: Timber Legislative Language

Martha,

Marla and the senator seem to know that our needle isn't fixed on the dial yet. She seemed to be under the impression that the POTUS had said something about repeal to Sen. Murray. Marla is particularly interested in the statutory language we've developed to "fix" the various problems with green sales released under Hogan's orders. She plans to graft that onto a 318/2001 repeal provision, as I understand it.

Tom

Distribution:

TO:   FOLEY\_M

TO:   SHUFFIELD\_A

CC:   MCGINTY\_K

CC:   KAGAN\_E

CC:   CHOW\_B

CC:   OCONNOR\_J

CC:   COGSWELL\_R

CC:   NOLIN\_CL

THE WHITE HOUSE  
WASHINGTON

~~Elana  
TOD - Frank  
JD~~

Tack -

After speaking with Katie, I told Jen O'Connor that what we were asking DOT to do — though neither improper nor unwise — was also not extremely important. (Katie spoke with some envoys who told her that while they thought their sales were bad ones, they knew we didn't have any chance of winning a petition for rehearing, and so were not going to press the matter.) I said that in these circumstances, we shouldn't ask DOT to file, given how ~~strongly~~ strongly ~~opposed~~ they feel about opposed it is to doing so. Jen agreed (as did Katie); she will talk with Harold. (Our 4:45 was canceled.) Call if you want more details. Elana

Timber Mtg 2/9/96

Wyden/Murray

1. Murray -

Some

a. Repeal of whole thing

b. Replacement or salvage

narrowing definition of salvage (just live salvage?)  
shortening appeals time/process

major inflection?

Bradley - introduce straight repeal  
(Fisc)

Go in when necessary

Craig - Forest Health Bill  
Does he want to move?

get away from  
of. diversion -  
"dead + dying  
timber"

Who knows what will  
get added to such a  
bill? Real problem

will also support a  
more narrow fix -  
which will have  
greater chance of  
passing.

2. Wyden -

Not full repeal - wait go w/ Bradley  
Try to stop logging of old growth  
Practical - no features.  
3/8 piece - most problematic

Chris -

Would you introduce?

Well... (Murray)

(Wyden) - can't do if ggs don't like

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

DATE: February 7, 1996  
 FROM: Albert M. Ferlo, Jr.   
 RE: NFRC v. Glickman and Babbitt  
 OFFICE PHONE: (202) 514-2757  
 NUMBER OF PAGES: Message Only

**PLEASE DELIVER TO:**

TO:	Don Barry	208-4684
	Bob Baum	
	Dave Gayer	208-3877
	Dianh Bear	456-0753
	Michelle Gilbert,	
	Ellen Athas	305-0429
	Mike Gippert,	690-2730
	Tim Obst,	
	Jay McWhirter	
	Greg Frazier	720-5437
	Jeff Handy (503)	326-3807
	Nancy Hayes	208-5242
	Elena Kagan	456-1647
	Don Knowles (503)	326-6282
	Karen Mouritsen	219-1792
	Roger Nesbit (503)	231-2166
	Chris Nolin	395-4941
	Tom Tuchmann (503)	326-6254
	Sue Zike (503)	326-7742
	Jean Williams,	
	Ellen Kohler	305-0275
	Terry Garcia	482-4893

**MESSAGE:**

The Panel which is currently considering our appeal from Judge Hogan's September 10, 1995 order on the geographic scope issue has decided not to take the new appeals dealing with the next high bidder and known to be nesting issues.

Our request for a stay pending appeal, filed on January 31, 1996, on the next high bidder issue will be presented to a regular motions panel today or tomorrow. We can expect a decision by Friday on the stay and the motions to expedite the appeals. We do not know who is on the motions panel - that information is not released. I will let you know of further developments as soon as I hear from the court.

Al Ferlo

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

06-Feb-1996 10:08am

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 today, Tuesday, January 6, 1996, at 2:00 p.m. in the CEQ conference room.

The draft agenda:

- 1:       Recent events update - chair
2.       Litigation update - Justice
3.       Replacement timber - Chair
4.       Salvage program information - USDA
5.       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)  
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TO: Kathleen A. McGinty  
TO: Shelley N. Fidler  
TO: T J Glauthier  
TO: Ron Cogswell  
TO: Mark A. Weatherly  
TO: Christine L. Nolin  
TO: Elena Kagan  
TO: Martha Foley

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-Feb-1996 01:10pm

TO:           (See Below)  
FROM:         Martha Foley  
              Office of the Chief of Staff

SUBJECT:     RE: Revised timber memo

I have a number of serious concerns with the memo, including disagreement with some of its assumptions and conclusions.

I think a small meeting, rather than memo, is the appropriate approach to this issue.

Distribution:

TO:   JensenTC  
CC:   OConnor\_J  
CC:   Kagan\_E  
CC:   Chow\_B  
CC:   Glauthier\_T  
CC:   Higgins\_K  
CC:   Fidler\_S  
CC:   Balderston\_K  
CC:   Shuffield\_A  
CC:   Saunders\_R

*Elana Kagan*  
~~125~~ 125  
JOHN A. KITZHABER  
Governor



## **NEWS RELEASE**

**FOR IMMEDIATE RELEASE**  
**FEBRUARY 1, 1996**

Contact: Bob Applegate  
(503) 378-6496  
Leslie Carlson  
(503) 378-6307

### **GOVERNOR ISSUES STATEMENT IN SUPPORT OF REVISING "SALVAGE RIDER" AMENDMENT**

Governor John Kitzhaber said today that he favored changes in the "Salvage Rider" amendment that would allow for protection of sensitive old growth areas, adherence to best environmental practices and protection of habitat for endangered Marbled Murrelets. The text of the statement follows:

*Congress has before it an opportunity to heal the wounds caused by the passage of the timber salvage rider last summer. I commend Congress for its willingness to address the problems created by the law and its mandate to log old growth timber in Western Oregon.*

*I strongly believe we must address this issue. If we do not, we put the integrity of the President's Northwest Forest Plan at risk. It is not acceptable to me to return to the gridlock in the forests that has characterized the last five years.*

*If we are to end the divisiveness, prevent damage to sensitive resources and begin the process of working to find common solutions, any attempt to fix the salvage rider must be substantial and meaningful. Unfortunately, the proposals now circulating in Congress constitute a hollow effort.*

*A real solution to this problem must, at the very least, allow the federal agencies to substitute timber volume in those contracts which threaten sensitive resources. The current proposal allows contract holders to veto any such exchange. The Forest Service and Bureau of Land Management must be allowed to exercise wise resource stewardship while respecting the legitimate interests of the timber industry. Giving contract holders veto power when timber of equivalent value is offered is unacceptable when sensitive species are threatened.*

(more)

*I would also ask that any amendment to the salvage rider contain a requirement for both the contract holder and the federal agency to discuss ways to modify these outdated contracts to reduce or mitigate damage to public resources such as water, fish and wildlife.*

*Finally, I cannot provide support for the effort unless the provisions in the bill related to marbled murrelet occupancy are corrected. Congress should not be in the business of defining what constitutes murrelet habitat, especially when their opinion contradicts current scientific understanding.*

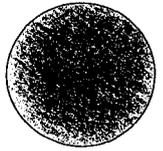
*I want to emphasize that I continue to support addressing our forest health problems in Eastern Oregon through active management. I am working with the U.S. Forest Service to initiate pilot projects to implement the findings of the Blue Mountain Forest Health Report I commissioned last year.*

*We have an opportunity in the Northwest to work together to solve problems created by changing federal forest management policy. I support the President's Northwest Forest Plan. Although it is not perfect, and its implementation has been stalled by budget cuts and lengthy studies, it is the only forest planning effort ever undertaken on this scale. It is scientifically grounded and has the potential to provide stability to the state's economy and to timber dependent communities. The Plan is supposed to be a flexible document. If we spent as much time trying to correct the flaws in the Plan as we do trying to tear it down, we might be a lot farther down the road to stability today.*

*I am hopeful that Congress will use this opportunity to make meaningful changes to the salvage rider. I believe it is possible to unite the citizens of the state with a common vision of forest management in Oregon.*



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



February 2, 1996

MEMORANDUM TO JENNIFER O'CONNOR

MARTHA FOLEY

T.J. GLAUTHIER

KITTY HIGGINS

BARBARA CHOW

ELENA KAGAN ✓

KATIE MCGINTY

FROM: SHELLEY FIDLER  
TOM JENSEN

SUBJECT REVISED TIMBER MEMO

Thank you for your comments on the earlier draft timber strategy memo. We've tried to incorporate the advice and reactions.

Please look over this second draft and, if possible, direct your comments back to CEQ (Fidler or Jensen) by COB today. We'll aim to send the final to Leon and Harold by the end of the day, if possible.

February 2, 1996

DRAFT -- DRAFT -- DRAFT --DRAFT

MEMORANDUM FOR LEON PANETTA  
HAROLD ICKES

FROM: JENNIFER O'CONNOR  
MARTHA FOLEY  
T.J. GLAUTHIER  
KITTY HIGGINS  
BARBARA CHOW  
ELENA KAGAN  
KATIE MCGINTY

RE: TIMBER STRATEGY

### Message and Policy

We are losing the battle over message and are diminishing our influence over policy. We have the high ground but no one knows it. The Oregonian and other Pacific Northwest press is full of stories about the negative impact of the timber rider, in some cases featuring the laments of those who voted for it, without placing blame on them or crediting us for opposing it first, warning about its consequences and then seeking to change it. A Post story on the adverse effects of the legislation and court decisions will run in the next week

We currently have an in-house agreed amendment package. We have described our goals to Hill staff and members, but have not shared our amendment package, pressed for its adoption, or publicized it.

As a result, others are being empowered to define the problem and the solution. Environmentalists are defining the problem and solution one way; the timber industry and its champions on the Hill another way. Neither camp's perspective matches our own and, thus, our policy as currently defined -- if we announce it -- will dissatisfy both.

We face a very difficult situation. Three months ago, the President made a commitment to address the environmental problems arising under the logging rider. If we proceed with our current amendment package, we are likely to be panned by both extremes and publicly supported by few, if any, parties.

Regardless how ardently we protest to the contrary, it may appear to the public that the President has not fulfilled, or necessarily made a credible effort to fulfill his promise. It is possible, perhaps, to overcome that reaction with a high profile presidential or vice presidential communications effort, but we are uncertain whether such an effort can be mounted given all the other priorities and activities requiring the President's and Vice

President's time. We need to discuss how to move forward in the most positive, productive way on this issue.

### **Current events**

In Congressional delegation meetings, even hard line conservatives reportedly are complaining about being beaten up at home. **Jack Metcalfe** has complained. **Jim Bunn** is in the news saying he is concerned about watersheds and fish. **Gorton** and others have said they are willing to make changes. **Governor Kitzhaber** is getting great press standing up for the Forest Plan and decrying the renewal of conflict. A recent news release by Kitzhaber is attached.

