

NLWJC- Kagan

Counsel - Box 001 - Folder 005

Timber-memos, emails, etc. [5]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Phone No. (Partial) (1 page)	11/11/1995	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

Timber - memos, emails, etc. [5]

2009-1006-F

ke688

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]

Dicks - Goes far beyond what we thought
Need admin flexibility
Too many limits on replacement timber
Buyout/substitute authority.

Also - not talking abt sales before 1990

Dwyer - Forest Pl will collapse

Hartfield - Intend to veto Interior bill?
(Tuyaux language)

2 are tied.

Finding excuses to show envois were w/ them

All senators want let anything be changed.

Katze - trying to keep faith w/ promise that
we'll mine timber says:

Misspent of Hopewell position - undermines OP line 9 -
gets rid of studs - make subj to expedite ~~free~~ (45 day
release)

9D rule - premised on assumps of 09.

MH) Met w/ JW Thomas - wanted flexibility for FS.
Jud interp not consistent w/ my intent.

- Define K area (?)
 - 50m buyouts - neutral fund
 - determine presence of man? - give discretion to FS.
 - potential future impact on FS
- need for - SUFFICIENCY -

TJ: That's not the issue
It's the definition

→ need
Have you draft language
needs need to clarify this.

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

16-Dec-1995 03:31pm

TO: Martha Foley

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

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

SUBJECT: RE: timber legislation

Martha, I didn't read your email until now, but I'm around for another hour and could be here tomorrow, especially if it's possible to get together. Let me know.

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

15-Dec-1995 08:34pm

TO: Kathleen A. McGinty

FROM: Martha Foley
Office of the Chief of Staff

CC: Elena Kagan
CC: T J Glauthier
CC: Barbara C. Chow

SUBJECT: RE: timber legislation

I agree with a lot of what you said, but with lots of caveats, though. The recon bill could easily blow up (see today's negotiations). Even if it doesn't, they (Congress, especially Repubs.) will be testy about another must-do item being introduced, so we should think carefully about the timing. The Hill also will probably try to leverage us on Interior approps and we need to think that through thoroughly.

Although LEP and Pat are stressed six ways to Sunday right now, I think it would be worth a 15-20 mins meeting with them to discuss.

This weekend???

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

15-Dec-1995 04:30pm

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: RE: timber legislation

Katie:

In keeping with your memo, I'd point out that the legislative package we're now pursuing ("Option 3") was chosen with the specific understanding that it represented what we believed was needed to "fix" the bill and what could win congressional support.

As the six original options were discussed, there was virtually no support for a more narrow approach. To the contrary, in fact. Option 1, full repeal plus tools, was discussed as what we'd seek if Congress didn't accept Option 3.

Tom

Distribution:

TO: Kathleen A. McGinty

CC: Martha Foley
CC: Elena Kagan
CC: T J Glauthier
CC: Barbara C. Chow
CC: Michelle Denton
CC: Shelley N. Fidler
CC: 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

15-Dec-1995 04:12pm

TO: (See Below)

FROM: Kathleen A. McGinty
 Council on Environmental Quality

SUBJECT: timber legislation

i do not think we should send up a formal legislative proposal today. i think we should continue to low key it for the next couple of days til we can get a read as to whether we are going to get anywhere with our proposals.

if we find that the congress genuinely is interested in getting something done, then i think we need to go public with what we are pushing for because we are going to have to explain it and make a case for it. this is especially important because anything short of full repeal will be decried by the enviros. therefore we will have a job to do to reach the general public to persuade them of our case.

if we find that the congress is not willing to deal, then i think we need to go public with that and throw our weight instead behind a full repeal and try to give them a really rough time about this whole deal. we would paint their refusal to deal with us in a less sweeping way as further evidence of their radical agenda and ill intent with regard to timber in general.

one note after our meeting with hatfield: in my mind we cannot go along with his suggestion that we do this next year. we have got to define the reconciliation bill as the vehicle and if they refuse to deal with us in this context, we have got to be prepared to scream. if we fail to do that, there never will be a "moment" when we have acted and it will appear (as it already does to reporters who are calling here) that the president has done nothing to fulfill his commitment to fix this problem.

Distribution:

TO: Martha Foley
TO: Elena Kagan
TO: T J Glauthier
TO: Barbara C. Chow
TO: Michelle Denton
TO: Shelley N. Fidler

EXECUTIVE OFFICE OF THE PRESIDENT

15-Dec-1995 03:04pm

TO: Martha Foley
TO: T J Glauthier
TO: Kathleen A. McGinty
TO: Dinah Bear

FROM: Elena Kagan
Office of the Counsel

SUBJECT: telecon w/ kevin kirschner

Dinah and I just had a fairly rushed conversation with Kevin Kirschner about our draft language. Kirschner had three suggestions that go beyond what we've been trying to do:

1. He thinks we should ask to amend 2001k(3) to provide that alternative volume SHALL count against ASQ. (The provision now says just the opposite.)
2. He thinks we should ask for language suspending any sales released pursuant to 2001 until such sales are brought into compliance with environmental laws.
3. He thinks we should delete 2001(l) entirely. (Our proposal eliminates only the prohibition on changing the Forest Plan to respond to changes made by the rider.) His fear is that 2001(l) may be read to shield the Forest Plan from judicial review even after the "emergency period" comes to a close.