Some of the private timber owners are coming in to ask that their special programs continue -- the programs such as Habitat Conservation Plans, which give companies guarantees that they will be deemed to have met the requirements of the ESA and other programs when they sign a contract with us, and the 4(d) rule which eliminates 80% of private lands in Washington State from spotted owl conservation requirements. They are increasingly worried that gridlock will return in the public forests of the Pacific Northwest and that their expected benefits will go away.

Mike Draper of the Carpenter's Union came in last week for a meeting with us, along with other labor leaders and timber company representatives, at which he admitted that the rider was playing out very badly for them. He's looking for changes and a way to avoid the public relations bludgeoning they are taking.

The environmentalists are turning up the heat not only on the green timber provisions, but the salvage provisions that we promised to manage responsibly. It may well be that our pledge is not entirely being fulfilled by the Forest Service. There is growing evidence of mismanagement and problems, such as green sales being re-labelled as salvage -- it is enraging grassroots enviros. They want repeal of the whole rider and are close to getting Senate sponsors to go along with Elizabeth Furse in the House, who now has 94 co-sponsors, including 7 Republicans.

We should expect that anything less than endorsement of full repeal from us will draw howls of protest despite the fact that the environmental CEOs, when they visited with the President, asked only that we manage the salvage provisions and seek change in the green timber provisions of the rider. Their position has been pushed farther toward the extreme by the activism of grassroots and local environmental organizations.

**The Lincoln County Board of Commissioners** sent the POTUS a letter (attached) asking that we protect the Forest Plan. Similar letters were sent by the Portland City Council and the Washington State Public Land Commissioner. The support is good, but they're writing to us, not their Senators and Congressmen asking them to fix the rider. The implication is that the President is not acting to protect the Plan in the face of this threat. We are getting no credit for seeking a solution.

## Current strategy

We had been waiting to consult with the major players. **Dicks** is on board to seek changes, but only modestly helpful. Publicly, he has only called for securing buyback authority and for avoiding waiving environmental laws "in the future." **Murray** has said she'd "be willing to help us get out of the mess we created" and now is talking about sponsoring repeal. **Hatfield** and **Gorton** have suggested an extremely inadequate fix in Interior Appropriations legislation.

## Need for new strategy - target, timing, vehicle, communications

### TARGET

There are six options:

1. Our legislation - which targets the problem areas of the rider. Completely defensible but an uphill battle to win Congressional support and sure to be condemned by environmentalists as "too little, too late." In the end, we might only be able to get part of our package passed. As a reminder, our package includes the following:

- a. area vs. sales - which corrects Hogan's overreaching on 318.
- b. Forest Plan - prevents timber industry from arguing that trees in the area of the Forest Plan must be released thus destroying Forest Plan
- c. murrelet language - we just lost part of this issue in court and have appealed
- d. giving us authority to buy-back problem sales
- e. expanding our authority to exchange, modify and otherwise reduce problems in awarded sales.

2. Repeal of the rider - now the darling of the environmentalists. Unlikely to succeed in Congress, but simple to explain and popular with a large constituency.

3. Our legislation, plus a POTUS directive to (suspend some or all of the salvage program) in order to assess its progress and investigate the many allegations of mismanagement and abuse. This would be a step in the environmental community's direction and well received, as such. On the other hand, it would be seen as antagonistic by the pro-timber members with whom we will be attempting to negotiate our remedy. Whether that will strengthen or weaken our hand in negotiations is not clear.

4. Gorton/Hatfield/Regula legislative option - very small "fix" depending on the good will and subject to the veto of timber purchasers. Very unsatisfactory for us and the environmentalists. In fact, the Forest Service has said that, in its current form, this language restricts their current authority to work with purchasers. Kitzhaber has condemned this approach as "hollow."

5. Voluntary agreements with timber companies to modify sales. Can be pursued

*Word to  
Lawrence*

without legislation or as a point of other options. Uncertain how much of this is happening. Profile of this effort could be stepped up -- with Cabinet Secretaries, perhaps Governor Kitzhaber, calling in companies that have contracts and asking for their help in avoiding damage to watershed, endangered species.

6. Voluntary agreements with major timber companies -- POTUS calls in Weyerhaeuser, Plum Creek, etc. (companies that have benefitted from HCPs and 4 (d) rule) and urges them to join us in urging Congress to fix the legislation.

#### TIMING

Trees are being cut in the forests. OMB is preparing an estimate of what has been cut and what is left. Obviously, murrelet sales have been protected for 60 days. When the spring arrives, we can expect very aggressive cutting.

The communications problem suggests we must get vocal pretty soon to get in the game in the Pacific Northwest. This is particularly important if our approach engages criticism from environmentalists.

#### VEHICLE

Budget negotiations, Interior Appropriations, Farm bill, other are the likely choices.

#### COMMUNICATIONS

Whatever we decide we have to be visible in the area - doing events, press calls, managing the salvage program, being seen to be seeking a peaceful solution to the conflict and a restoration of the quiet we had reinstated prior to the rescissions bill.

We have many assets to help us perform that task. We are not using them. We have governors and other public officials. We have Cabinet and sub-Cabinet officials. We have the local press ready to support us.

#### RECOMMENDATION

The Administration should mount an immediate all out effort to secure passage of our legislative package. This would require hard bargaining with Congress and we must expect resulting trade-offs on other items. To overcome criticism from the environmental community, senior Administration officials must be active and vocal explaining and promoting our position. Along with this campaign, we should continue to pursue voluntary agreements to modify sales with timber purchasers. We should press the major timber companies to join us in pursuing our legislative package.

If we cannot reasonably expect senior officials to implement a aggressive communications strategy, then we need to consider advocating a position that draws praise from the environmental community.

Timber mtg

Ben - reasonable modifications etc.

Katie - worried that other sheets are getting advantage - looking reasonable.

Meantime, we're not getting credit.

Go public -

Martha - Don't care if Gortan gets angry.

Need a decision!

What is our substantive proposal -  
total repeal of green OR  
our proposal

Have to hash Gortan's proposal.

Have Dix, Glichman

Ample

public/press

Gortan wants mtg w/ Leon.

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

28-Jan-1996 02:31pm

TO:           (See Below)

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

SUBJECT:     RE: Judge Hogan stays murrelet order

It was not only good on the merits to hear about Judge Hogan's ruling, but those of us who saw Mark Rey were especially pleased at his surprise and apparent displeasure at this turn of events.

Judge Hogan seems to be seeking the kind of position we discussed earlier in the Fall, when the briefs were being prepared. That is, an argument that we did not simply apply the protocol in a minimalist fashion, but that we reviewed all the data collected over multiple inspections (each using the protocol) to get as many confirmations and verifications as possible.

I know DOJ doesn't like this view, because it sets up a higher standard than just the protocol, but it seems like the logical response which utilizes the data from the protocol, rather than creating some new scientific standards.

Distribution:

TO:   Dinah Bear

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

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

26-Jan-1996 08:04pm

TO:           (See Below)

FROM:         Dinah Bear  
              Council on Environmental Quality

SUBJECT:     Judge Hogan stays murrelet order

Some, but not all of you heard this yesterday: Judge Hogan ruled in favor of the government's motion for a 60 day stay in the timber rider case dealing with the "known to be nesting" criteria for marbled murrelets.

The stay applies to his decision of last week, that found - in an opinion which many believe raises strong grounds for a successful appeal - that Congress could not have meant for the agencies to rely on the Pacific Seabird Protocol to determine where murrelets are nesting.

He also indicated that the agencies should go forward in determining which of the sales would be meet the criteria he set out in his opinion during the stay. We will also use that information for purposes of appeal, which will be filing shortly in the 9th Circuit.

On the other hand, he denied our motion for stay on the issue of whether we have to reoffer sales when the high bidder is no longer in business or no longer qualifies for the bid.

Distribution:

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

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

29-Jan-1996 09:13am

TO:           (See Below)

FROM:         Dinah Bear  
              Council on Environmental Quality

SUBJECT:     High bidder sales

There was some uncertainty at the end of last week as to whether Justice would move for a stay and appeal on the high bidder cases we lost (do we have to offer sales under 2001(k) if the higher bidder is out of business or no longer qualifies).

Env. Division HAS recommended an appeal of the denial of the motion to stay and an appeal on the merits. The recommendation is the S.G.'s office, who is expected to approve the recommendation.

Distribution:

TO: Martha Foley  
TO: Kathleen A. McGinty  
TO: T J Glauthier  
TO: Elena Kagan  
TO: Alice E. Shuffield  
TO: 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-Jan-1996 09:18am

TO:           (See Below)

FROM:        Thomas C. Jensen  
              Council on Environmental Quality

SUBJECT:     Meeting Reminder

The EOP/Agency timber working group will meet tomorrow, Tuesday, January 30, 1996, at 2:00 p.m. in the CEQ conference room.

The agenda will include:

1.       Recent Event Update - chair
2.       Litigation update - Justice  
          Status of murrelet survey analysis  
          High bidder decision appeal
3.       Salvage Program - status of information package being  
          developed by USFS
4.       Other business

Thanks for your cooperation.

Distribution:

TO: Alice E. Shuffield  
TO: FAX (9-720-5437, Greg Frazier)  
TO: FAX (9-720-4732, Jim Lyons)  
TO: FAX (9-208-6956, Ann Shields)  
TO: FAX (9-208-4684, George Frampton)  
TO: FAX (9-208-3144, Bob Armstrong)  
TO: FAX (9-514-0557, Lois Schiffer)  
TO: FAX (9-482-6318, Doug Hall)  
TO: FAX (9-260-0500, Steve Herman)  
TO: Kathleen A. McGinty  
TO: Shelley N. Fidler  
TO: T J Glauthier  
TO: Ron Cogswell  
TO: Mark A. Weatherly  
TO: Christine L. Nolin  
TO: Elena Kagan  
TO: Martha Foley  
TO: Kris Balderston  
TO: Jennifer M. O'Connor

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

FAX NUMBER (202) 305-0275  
 CONFIRMATION NUMBER (202) 305-0210

PLEASE DELIVER TO:

To: Don Barry 208-4684  
 Bob Baum 208-3877  
 Dinah Bear 456-0753  
 Ted Boling 514-4231  
 Peter Coppelman, 514-0557  
     Lois Schiffer,  
     Jim Simon  
 Mike Gippert, 690-2730  
     Jay McWhirter  
     Tim Obst  
 \_\_\_\_\_  
 Jeff Handy (503) 326-3807  
 Nancy Hayes 208-5242  
 Elena Kagan 456-1647  
 Don Knowles (503) 326-6282  
 Thomas Lee (503) 727-1117  
 Karen Mouritsen 219-1792  
 Roger Nesbit (503) 231-2166  
 Chris Nolan 395-4941  
 David Shilton, 514-4240  
     Al Ferlo, Anne Almy  
 Tom Tuchmann (503) 326-6254  
 Sue Zike (503) 326-7742

NUMBER OF PAGES:

DATE: January 25, 1996

FROM: Jean Williams (305-0228), Ellen Kohler,  
 Geoff Garver (305-0481), Ellen Athas

MESSAGE: Report on Hearing before Judge Hogan,  
NFRC v. Glickman, Civ. No. 95-6244

Judge Hogan heard two motions for stays pending appeal on his January 10, 1996, order regarding further legal issues under Section 2001(k)(1), and on his January 19, 1996, order on the interpretation of "known to be nesting" under section 2001(k)(2).

As to the January 10 order, the Court denied our motion to stay his injunction requiring the agencies to award and release sales that the original high bidders rejected or unable or unqualified to accept.

The Court granted the motion for stay pending appeal on his January 19, order on the interpretation of "known to be nesting." The order is stayed for 60 days. The Court made clear that the federal agencies should continue with the review of the timber sales withheld under (k)(2) pursuant to the standards set out in his order, and that not pursuing this review during the stay period would prejudice any request the agencies might wish to make at the end of the 60 day period.

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

24-Jan-1996 08:02pm

TO:           Martha Foley  
TO:           Jennifer M. O'Connor  
TO:           Barbara C. Chow  
TO:           Elena Kagan  
TO:           Thomas C. Jensen  
  
FROM:         Dinah Bear  
              Council on Environmental Quality

SUBJECT:     Timber meeting: labor and industry comes in . . .

Katie asked that I fill you in on this morning's meeting that had been requested by Mike Draper from the Carpenters Union. It turned out to be more of more potential significance than we had perhaps anticipated.

The group consisted of representatives from both labor and industry, including individuals directly associated with the old growth sales in litigation (for example, Jim Geisinger, Northwest Forestry Association, who is quoted in current articles on the recent Hogan murrelet ruling as saying that eventually all of the sales would be harvested.) Draper made an opening pitch, emphasizing their concerns that:

- o         the Administration had made a conscious decision to swing strictly to the environmentalists' side of timber for political reasons;
- o         that the Administration might be seeking full repeal of the rider;
- o         that if, in fact, we were serious about solving the problem we were approaching the situation backwards by talking only to our friends on the hill and not talking to the affected parties (industry);
- o         that the rapidly escalating situation in the Pacific NW was bad for us, bad for workers, bad for the country;
- o         that they wanted this to end;
- o         that they didn't think we were getting correct information about what was really happening on the ground;

o they they were interested in talking about starting a

dialogue.

Katie responded by identifying common sentiments we shared - wanting to end the polarization, start a dialogue, etc. She also explained that rather than the picture they painted of the Admin. lobbying "our friends" on the hill for a full repeal, we had been trying - without success - to have serious talks with key Members of the Pac. NW delegation about provisions focused on specific problems. She indicated that if we weren't able to achieve that goal, the initial strategy would have to be reconsidered.

A number of other issues were touched on in the course of conversation, including:

o why does the Forest Service say it doesn't have replacement timber when - at the same time - we keep repeating that we have all of this timber planned for sale in the Forest Plan?

We explained that while we have that timber, there were genuine concerns on our part that committing timber already planned for sale under the Plan would generate cries of "double-counting". Their response was that they doubted we would ever reach the amounts we had set out in the Plan and hadn't for the last two years, and if we could move some of the quantities designated for the past two FY years out as replacement timber, that might make sense. ✓

o on the issue of "like kind" replacement timber, there seemed to be some tentative agreement that there was a problem, although, as Draper put it, given the level of trust between various parties, there was fear that without that, they'd be offered "a patch of dandelions" to harvest. ✓

o there was recognition that the Forest Service was suffering from a resource problem. The Northwest Forest Assoc. rep. stated that forest supervisors are telling him that if they have to offer replacement timber, they won't be able to get sales out under the Plan for this year simply because of the workload.

o there was great interest in hearing us say that we found the salvage side of this to be helpful. No one did (as T.J. put it, "it would be hard to find anyone here to say this bill had been helpful!!). Mark Gaede from USDA explained that the Forest Service had already been ramping up salvage and the bill really hadn't helped that process. However, we acknowledged that we were more comfortable - while not thrilled - with the salvage side of the bill.

o The industry rep. also acknowledge that the Endangered Species Act was NOT the problem and that in fact the real, on-the-ground picture in terms of cooperation with the Fish and Wildlife Service was at least as good "if not better" than Interior painted it. Instead, he targeted the real problem as resource and management problems in the Forest Service.

o Towards the end of the discussion, both Mark Gaede and Don Barry pointed out that all the talk in the world wouldn't help matters if DOI appros. and the budget wasn't resolved. Mark mentioned having to riff 2,600 Forest Service employees and Don mentioned shutting down the consultation process if there's a permanent CR. At least one of them jumped visibly at this. ✓

o The conclusion was that everyone agreed we should begin to talk. There was discussion about various goals, topics and types of people that the talks might involve. There seemed to be general agreement that the timber rider had to be dealt with before we got to broader issues, although some industry reps. wanted to talk about the future of forestry and others wanted to talk about the "reality check - what's happening the ground" kind of issues. Katie left it in Mike Draper's hands to think about who should involved on their side in these talks, and to give her a call back at the end of the week or beginning of next week.

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

23-Jan-1996 12:15pm

TO:           (See Below)

FROM:        Thomas C. Jensen  
              Council on Environmental Quality

SUBJECT:     NW FORESTS: USFS may reject enviro bid to buy timber.

NW FORESTS: USFS MAY REJECT ENVIRO BID TO BUY TIMBER

The Northwest Ecosystem Alliance was the highest bidder in a recent federal timber sale in Washington state, but the US Forest Service may reject the \$29,000 bid because the group doesn't plan to cut the trees, NPR's Jennifer Schmidt reports. The 275-acre parcel in the Okanogan Nat'l Forest, called the "Thunder sale," was burned by wildfires in 1994. It lies in a large tract of undeveloped forest providing habitat for chinook salmon and one of the last remaining Lynx populations in the lower 48 states.

Alliance Dir. Mitch Friedman says the Thunder sale violates water quality and other enviro laws, but the group can't sue to stop the sale because of the salvage law signed by Pres. Clinton in 7/95. Friedman says no matter who buys the timber, its a bad deal for taxpayers: "The public is still only going to get 10 cents on the dollar for the investment and the market is bad."

USFS is expected to decide the sale in the next few weeks. The alliance said if it loses the bid, it will appeal to the Agriculture Dept. ("Morning Edition," NPR, 1/22).

(c) The American Political Network, Inc.

Distribution:

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

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

22-Jan-1996 01:42pm

TO:           (See Below)

FROM:        Thomas C. Jensen  
              Council on Environmental Quality

SUBJECT:     Meeting Notice

MEETING REMINDER

The EOP/Agency timber working group will meet as regularly scheduled, tomorrow, Tuesday, January 23, 1996, at 2:00 p.m. in the CEQ conference room (722 Jackson Place).

The draft agenda is:

1.       Recent events (other than Hogan's ruling) update - chair
2.       Litigation (other than Hogan's ruling) update - Justice
3.       Judge Hogan's ruling on murrelets - Justice
  - a.       Substance of the ruling
  - b.       Stay/appeal
  - c.       Administration of sales at issue? *timing?*
  - d.       Other related issues
4.       Energy Committee hearing on GAO findings - USDA
5.       Communications
6.       Other business

Distribution:

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

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

22-Jan-1996 01:04pm

TO:           (See Below)

FROM:        Barbara C. Chow  
              Office of Legislative Affairs

SUBJECT:     RE: Hogan decision on murrelets

I have already spoken with Josh Kardon (Wyden's AA) and told him that T.J. would be following up with he and his staff. Josh indicated that the murrelet issue is an important one in the campaign and I reassured him that we were sensitive to this. As far as I understand it the next steps were for T.J. to call Wyden's staff, lay our our position and then we would discuss it again.

Distribution:

TO:   Shelley N. Fidler

CC:   T J Glauthier  
CC:   Martha Foley  
CC:   Kathleen A. McGinty  
CC:   Jennifer M. O'Connor  
CC:   Elena Kagan  
CC:   Dinah Bear  
CC:   Thomas C. Jensen

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

22-Jan-1996 12:18pm

TO:           (See Below)

FROM:       Shelley N. Fidler  
            Council on Environmental Quality

SUBJECT:   RE: Hogan decision on murrelets

i'M HAPPY TO CALL WYDEN BUT SOMEONE SHOULD SAY IF THEY ARE BETTER  
CONNECTED

Distribution:

TO:   T J Glauthier

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

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

22-Jan-1996 11:29am

TO: Elena Kagan  
FROM: Dinah Bear  
Council on Environmental Quality

SUBJECT: murrelet decision

in response to query from Martha . . .

EXECUTIVE OFFICE OF THE PRESIDENT

22-Jan-1996 11:22am

TO: Martha Foley

FROM: Dinah Bear  
Council on Environmental Quality

SUBJECT: RE: Hogan decision on murrelets

Hogan neither endorses the "physical evidence" standard set forth by plaintiffs, nor the Pacific Seabird Protocol defended by us. He ends up - heaven help us - formulating his own "Hogan protocol" for finding murrelet nests, and practically calling for a sale by sale determination in courtrooms.

*meaning can you be heard?*

My own sense is that many - but not all - of the sales at issue meet his standard. Justice and the Fish and Wildlife Service wants to spend some time today looking at our actual survey determinations to get a sense of how many sales at really at issue. We will have our usual interagency timber meeting tomorrow afternoon in the CEQ conf. room, 2 - 4, and get a sense of their assessment at that time. However, at least some sales don't meet his standard and I have already discussed with Justice that regardless of whether it's one sale or lots of them, we need to appeal this. As soon as sales are identified that don't meet Hogan's criteria, Justice will move for a stay and appeal. They expect that to happen later this week.

Hogan is expected to rule against a stay, of course, and DOJ already knows they'll be on the way to the 9th Cir. I have said repeatedly (and will repeat tomorrow) that if the 9th Cir. denies a stay, this time we want to have a SERIOUS discussion about going to the Supreme Ct. immediately. Actually, I think we should have that prior to argument in front of the 9th Cir.

*Will there be argument on the stay issue?*

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

22-Jan-1996 11:22am

TO: (See Below)

FROM: Martha Foley  
Office of the Chief of Staff

SUBJECT: RE: Hogan decision on murrelets

I have a lot of tactical concerns regarding a meeting with Gorton and we should discuss further.

Distribution:

TO: T J Glauthier

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

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

22-Jan-1996 09:12am

TO: (See Below)

FROM: Dinah Bear  
Council on Environmental Quality

SUBJECT: RE: Hogan decision on murrelets

This time, I think they've got it (famous last words)!

Distribution:

TO: Kathleen A. McGinty

CC: Barbara C. Chow  
CC: T J Glauthier  
CC: Martha Foley  
CC: Jennifer M. O'Connor  
CC: Elena Kagan  
CC: Thomas C. Jensen  
CC: Shelley N. Fidler

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

22-Jan-1996 09:11am

TO:           (See Below)

FROM:        Kathleen A. McGinty  
              Council on Environmental Quality

SUBJECT:     RE: Hogan decision on murrelets

on the marbled murrelet issue -- dinah and elana, pls make sure justice is aware that they should be asking for a stay pending appeal on these sales. no sales should be released without harold signing off. thx

Distribution:

TO: Barbara C. Chow

CC: T J Glauthier  
CC: Martha Foley  
CC: Jennifer M. O'Connor  
CC: Elena Kagan  
CC: Dinah Bear  
CC: Thomas C. Jensen  
CC: Shelley N. Fidler

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

22-Jan-1996 09:08am

TO:           (See Below)

FROM:        Kathleen A. McGinty  
              Council on Environmental Quality

SUBJECT:     RE: Hogan decision on murrelets

1. i haven't talked to wyden
2. on gorton visit, i would push for it asap. but, i agree that we should go in there without paper and discuss in detail instead.
3. but, simultaneously, i would start having conversations with the lead reporters on this issue immediately to explain what we're pushing for and why.

Distribution:

TO: T J Glauthier

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

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

22-Jan-1996 08:46am

TO:           (See Below)

FROM:        Barbara C. Chow  
              Office of Legislative Affairs

SUBJECT:     RE: Hogan decision on murrelets

I will try to schedule the Gorton meeting for later this week. With regard to Wyden, T.J. did you talk to Josh Kardon (Wyden's A.A.) and Joshua Shankman as we discussed? They are expecting to hear from you. They have indicated that the issue is very important to the campaign and I reassured them that we would be sensitive to this as we proceed.

-----

Distribution:

TO:   T J Glauthier

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

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

20-Jan-1996 12:38pm

TO:            Elena Kagan

FROM:         Dinah Bear  
                Council on Environmental Quality

SUBJECT:     TJ's e-mail re timber legislation

TJ is certainly correct in so far as his assessment that the language has not gotten around yet.

That reminds me: did you ever get the "minor technical change" into the word processor at OMB and out again? I feel no compelling need to have a copy right now, but at least one of us who is regularly plugged into these discussions should have a clean copy of the latest version handy.

The thought about a change in "like kind and volume" comes from discussions that Tom Tuchmann, head of the Interagency Office of Forestry and Economic Development in Portland had with several people, including T.J. and myself, yesterday. Tom had a joint visit recently by one of the Umpqua sale purchasers and an environmentalist. The purchaser expressed concern about the controversy over the sale under the "original terms" and also had come to the realization that "like kind" was going to be equally difficult to come by without a "like" degree of controversy over environmental impacts. Apparently, after having long talks with his environmentalist friend, he had come to the idea of accepting replacement timber that wouldn't necessarily be of like kind. In the course of the discussion, there were suggestion that other purchasers of the really controversial sales were beginning to feel the public heat and might be amenable to something other than the strict terms of the current statute. The other thought expressed during these disucssions was a willingness to explore a much longer time period than 45 days (the industry side is set to argue that we must provide replacement timber also within 45 days, although the rider is not specific on that point.)

*like  
kind  
requirement*

EXECUTIVE OFFICE OF THE PRESIDENT

20-Jan-1996 11:42am

TO: (See Below)

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

SUBJECT: RE: Hogan decision on murrelets

I agree with the earlier emails that we should move ahead with our meeting with Gorton. This court decision makes it all the more essential.

Given the delays in the reconciliation schedule and the time it will take us to work through the key issues on the Interior bill, we do have a little time. I would not accelerate our meeting with Gorton ahead of whenever we are going to meet next on the Interior bill.

But I would try to schedule a meeting on the timber issue with him as soon after that as possible. That should be mid- to late-week coming up.

We also need to carry out the other consultations we discussed at our "western issues" meeting early this week. I am scheduled to have a phone conversation with Peter DeFazio on Monday. We all agreed that Wyden needs to be informed, too. But I don't recall that anyone actually took responsibility for it. I'm happy to help out, but has anyone been in touch with him or his staff?

With respect to paper, when are we doing to give our text out? So far, very few people on the Hill have our text and none of it appears to have leaked out. We could complete these pre-Gorton discussions without paper and then review and finalize the text to reflect what we've heard. That way we can "consult", not have it get out before we're ready, and honestly consider reactions. There's at least one change we may want to make already, to the "like kind and volume" requirement for replacement timber to respond to some Oregon recommendations.

Distribution:

TO: Martha Foley

TO: Kathleen A. McGinty  
TO: Jennifer M. O'Connor  
TO: Barbara C. Chow  
TO: Elena Kagan  
TO: Dinah Bear  
TO: Thomas C. Jensen  
TO: Shelley N. Fidler

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

19-Jan-1996 08:10pm

TO:           (See Below)

FROM:         Dinah Bear  
              Council on Environmental Quality

SUBJECT:     Hogan decision on murrelets

Judge Hogan just issued his decision on the murrelet issue. We lost.

Peter Coppelman assures me that it is well understood at Justice that we intend to appeal the decision.

Distribution:

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

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

18-Jan-1996 12:28pm

TO:           Jennifer M. O'Connor

FROM:          Elena Kagan  
                Office of the Counsel

SUBJECT:      timber

You probably know by now that Justice will appeal Hogan's rulings on enjoined sales and high-bidder sales and will seek a stay pending the appeal.

As to the "withdrawn" sales (the First and Last sales), Justice is going to file a "Notice of Filing and Request for Status Conference" with Judge Dwyer. As you know, Hogan has enjoined us to release those sales. We haven't contested their release in any prior court proceeding. Environmental plaintiffs, however, did contest their release (as well as the release of the enjoined sales) in a motion filed in Judge Dwyer's court. Dwyer stayed that motion pending Hogan's ruling. The pleading that Justice intends to file with Dwyer states that in these circumstances, some direction from Dwyer is necessary prior to any release of the sales. The pleading does not take a position on what Dwyer should do: it does not say whether he has a legal basis for ordering the withholding of the sales. The pleading essentially punts the question to Dwyer. Given the Forest Service's and DOJ's prior statements on these sales, stretching back to early 1995, I think this is the best we can do in this pleading.

DOJ is still thinking about whether it also can file an affidavit in response to the enviros' motion in Dwyer's court describing the environmental damage that release of these sales would cause. This affidavit, while saying nothing about the legal basis for withholding the sales, would provide Dwyer with factual information about the consequences of such release. I take it there is some dissension within DOJ on whether filing such an affidavit makes sense. (If I had to guess, I'd say that Lois is in favor, while Peter Coppelman is opposed.) I told Lois that CEQ, you, and I all thought we should file the affidavit (assuming that the facts support a claim of environmental damage). I believe folks from CEQ were going to call Lois and make the same point.

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

17-Jan-1996 05:24pm

TO:            Elena Kagan

FROM:         Dinah Bear  
               Council on Environmental Quality

SUBJECT:      First and Last

The First sale contains 5,100 mbf and the Last sale has 6,700 mbf, for a grand total of 11,800 mbf.

Of perhaps more importance than the volume is the fact that the National Marine Fisheries Service has stated that the First and Last sales will have result in adverse effects, including potential jeopardy to coastal coho salmon (Oregon Coast) and a distinct population of Umpqua River cutthroat trout.

## LEGAL ISSUES

### Background

1. Appeal argued before Ninth Circuit 1/8/96
2. Judge Hogan's Decision of 1/10/96
3. SCLDF has filed a Notice of Appeal and a stay motion
4. Letter from Scott Horngren and threat of Contempt Motion

### Decisions

1. How do we proceed under Judge Hogan's Order?
2. How do we proceed before other courts based on Order?
3. Do we appeal the decision?
4. Do we seek a stay pending appeal? If yes, how strong should our affidavits be on the injury from specific sales?

### Other Issues

1. Reports: Next one due on Friday

Timber mtg 1/17/96

Legislative - mtgs w/ mbrs

next: center

center proposal?

Heard: he just waits what he has / no negotiation

Further bill - 50 co-sponsors.

### Litigation

1. Appeal in *geop v sales* (Mandary)

Hankins - didn't have a clue

Levy - very familiar w/ 318

gen'l tone: plain language is apt. The gov't

2. Was the other Thunderbolt case

3. Hogan's order

Extremely good news - no pre-318 sales

Sales enjoined (Dwyer) - <sup>et al!</sup> must release.

There are bad sales.

Issued DJ - not injunctive

ITS - <sup>can</sup> come back to him or crif judge

This implicates appeal - crif ask for

stay - b/c hasn't been asked to do anything.

Check This → Sales w/drawn - (1st + last)

we have to go back to Judge Dwyer?

Sales - hi hidden.

Env. implics? lots of them are incl. in  
declarations we need to seek crif stay.

Phys. impos.

SCADEF - emerg motion for stay in  
district ct; everything we lost.  
or

4. What to do: on 1st + last - to contest here

we reviewed IT<sup>1</sup> - in what appeal in *geop v sales* says?

a) wait for ITS to go to Dwyer? ~~to~~

b) stay pending app - 9th Cir.

c) say - no objection. -

Telecom Trade Deal 1/16/95

2 withdrawn rates -

letter to atty - shutdown - not giving subst decision -  
take until end of wk

John is the decision maker - Dinala to brief Jennifer.

On injuncti - everyone agreed on appeal.

On his bidder - split situation.

John - no imp of reason to appeal.

but wouldn't object to appealing.

FS - disc among selves. - anyone still interested  
anyway? May be.

Wanted to talk to Ben.

No one seemed to care all that much.

Next report - due to Lopez - Friday.

~~to~~ Lopez opinion in ONRC v Thomas.

Salvage -

West. States Mtg. Lots of talk - critical of ays but not  
trusting Kimberley.

Tom said: ays told us to.

new market - were changing our minds.

Want to go public on this.

Ays - OK to see leg?

Not yet.

Need clean copy

Get last change.

100 to Jones

3/12/95  
3/12/95  
3/12/95

Dinah Barr telecon - 11/16/98

Jen / Martha

Appeal Hogan?

Hogan decision -

Hogans - contempt letter

Contempt letter

planning to release these - just haven't done yet.

inform

already -

Jack Ward Thomas announcement already releasing

sales under injunction  
trouble some evidence -  
mentally  
in binder -

If any resistance from AG  
Maybe Jimmy DOT  
= (probably not)

Use original K language?

Get K language

cancel some of Ks (fish rules) - using orig. terms of K.

TK<sup>original</sup> - relating to modif / supersede

Why don't we think about this again?  
Wahlberg's counsel remind this!

Hogan decision - on canceled sales - suggests we're wrong?

No. diff. to refer to K than to refer to other laws.

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

16-Jan-1996 05:14pm

TO:            Elena Kagan

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

SUBJECT:      You should have been in our earlier meeting...

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

16-Jan-1996 05:09pm

TO:            Kathleen A. McGinty  
TO:            Shelley N. Fidler  
TO:            Thomas C. Jensen  
TO:            T J Glauthier

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

SUBJECT:      Appeals of Lawsuits

I explained to Harold what we knew at the earlier meeting today about the two potential appeals. Based on that information, he felt we should appeal the ruling on the enjoined sales and should also appeal the ruling on the sales where the top bidder went out of business, unless DoJ has a compelling argument that they have no case and we would be hurt by the appeal -- i.e. it would be frivolous and they would be sanctioned. If you get contradictory information, please page me and we can raise this with Harold again. But if you find only that DoJ thinks it is legally acceptable to appeal one or both rulings, then Harold thinks we should go ahead and appeal them.

THE WHITE HOUSE  
WASHINGTON

January 11, 1996

MEMORANDUM FOR JACK QUINN  
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: TIMBER

This memo is to bring you up to date on timber issues:

1. We are supposed to meet sometime next week with Sen. Gorton on our timber proposal. (He canceled a scheduled meeting last week.) The cast of characters should include: Katie McGinty, Martha Foley, TJ Glauthier, Barbara Chow, Jen O'Connor, and me. As you may recall, this meeting follows meetings on our proposal with Sen. Hatfield and Rep. Dicks.

2. We have heard that Sen. Gorton favors a legislative fix, but one that is narrower than our proposal. We have also heard that Rep. Dicks may want to cut back somewhat on our proposal. The details on all this are very hazy. And we still don't know where Sen. Hatfield is (though he may just line up with Sen. Gorton).

3. Katie thinks that once we get a sense from Gorton, Hatfield, and Dicks as to how far they'll go, we need to reconsider whether to (1) continue to push our proposal or (2) charge the Republicans with extremism and demand the repeal of the whole timber rider. She thinks that if we're not going to get much out of the Republicans in the end, we may as well score some political points by taking a strong position. Of course, taking this route may leave us open to a charge of flip-flopping; if we do decide to demand a full repeal, we'll have to consider carefully how to minimize the appearance of inconstancy.

4. Earlier this week, Judge Hogan issued a number of further rulings on the meaning of Section 2001(k) of the timber rider, which is the provision on Section 318 sales. (This is, of course, the provision that Hogan previously interpreted very broadly, to include not only "pure" 318 sales, but other sales in the same area.) Most critically, Hogan agreed with us that 2001(k) does not force the release of sales offered before the date Section 318 was enacted (October 1989). But he agreed with the industry that 2001(k) does force the release of (1) sales currently under injunctions in other courts and (2) sales for which the high bidder has gone out of business.

5. We are still waiting for decisions on several important

*Elena Kagan*  
*Jack Quinn*  
*Jen O'Connor*

matters. Judge Hogan has yet to rule on the meaning of the murrelet provision in Section 2001(k) -- i.e., is there a need to find actual nests or is other evidence of presence enough? A Ninth Circuit panel has just heard argument on Judge Hogan's ruling on the scope of 2001(k) -- i.e., does it apply only to 318 sales or to all sales within the same area? And a different Ninth Circuit panel is considering a multi-pronged attack on the validity of the Forest Plan, which includes the question whether the timber rider fatally undermines it.

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

16-Jan-1996 08:50am

TO:           (See Below)

FROM:        Thomas C. Jensen  
              Council on Environmental Quality

SUBJECT:     Timber meeting reminder

Meeting reminder:

The EOP/Agency timber working group will meet today, Tuesday, January 16th, at 2:00 p.m. at the CEQ conference room.

Please be prepared to discuss your agency's position regarding possible appeal of Judge Hogan's ruling last week regarding, inter alia, sales under injunction and sales without high bidders.

Welcome back.

Distribution:

TO: Alice E. Shuffield  
TO: FAX (9-720-5437, Greg Frazier)  
TO: FAX (9-720-4732, Jim Lyons)  
TO: FAX (9-208-6956, Ann Shields)  
TO: FAX (9-208-4684, George Frampton)  
TO: FAX (9-208-3144, Bob Armstrong)  
TO: FAX (9-514-0557, Lois Schiffer)  
TO: FAX (9-482-6318, Doug Hall)  
TO: FAX (9-260-0500, Steve Herman)  
TO: Kathleen A. McGinty  
TO: Shelley N. Fidler  
TO: T J Glauthier  
TO: Ron Cogswell  
TO: Mark A. Weatherly  
TO: Christine L. Nolin  
TO: Elena Kagan  
TO: Martha Foley  
TO: Kris Balderston  
TO: Jennifer M. O'Connor  
TO: Dinah Bear  
TO: Remote Addressee  
TO: FAX (92084684, Don Barry)  
TO: FAX (94821041, Bob Ziobro)  
TO: Remote Addressee

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

11-Jan-1996 03:54pm

TO:           (See Below)

FROM:        Thomas C. Jensen  
              Council on Environmental Quality

SUBJECT:     Notice of Meeting

The EOP/agency timber working group will meet (yes, meet) on Tuesday, January 16th, at 2:00 p.m. at the CEQ conference room (722 Jackson Place).

The agenda will include:

1.       Recent event update - Chair
2.       Litigation update - Justice
3.       Rescission act implementation - USDA and BLM  
          - Salvage activities in roadless areas (USDA)  
          - Harvest status of sales released under 2001(k) (USDA & BLM)
4.       Communications - Chair
5.       Other business - Chair

Happy new year.

Distribution:

TO: Alice E. Shuffield  
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TO: FAX (9-720-4732, Jim Lyons)  
TO: FAX (9-208-6956, Ann Shields)  
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TO: FAX (9-482-6318, Doug Hall)  
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TO: Kathleen A. McGinty  
TO: Shelley N. Fidler  
TO: T J Glauthier  
TO: Ron Cogswell  
TO: Mark A. Weatherly  
TO: Christine L. Nolin  
TO: Elena Kagan  
TO: Martha Foley  
TO: Kris Balderston

EXECUTIVE OFFICE OF THE PRESIDENT

11-Jan-1996 11:34am

TO: Bear\_D  
FROM: JensenTC  
CC: Kagan\_E  
SUBJECT: Katie's memo on timber negotiations

Dinah,

I gather that the senior WH folks are meeting with Gorton and Regula next week (weather and other factors permitting) to discuss the rescissions act amendments.

Katie's memo -- a copy of which I forwarded to you -- asks for our reactions to two things: Gorton's idea that we'd get authority to not release sensitive sales, but would have to supply replacement timber and, second, Dicks' idea that we get only buy-back authority. ]?

My thoughts are the following:

1. We should include Elena in our discussions (and I've copied her on this note).
2. Regarding Gorton's notion, it seems to me that it gives us the key thing we needed four months ago, but would not be enough, by itself, today. It could help with the murrelet sales, rendering whatever Hogan decides mostly irrelevant. Win or lose, we have to provide replacement timber, but don't have to cut down the little dears' nesty-poops. It would also help with the enjoined sales, I suppose, but could, in that case, create a "replacement timber" entitlement that does not now exist.

I would be very, very wary of any formula Gorton offers for "compensation" or "exchange." We have a view of what the sales are worth that is different from the industry's. Ruth Saunders is on top of that.

What will be key to win from Gorton will be the authority and resources to buy-back, involuntarily or voluntarily modify, stop, etc., problematic sales that have already been released. We could, if pressed, probably identify many of the sales that have been released but need to be stopped or modified.

I do not know whether the USFS and BLM can give us accurate information on modification alternatives or on the progress that sale beneficiaries have made in cutting their sales (er, that is, trees).

Also, we'll need assurance that the Dinah Bear Forest Plan death spiral scenario is specifically barred or somehow foresworn by congress. Although Rutzick has said he's not going to pull the pin on that grenade, we need to make sure that Congress defuses the grenade so nobody else can set it off.

On the shortcomings of the Dicks plan, I suppose the key issues are murrelets

and the Forest Plan. His buy-back authority would not guarantee that we could, if we lose in front of Hogan, stop cutting of key habitat areas.

Also, Dicks plan does not deal with the Forest Plan death spiral problem.

Other thoughts?

EXECUTIVE OFFICE OF THE PRESIDENT

11-Jan-1996 11:24am

TO: (See Below)

FROM: Dinah Bear  
Council on Environmental Quality

SUBJECT: RE: no meeting

We did get rulings from Judge Hogan earlier this week on a cluster of four cases dealing with the interpretation of Section 200k(1). In brief, we won two issues and lost two issues; to wit:

- a) Judge Hogan agreed with us that the temporal scope of Sc200k(1) begins with the passage of the original Sc318 - i.e., no sales offered before 10/23/89 fall within the scope of the timber rider. ✓
- b) He also agreed with the government's argument that physical impossibility was a reason not to offer a sale (i.e., the trees had already cut in a modified sale or some other reason).. ✓
- c) He disagreed with our argument that if the high bidder for a sale falling under the timber rider has gone out of business or otherwise does not qualify as a bidder under agency rule that we no longer have to offer the sale. Instead, we have to go back and offer the sale to the second highest bidder at the same terms and conditions as those offered to the highest bidder.
- d) He also ruled that the fact that a sale has been enjoined by another court does not excuse its release under the timber rider. He will issue a declaratory judgment and then timber plaintiffs can ask him or the other court to order the government to release particular sales.

Distribution:

TO: Kris Balderston

CC: Thomas C. Jensen  
CC: Alice E. Shuffield  
CC: FAX (9-720-5437, Greg Frazier)  
CC: FAX (9-720-4732, Jim Lyons)  
CC: FAX (9-208-6956, Ann Shields)  
CC: FAX (9-208-4684, George Frampton)

*Lina Balderston  
305-0474*

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

11-Jan-1996 01:31pm

TO:            Elena Kagan

FROM:          Dinah Bear  
                Council on Environmental Quality

SUBJECT:      SALVAGE LAW: GOP may support "modest" revision.

SALVAGE LAW: GOP MAY SUPPORT "MODEST" REVISION

Congressional GOPers "quietly are preparing" to revise the salvage law that exempts timber sales from most environmental laws. Under the proposed revisions, the Clinton admin. would not have to release for logging environmentally sensitive areas of public lands. In exchange, the gov't would have to offer an equal amount of timber for sale elsewhere. The language could be attached to a new FY '96 Interior Dept. appropriations bill.

Sen. Slade Gorton (R-WA), chairman of the interior appropriations cmte., is overseeing discussions. But aide Heidi Kelly on 1/5 said nothing has been decided: "Slade is willing to give the administration some additional flexibility."

THIS FAR, AND NO FURTHER

"The revisions are aimed at appeasing President Clinton," but the "modest" changes "signal that while Republicans are feeling some political heat, little chance exists for wholesale repeal" of the salvage law. Rep. Elizabeth Furse (D-OR) introduced a bill last month to repeal the law, with strong backing from Dems and enviros, who criticize it for opening up large tracts of healthy, old-growth forests to logging (GREENWIRE 12/8) (O'Connor/Sleeth, Portland OREGONIAN, 1/6).

(c) The American Political Network, Inc.

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

10-Jan-1996 04:32pm

TO:            Robert C. Vandermark  
TO:            Thomas C. Jensen  
TO:            Dinah Bear  
TO:            Michelle Denton  
TO:            Shelley N. Fidler  
  
FROM:          Kathleen A. McGinty  
                Council on Environmental Quality

SUBJECT:      int approps meeting on hill

fyi. likely meeting with gorton, regula, etc. on tues. i will go to that meeting. that means that i need to get briefed up on the particulars of the language that has been tossed around on the major issues. so, we will need serious briefing time and otherwise, rob, pls be ready for this meeting to get added to the schedule./

forgot to copy wesley and brian on this. i'll forward to them.

p.s. gorton IS putting timber on the table. we'll see his price

January 11, 1996

MEMORANDUM FOR JACK QUINN  
KATHY WALLMAN

FROM: ELENA KAGAN

SUBJECT: TIMBER

This memo is to bring you up to date on timber issues:

1. We are supposed to meet sometime next week with Sen. Gorton on our timber proposal. (He canceled a scheduled meeting last week.) The cast of characters should include: Katie McGinty, Martha Foley, TJ Glauthier, Barbara Chow, Jen O'Connor, and me. As you may recall, this meeting follows meetings on our proposal with Sen. Hatfield and Rep. Dicks.
2. We have heard that Sen. Gorton favors a legislative fix, but one that is narrower than our proposal. We have also heard that Rep. Dicks may want to cut back somewhat on our proposal. The details on all this are very hazy. And we still don't know where Sen. Hatfield is (though he may just line up with Sen. Gorton).
3. Katie thinks that once we get a sense from Gorton, Hatfield, and Dicks as to how far they'll go, we need to reconsider whether to (1) continue to push our proposal or (2) charge the Republicans with extremism and demand the repeal of the whole timber rider. She thinks that if we're not going to get much out of the Republicans in the end, we may as well score some political points by taking a strong position. Of course, taking this route may leave us open to a charge of flip-flopping; if we do decide to demand a full repeal, we'll have to consider carefully how to minimize the appearance of inconstancy.
4. Earlier this week, Judge Hogan issued a number of further rulings on the meaning of Section 2001(k) of the timber rider, which is the provision on Section 318 sales. (This is, of course, the provision that Hogan previously interpreted very broadly, to include not only "pure" 318 sales, but other sales in the same area.) Most critically, Hogan agreed with us that 2001(k) does not force the release of sales offered before the date Section 318 was enacted (October 1989). But he agreed with the industry that 2001(k) does force the release of (1) sales currently under injunctions in other courts and (2) sales for which the high bidder has gone out of business.
5. We are still waiting for decisions on several important

matters. Judge Hogan has yet to rule on the meaning of the murrelet provision in Section 2001(k) -- i.e., is there a need to find actual nests or is other evidence of presence enough? A Ninth Circuit panel has just heard argument on Judge Hogan's ruling on the scope of 2001(k) -- i.e., does it apply only to 318 sales or to all sales within the same area? And a different Ninth Circuit panel is considering a multi-pronged attack on the validity of the Forest Plan, which includes the question whether the timber rider fatally undermines it.

EXECUTIVE OFFICE OF THE PRESIDENT

03-Jan-1996 02:44pm

TO: (See Below)

FROM: Kathleen A. McGinty  
Council on Environmental Quality

SUBJECT: timber

couple of things (some of which i have already relayed to some of you):

1. norm dicks called first thing yesterday morning to inquire re: status of timber action. i told him that we still thought that the meeting with gorton was a top priority. he said gorton would insist that that discussion only happen in the context of discussing the interior bill. i said that we had no problem discussing the interior bill tho i had no reason for optimism that that would be productive. norm was going to call gorton again and try to set up meeting.
2. this am i mentioned to harold ickes and want to repeat to all of you, we need to make a decision as to whether our principals want to flag this issue as one we want fixed as part of the budget deal. i'm concerned that, if that is what we want to do, we need to lay the marked down or we will be estopped from so doing later.
3. martha raised a question before the holiday on the proposal kitzhaber has for a legislative fix. know that he has decided not to move it forward(this info from his office yesterday). it is like ours -- that is, it truly tries to fix problems; it does not, for example, repeal the whole thing. kitzhaber decided not to do anything with it because it angers the enviros cause it does not go far enough and it angers industry because it tinkers. (this should be instructive to us as we decide how far we want to carry our proposal. again, we need to define for ourselves a cut-off point beyond which we decide whether simply to attack them for extremism.

Distribution:

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

TO: Elena Kagan

TO: Shelley N. Fidler  
TO: Dinah Bear  
TO: Thomas C. Jensen

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

23-Dec-1995 04:07pm

TO:           T J Glauthier  
TO:           Kathleen A. McGinty  
  
FROM:         Martha Foley  
              Office of the Chief of Staff

SUBJECT:     Kitzhabertimber proposal

Are you familiar with the legislative approach Kitzhaber is taking on timber?

Jen O'Connor gave me a 2-pager from him on the subject.

You both are better able to evaluate it than I. You might want to get a copy from her (or from me, after I return, on the 29th).

Thanks.

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Phone No. (Partial) (1 page)	01/02/1996	P6/b(6)

### COLLECTION:

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

### FOLDER TITLE:

Timber - memos, emails, etc. [4]

2009-1006-F  
kc687

### RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

EXECUTIVE OFFICE OF THE PRESIDENT

02-Jan-1996 05:19pm

TO: Elena Kagan

FROM: Dinah Bear  
Council on Environmental Quality

SUBJECT: timber language

I sent the revised timber rider modification letter to DOJ and talked to Peter about it. Ted is on furlough and he wants Ted to look at it, so he's going to ask him to come in tomorrow. I'll be on furlough tomorrow, so I asked that any communications from Justice go directly to you.

If you come to closure on item #2, would you please get the revised language to T.J.'s office? He hasn't heard anything about this - frankly, I think he would consider it a technical change. I'm not sure which of his staff actually have the language on the machine - I think Cogswell, but I'm not sure. Anyway, I don't know the status of any meetings he has scheduled on this, but I'd like to make sure he has a revised page before he hands out any more specific language.

Thanks. Feel free to call me at home [P6/(b)(6)], although [001] having said that, I will actually be out of both home and office much of the day tomorrow - but I'll check in at home via voice mail.

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

02-Jan-1996 09:02am

TO:            Elena Kagan

FROM:          Kathleen A. McGinty  
                Council on Environmental Quality

SUBJECT:      RE: timber

martha and barbara were trying to get us in to see gorton to continue to move this -- but at the member level. that did not pan out before the holiday. we also discussed making sure that the subject at least gets raised in the budget talks to put a marker down. i don't know for sure, but i doubt that happened. so, back to martha and barbara i think to see what the next step is.

*Email to OMD -  
change in language  
+ to Dinah*

*e-mail to JO  
Au of Paris.*

EXECUTIVE OFFICE OF THE PRESIDENT

02-Jan-1996 01:49pm

TO: Thomas C. Jensen  
TO: Elena Kagan

FROM: Dinah Bear  
Council on Environmental Quality

SUBJECT: Panel for appeal of NFRC v. Glickman

The panel to hear our appeal of the NFVC v. Glickman decision (areas vs. sales - geographic scope) has been announced, and fortunately, it's not the same panel that so curtly denied our motion to stay Hogan's decision on areas vs. scope.

It is composed of 1) Levy, who will preside - he's from Eugene and characterized as conservative, thoughtful, fair - believes courts should stay out of managing natural resources and thus Al will portray Hogan's decision as taking managing out of hands of managers; 2) Noonan - cranky but bright; Hawkins - Clinton appointees, former U.S. attorney in Arizona.

Al Ferlo and Michelle Gilbert will be leaving Sunday evening for the Monday afternoon argument (although according to yesterday's Post story, the federal courts will have run out of \$ and be closed if there isn't a deal or Commerce/Justice \$ isn't signed by Jan. 7th.)

-----

Elena, I faxed you the changes to our timber language suggested by USDA OGC. You may now more than I at this point, but TJ was trying to get a meeting with Gorton asap, this afternoon or tomorrow.

DEC-28 95 13:39 FROM:

12024562464

TO: 54941

PAGE: 02

DEC 28 '95 05:22PM FAX 254

P. 3/4

Dear

I am greatly concerned that the implementation of the timber salvage provisions of the 1993 reclamation bill, as it has been interpreted by the court, will polarize Oregonians and cause long term damage to the forests. Furthermore, I believe that if these sales go ahead as planned, they will pose an unacceptable risk to the viability and integrity of the Forest Plan. The Northwest Forest Plan while imperfect, is the best tool we have to bring stability and predictability to the economy of this region and to the long term stability of ecosystem management. I am also concerned that the battle in the forests set off by the salvage rider will pit Oregonian against Oregonian in an unproductive and acrimonious fight.

I believe there are reasonable solutions that can both protect important resources such as habitat for salmon stocks and the marbled murrelet and respect the legitimate interests of the timber industry.

I would like to propose that the salvage rider be amended in the following manner:

1. Set a fixed date of 1990 before which the salvage rider would not apply. This would prevent old, withdrawn sales, laid out under old rules and outdated science, from being cut.
2. Amend the bill so that the Forest Service and BLM can substitute timber of similar value for the most sensitive sales, without being required to substitute the same type of timber. I would like to see the agencies target sales in key watersheds, and those that could impact habitat for at-risk salmon stocks and the murrelet. The result would be that timber companies could cut equivalent amounts of second growth instead of old growth.
3. Facilitate the designation of replacement volume for sales in critical natural resources areas. The recent blowdown in the federal forests may provide opportunities that will meet our obligations to timber purchasers if adequate environmental safeguards are in place. Any barriers that would interfere with creative and collaborative approaches to preventing resource damage need to be removed. The agencies should be allowed up to five years to designate replacement volume.
4. Amend the language relating to marbled murrelet occupancy, removing the requirement that an actual nest be found. There is broad agreement among the scientific community on how murrelet occupancy is best defined, and this amendment would bring the legislation in line with the accepted scientific protocol.
5. Allow the federal government to amend the Forest Plan as appropriate to account for the effect of the released sales. These amendments should be designed to eliminate or minimize the need for future adjustments in harvest volumes under the salvage rider in future volume calculations.

When sales do go forward I would ask the federal agencies to work closely with purchasers to make voluntary exchanges or take protective actions in their timber sale design that provide a level of resource protection similar or, where possible, equivalent to the Northwest Forest Plan.

DEC-28 95 13:39 FROM:

12024562464

TO:54941

PAGE: 63

00 095 00 23PM FAX 254

am beginning discussions with a number of purchasers who have significant timber volumes under the salvage rider, and I am hopeful that we can reach an accommodation.

I do not think we need to make any changes in current strategies on eastside forest health. I have two initiatives under way: (1) pilot implementation of my Blue Mountain Forest Health Report and (2) establishing a citizen/science team to ensure that we make progress on our forest health objectives in Eastern Oregon. I have been very pleased with the Administration's cooperation on these projects.

In an effort to move us toward a long term vision for federal lands, I have also initiated a review of public land laws through the Western Governors' Association. This review will be broadly inclusive of affected interests and will look at the basic uses and purposes of public lands. It will also study ways to harmonize federal laws and improve the planning process.

Taken together, I think these strategies provide hope for a reasonable solution to the controversy we currently face. It is important to protect the viability of the Northwest Forest Plan. Although it has enjoyed little support among environmentalists and industry, and there are many who would wish its downfall, I believe the plan provides a reasonable foundation upon which to build. In the eyes of the court, section (k) of the salvage rider may threaten the plan's viability, and it is vital to shore up the plan by protecting key resources. I ask that this critical Northwest issue not be compromised by other political agendas, and that we do what needs to be done on federal forests in the Northwest.

Please do not hesitate to call me to discuss this matter.

Best regards,

John A. Kitzhaber, M.D.

JAK:pfj/sn

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

11-Jan-1996 10:20am

TO:           (See Below)

FROM:         Dinah Bear  
              Council on Environmental Quality

SUBJECT:     RE: no meeting

There has not yet been a ruling in the case in front of Hogan dealing with murrelets "known to be nesting", nor the appeal from the adverse decision on areas versus sales - which was just argued this Monday. Also, no decision yet from the Ninth Circuit on the appeal regarding the President's Forest Plan.

Distribution:

TO:   Kris Balderston

CC:   Thomas C. Jensen  
CC:   Alice E. Shuffield  
CC:   FAX (9-720-5437, Greg Frazier)  
CC:   FAX (9-720-4732, Jim Lyons)  
CC:   FAX (9-208-6956, Ann Shields)  
CC:   FAX (9-208-4684, George Frampton)  
CC:   FAX (9-208-3144, Bob Armstrong)  
CC:   FAX (9-514-0557, Lois Schiffer)  
CC:   FAX (9-482-6318, Doug Hall)  
CC:   FAX (9-260-0500, Steve Herman)  
CC:   Kathleen A. McGinty  
CC:   Shelley N. Fidler  
CC:   T J Glauthier  
CC:   Ron Cogswell  
CC:   Mark A. Weatherly  
CC:   Christine L. Nolin  
CC:   Elena Kagan  
CC:   Martha Foley  
CC:   Jennifer M. O'Connor  
CC:   Remote Addressee  
CC:   FAX (92084684, Don Barry)  
CC:   FAX (94821041, Bob Ziobro)  
CC:   Remote Addressee  
CC:   Remote Addressee  
CC:   FAX (92191792, Kris Clark)  
CC:   FAX (96902730, Mike Gippert)

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

DATE: January 2, 1996  
FROM: Albert M. Ferlo, Jr.  
RE: NFRC v. Glickman and Babbitt  
OFFICE PHONE: (202) 514-2757  
NUMBER OF PAGES: Message only

PLEASE DELIVER TO:

TO:	Don Barry	208-4684
	Bob Baum	
	Dave Gayer	208-3877
	Dianh Bear	456-0753
	Michelle Gilbert,	
	Ellen Athas	305-0429
	Mike Gippert,	690-2730
	Tim Obst,	
	Jay McWhirter	
	Greg Frazier	720-5437
	Jeff Handy (503)	326-3807
	Nancy Hayes	208-5242
	Elena Kagan	456-1647
	Don Knowles (503)	326-6282
	Karen Mouritsen	219-1792
	Roger Nesbit (503)	231-2166
	Chris Nolin	395-4941
	Tom Tuchmann (503)	326-6254
	Sue Zike (503)	326-7742
	Jean Williams,	
	Ellen Kohler	305-0275
	Terry Garcia	482-4893

**MESSAGE:**

The panel for the oral argument on Monday, January 9, 1995, in Portland Oregon, will consist of Judges Noonan, Leavy and Hawkins.

Al Ferlo

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-Dec-1995 02:04pm

TO: Kathleen A. McGinty  
TO: Elena Kagan  
  
FROM: Dinah Bear  
Council on Environmental Quality

SUBJECT: request for extension

Peter Coppelman called and has also talked to Jim and Mark Gaede. Gippert, the USDA lawyers and trial lawyers are predictably upset. Their argument is that we stipulated to an expedited briefing schedule so that there would be a decision before the logging season in March and that it's a very tight schedule.

Frankly, this is outrageous - neither Lyons nor Kennedy even knew that from their own lawyers this was taking place days after the President's veto.

Lois is working towards readjusting the schedule to ask for a one week extension.

Answer: I thought we said two .

12/18/95

Telcon w/ Peter Coppelman.

Might win...

1. Pre-1989

open to our argument  
but how to write, given what  
he's said??

2 open to our args on prev. enjoined sale  
(didn't comply w/ 31F)

not withdraw sales.

Also not where his bidder went out of  
business.

Putzsch: just inhospitable

Hogan: disagree w/ that characterizat-  
ion but has done admirable job under  
tight constraints.

Not going to say when I'm going to make.

Think: wrap it all up in 1 ruling.

*Element*

**WHITE HOUSE STAFFING MEMORANDUM**

DATE: 12-16 ACTION/CONCURRENCE/COMMENT DUE BY: ASAP

SUBJECT: Interior - DRAFT VETO MESSAGE

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCURRY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PANETTA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGINTY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
McLARTY	<input type="checkbox"/>	<input type="checkbox"/>	NASH	<input type="checkbox"/>	<input type="checkbox"/>
ICKES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	QUINN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BOWLES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RASCO	<input checked="" type="checkbox"/>	<input type="checkbox"/>
RIVLIN	<input type="checkbox"/>	<input type="checkbox"/>	SOSNIK	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STEPHANOPOULOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CURRY	<input type="checkbox"/>	<input type="checkbox"/>	STIGLITZ	<input type="checkbox"/>	<input type="checkbox"/>
EMANUEL	<input type="checkbox"/>	<input type="checkbox"/>	STRETT	<input type="checkbox"/>	<input type="checkbox"/>
GIBBONS	<input type="checkbox"/>	<input type="checkbox"/>	TYSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
GRIFFIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WALLEY	<input type="checkbox"/>	<input type="checkbox"/>
HALE	<input type="checkbox"/>	<input type="checkbox"/>	WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>
HERMAN	<input type="checkbox"/>	<input type="checkbox"/>	<u>Tow</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HIGGINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Foley</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KLAIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
LAKE	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
LINDSEY	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

RESPONSE:

TO THE HOUSE OF REPRESENTATIVES:

I am returning today without my approval H.R. 1977, the "Department of the Interior and Related Agencies Appropriations Act, FY 1996."

Regrettably, the bill would inhibit our ability to protect our Nation's natural resources and cultural assets, to provide adequate services to Native Americans, and to promote energy conservation technology.

I am deeply concerned that the bill does not adequately fund Native American programs, including Interior's Bureau of Indian Affairs (BIA), HHS's Indian Health Service, and the Education Department's Indian Education programs. Most significant are the crippling cuts targeted at BIA's tribal priority allocation program, which supports: essential tribal government operations; general assistance to low-income Indian individuals and families; child welfare programs; adult vocational training; law enforcement and detention services; and community fire protection. I urge Congress to restore funding substantially for these important programs.

Similarly, the bill severely cuts funding for the Energy Department's energy conservation programs. Investment in energy conservation activities is important for our Nation's energy and environmental future. I do not support the one-year moratorium on the issuance of Energy Department efficiency standards.

I am very concerned that the bill contains language concerning management of the Tongass (Alaska) National Forest that would dictate the use of an outdated forest plan for FY 1996 and FY 1997, require unsustainable timber sale levels, and not allow the plan to be updated during this period.

I am concerned that the Columbia River Basin Ecosystem Management Project provision of the bill would continue to impede implementation of the comprehensive plan for management of public lands by prohibiting the publication of the final Environmental Impact Statement or Record of Decision and limiting the contents to exclude information on fisheries and watersheds. The provision would risk a return to legal gridlock on timber harvesting, grazing, mining, and other economically desirable activities.

In addition, I do not support language in the bill that places the management of the Mojave National Preserve in the Bureau of Land Management rather than the National Park Service. The bill would cut funding for the Preserve and undermine the designation of a National Park Service area, which occurred after thorough public hearings and the full legislative process in the last Congress.

I am concerned about language that would make permanent the protocol for identification of marbled murrelet nests related to provisions in the FY 1995 rescission bill, thereby eliminating normal flexibility for both the Interior and Agriculture Departments to use new scientific information as it develops. I am also concerned that the bill contains a moratorium on future listings and critical habitat designations under the Endangered Species Act.

I am also concerned that the bill would financially penalize self governance Native American tribes in Washington State for resorting to legal self-help remedies in disputes with non-tribal owners of land within reservations. The language restricts only the tribes, not the non-tribal land owners.

I regret that the bill drastically cuts funding for the National Endowment for the Arts (NEA) and the National Endowment for the Humanities (NEH). I believe strongly that these funding levels would jeopardize NEA's and NEH's ability to continue to provide important cultural, educational, and artistic programs for communities across America.

H.R. 1977 does not reflect my priorities or the values of the American people. I urge the Congress to send me a bill that truly serves the interests of the American people.

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

*Counsel*

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

18-Dec-1995 02:16pm

TO:            Elena Kagan

FROM:          Dinah Bear  
                Council on Environmental Quality

SUBJECT:      RE: telecon with ted

Good; thanks. You should know that T.J. and I also talked to Ted this morning re the murrelet language in DOI appropriations (which we vetoed this am, but T.J. wanted to get a better handle on that section for round #4.) Because the language - on its face - can be interpreted to favor our position in court, T.J. wanted a better explanation of Justice's concerns. Basically, we left it with the idea that innocent though it may look, Gorton introduced it - referencing the date he articulated the industry position on murrelets on the Senate floor - and that in the course of negotiations over both our timber language and DOI approps, T.J., Katie, et. al might want to bring this provision up directly with Gorton and discuss its meaning. Katie and Shelley are aware of this discussion, also.

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

16-Dec-1995 04:20pm

TO:            Jack M. Quinn

FROM:          Elena Kagan  
                Office of the Counsel

SUBJECT:      timber

Late on Friday afternoon, we gave our proposed statutory language on timber to Hatfield and Dicks. We decided not to incorporate any of the Sierra Club's suggestions about further changes we could make to the timber rider. The next question is when (and, I suppose, if) we should send up a formal legislative proposal. This in part depends on Hatfield's reaction to our draft language. Katie thinks we should try to get a read over the next few days of whether Hatfield and, more broadly, Congress is genuinely interested. If not, she thinks we should go public with that and then throw our weight behind a full repeal. She also thinks that whatever we do on timber, we have to do now, rather than wait until next year. Martha thinks we should talk about this a bit more, taking into account Congress's current testiness and the status of the Interior appropriations bill. In her last e-mail, she suggested a short meeting with Leon and Pat, though it's not clear when this would happen.

EXECUTIVE OFFICE OF THE PRESIDENT

18-Dec-1995 11:00am

TO: Dinah Bear

FROM: Elena Kagan  
Office of the Counsel

SUBJECT: telecon with ted

I just had a talk with Ted Bolling on two matters:

1. He passed along a suggestion from Mike Gippert that we change "suspended" to "suspended or delayed." I told him I thought this was a bad idea: since the phrase refers to sales that we have an obligation to ~~please~~ <sup>release</sup>, we shouldn't broaden its scope unless we have to. He agreed.
2. He said he didn't think the bid bond provision was a problem because there might well be pure 318 sales that were offered where a bid bond was returned. I basically agree that this is not a problem. But I told him he should speak with Gippert and others and find out for a fact whether a bid bond was returned on any of the sales that are ordered released under our new version.

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

17-Dec-1995 02:11pm

TO:           (See Below)

FROM:        Martha Foley  
              Office of the Chief of Staff

SUBJECT:     RE: Timber Replacement Cost

I thought this was direct spending that would be estimated by CBO based on assumptions about what we would do. Therefore, we can't say in advance what it is. We can estimate based on what we would do and convince (?) CBO but we can't pinpoint a number. |

If this goes into reconciliation, I would not feel constrained to keep the number lower than we would otherwise want for purely budget reasons. |

Distribution:

TO:   T J Glauthier

CC:   Ron Cogswell  
CC:   Mark A. Weatherly  
CC:   Ruth D. Saunders  
CC:   Christine L. Nolin  
CC:   Bruce D. Beard  
CC:   Thomas C. Jensen  
CC:   Kathleen A. McGinty  
CC:   Elena Kagan  
CC:   Jennifer M. O'Connor  
CC:   Dinah Bear  
CC:   Brian J. Johnson  
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

17-Dec-1995 01:40pm

TO:           (See Below)

FROM:         Dinah Bear  
              Council on Environmental Quality

SUBJECT:     RE: Timber Replacement Cost

T.J.:

o           My understanding from Justice was that Hogan was not receptive to any of our arguments except for physical impossibility (i.e., if the original sale at issue had been modified and sold in a modified form prior to passage of the Rescissions Act, it sounded as though he might not require us to come up w/replacement timber for those already cut trees. Generous guy!) He was extremely hostile to the SCLDF lawyer, to the point of cutting off many of her arguments. DOJ's assessment was that we would lose on all issues - including pre-90 sales - except possibly for physical impossibility.

I will double-check with them on this point tonight, if possible, or tommorrow am.

o           Industry cited a \$200 m in the press in response to the CRS \$34 m estimate, but the article didn't discuss the assumptions used. Also, the CRS report and industry response was prior to Hogan's initial ruling expanding the universe of sales. It dealt only with the "pure" 318 sales.

Distribution:

TO:   T J Glauthier

CC:   Ron Cogswell  
CC:   Mark A. Weatherly  
CC:   Ruth D. Saunders  
CC:   Christine L. Nolin  
CC:   Bruce D. Beard  
CC:   Thomas C. Jensen  
CC:   Kathleen A. McGinty  
CC:   Martha Foley  
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

17-Dec-1995 09:38am

TO:           (See Below)

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

SUBJECT:     Timber Replacement Cost

We need to reexamine the question of the funding needed for buyout authority first thing Monday morning. I've talked to Tom Jensen about it, and you've seen the emails over the weekend.

I don't want to change the \$50 m level unless we really feel we need to. I think we've developed it as carefully as possible to be a conservatively high amount that will allow us to make the modifications and buy backs that we really will want to if we get this authority approved. However, if we decide it is too low, then I want to know that Monday morning so I can make calls by noon.

I know that our calculation is very uncertain, both in terms of the court's likely actions and from not knowing exactly how much the sales would need to be modified to meet our preferred standards and guidelines. There are three or four key factors that need to be examined on Monday:

- o Has Judge Hogan given any indication of what he is going to do on the pre-1990 sales? I believe I heard on Thursday that he had made a statement from the bench that he does not intend to include those sales. If that is true, it simplifies our calculation a lot and helps to reduce the overall exposure to the level we are discussing. Our \$50 m figure assumes that the pre-1990 sales would not have to be bought back.
- o Is the value of \$200 to \$250/1000 bd ft a reasonable upper bound for the average amount that we would end up paying? While some sales might go higher, is this a good basis for estimating? We want to assume a formula that is based on market price net of avoided costs, not just out-of-pocket costs, so it would be generous enough to be attractive to contract holders and can be defended as completely equitable.

- o What figures has the Forest Service already circulated? Given how quickly their information gets out in the field, I assume that their estimates are already well-known by the industry. My notes indicated that the FS had told us it would cost about \$120 m to cancel virtually all of their sales that are either "known to be nesting" or "Hogan" sales. And their estimate assumed very little, if any, modification of the sales. BLM, which did assume modification of their sales, had estimated \$15 m, so that's how we had calculated the upper bound of \$135 m. (Of these sales categories, BLM accounts for 126 m bd ft, and FS has 328 m. So a straight extrapolation of the BLM number for FS would yield an estimate of \$39 m, for a combined total of \$54 m. to modify/buy back all of these sales.)
  
- o What numbers is the industry using? Tom says he's under the impression that the industry is saying it could cost \$300 to \$400 m to buy back all the sales. Are there figures like that in the press? If so, what do they represent?

Distribution:

TO: Ron Cogswell  
TO: Mark A. Weatherly  
TO: Ruth D. Saunders  
TO: Christine L. Nolin  
TO: Bruce D. Beard  
  
CC: Thomas C. Jensen  
CC: Kathleen A. McGinty  
CC: Martha Foley  
CC: Elena Kagan  
CC: Jennifer M. O'Connor  
CC: Dinah Bear  
CC: Brian J. Johnson  
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

17-Dec-1995 08:54am

TO:           (See Below)

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

SUBJECT:     RE: Timber proposal

Tom, I will call you to discuss this further. I appreciate your concerns, but do not see how any reasonable calculation will get us up into the higher dollar levels. We can examine this carefully once again on Monday and make a change if we really feel it is needed. However, I remain concerned that there will be a backlash if we appear to be asking for too much money, both from the budgeteers and from those who read into it that we are planning to cancel virtually all the sales.

Distribution:

TO:   Thomas C. Jensen

CC:   Kathleen A. McGinty  
CC:   Dinah Bear  
CC:   Elena Kagan  
CC:   Martha Foley  
CC:   Jennifer M. O'Connor  
CC:   Brian J. Johnson  
CC:   Mark A. Weatherly  
CC:   Ruth D. Saunders  
CC:   Christine L. Nolin  
CC:   Ron Cogswell

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

17-Dec-1995 08:49am

TO:           (See Below)

FROM:        Thomas C. Jensen  
              Council on Environmental Quality

SUBJECT:     Timber proposal

I'd like to register a note of concern about the decision to limit our request for funds in the new timber proposal to \$50 million, which came as a surprise to CEQ.

TJ, I understand your explanation (thanks for such a thorough reply), and concur fully that we do not need to plan or budget for buying out all the sales. Targeting is the right way to go. Nonetheless, let me raise two strong cautions:

1.        There is not a single formula for pricing the value of a sale or portion thereof. The industry's view is that the sale price of the wood itself is only one factor, and that numerous other considerations must enter into a value calculation. In a nutshell, we view the situation as one of contract termination. The industry characterizes the situation as a "taking." The last time I checked, the industry's formula resulted in costs about three times higher than our figures. Accordingly, I'd be hesitant to plan narrowly on the basis you described.

2.        I'm very uneasy about the board-foot number you cited. Depending on how Hogan rules on several outstanding questions, we may be required to release 1bbf more than planned, considerably more than the 200mbf referenced in your note. Also, the cost limit presumes, I take it, that we will use a considerable amount of timber from within the forest plan area as offsetting or compensating volume. Without adequate funds, it's the only thing we've got. As Katie has so often stressed, we need to be very careful how we put that prospect on the table so that we're not accused of renegeing on the forest plan timber levels. We want that dead cat left on Congress' doorstep.

Distribution:

TO:   T J Glauthier  
TO:   Kathleen A. McGinty

TO: Dinah Bear  
TO: Elena Kagan  
TO: Martha Foley  
TO: Jennifer M. O'Connor  
TO: Brian J. Johnson  
TO: Mark A. Weatherly  
TO: Ruth D. Saunders  
TO: Christine L. Nolin  
TO: Ron Cogswell

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

16-Dec-1995 04:38pm

TO:           T J Glauthier

FROM:         Martha Foley  
              Office of the Chief of Staff

CC:           Kathleen A. McGinty  
CC:           Elena Kagan  
CC:           Barbara C. Chow

SUBJECT:     RE: timber legislation

Just got your e-mail. Have been buried in veto statements! May try to talk to him generally this evening.

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

16-Dec-1995 04:27pm

TO:           Elena Kagan

FROM:          Dinah Bear  
              Council on Environmental Quality

CC:           Martha Foley  
CC:           T J Glauthier  
CC:           Kathleen A. McGinty

SUBJECT:      RE: telecon w/ kevin kirschner

I'd like to add a couple of things to Elena's memo (as well as thanking her for picking up a rapidly moving ball on a frantic afternoon!):

1. On the policy front, I think that Kevin's second point raises an issue that's worth having people think about to determine if we're satisfied with our approach. This relates to his suggestion for language suspending sales upon passage of the legislation until they come into compliance with env. laws.

Kevin envisions a tremendous rush to harvest if legislation passages. While his particular suggestion for how to treat this period does goes beyond what we have drafted, it raises - at least in my mind - the question of how all of you would want to treat the sales (particularly the non-318 sales) immediately after passage. Would you anticipate immediate termination or suspension of the contracts? If so, is the \$50 mill. adequate to cover costs of those actions? Recall, too, that Hogan has at least 3 more opinions to issue - all of which are highly likely to result in orders to release yet more sales. Depending upon timing, appeals, etc., the numbers could top 1 bill. board feet.

2. Kevin called in at the end of the day with one other additional technical concern, regarding whether the sentence in 2001(1)(k) dealing with the return of the high bid bond could somehow trump some of our new language. I'll talk to DOJ about that.

THE WHITE HOUSE  
WASHINGTON

leave numbers  
to do ~~it~~ The flexibility

out-of-plot

< \$400 p. 1000 bd feet.

support costs \$100 to  
do it

buy back at \$300

profit.

— market price minus cost.

THE WHITE HOUSE  
WASHINGTON

Release  
Award 318 sales

more of these ← suspended then

less of these ← suspended now