Kirschner said his people also had a suggestion respecting the known to be nesting language, but he hadn't had time to figure out what it was; he said he would call me back on it.

The above three suggestions obviously present issues of policy. If we think, given our conversations with Hatfield, that we can't go beyond our current proposals, we should ignore them.

Kirschner also had two more technical suggestions, which I will immediately discuss with Justice. The first concerns the modification/termination provision and whether it makes sufficiently clear that when a contract authorizes the termination/modification, the contract also provides the measure of damages. The second is whether we should provide for the release of 318 sales (as we've described and defined those sales) that are "currently suspended" or that are "suspended as of 7/27/95."

Council on Environmental Quality

Executive Office of the President

722 Jackson Place, NW

Washington, DC 20503

Phone: (202) 395-7421

Fax: (202) 456-0753

FAX TRANSMISSION COVER SHEET

Date:

12/15/95

To:

Lee ANN Inadomi

Fax:

456-6704

Re:

timber case

Sender:

DINAH BEAR

YOU SHOULD RECEIVE 2 PAGE(S), INCLUDING THIS COVER SHEET.

Per voice mail message
to Elena Kagan's
request

cc: Elena Kagan
456-1647

Appeal from Decision Upholding the President's Northwest Forest Plan: Last week, the Court of Appeals for the Ninth Circuit heard arguments in *Seattle Audubon Society V. Lyons*, in which both some local environmentalists and the industry trade association challenged Judge Dwyer's decision of a year ago upholding the Forest Plan. Justice reports that the questioning regarding the adequacy of alternatives discussed in the environmental impact statement and other issues raised by the environmental seemed to go well, as did the argument regarding the industry's claim that the government improperly brought them into the proceedings before Judge Dwyer.

The most timely issue raised in the case by the Court itself was the issue of how the timber provisions of the Rescissions Act that went into effect this summer affect the adequacy of the Forest Plan. On that issue, we explained that the Plan itself provides an adaptive process for taking account of new circumstances, and that we were beginning to take a look at the effects of the timber sales required by the Rescissions Act. We also explained to the Court the restriction in the Rescission Act on amending the Plan, but noted our position that this only applied until December 31, 1996.

Attorneys for environmental groups have asked the Court for permission to provide supplemental briefs on the effects of the Rescissions Act. The Court said it would take those requests under advisement, and has not yet issued a ruling on them. The Court gave no indication of how quickly it might rule on the merits.

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

14-Dec-1995 03:49pm

TO: Elena Kagan

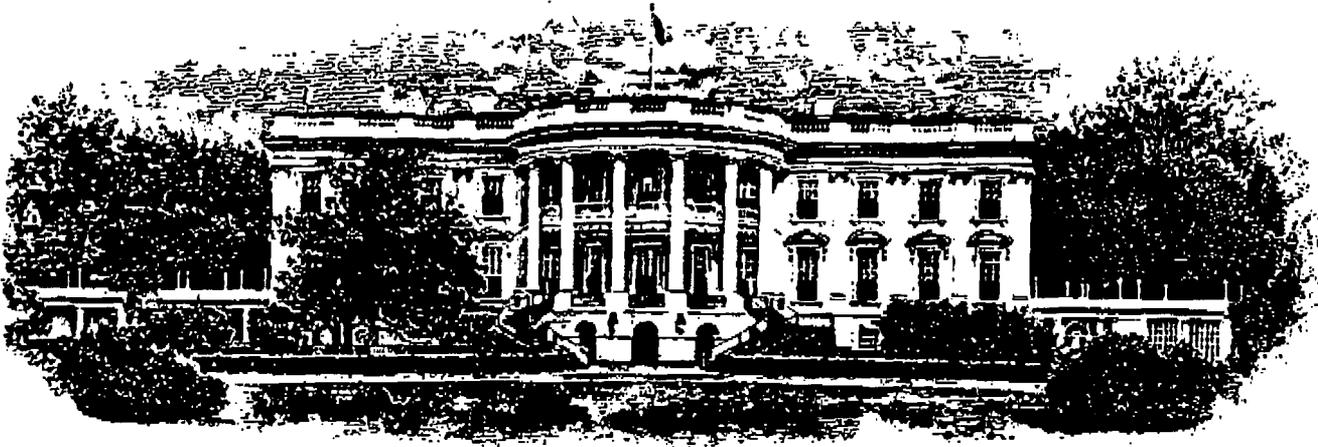
FROM: Shelley N. Fidler
 Council on Environmental Quality

SUBJECT: Jack

Boy, I'm never going to send compliments about someone if I think they'll read them.

I didn't mind his e mail at all. He used to do the same for us. That's one of the reasons we miss him.

But you're right. Martha should think about WH Counsel more as a resource, particularly in this kind of case. I plan to say the same to her and don't mind at all that you're concerned. You're right.



THE WHITE HOUSE
OFFICE OF CABINET AFFAIRS
Room 160 OEOB
Washington D.C. 20050
Tel. 202-456-2572
Fax. 202-456-6704

Fax Cover Sheet

DATE: 12/14

TO: Elena Kagan

PHONE: _____

FAX: _____

FROM: LeeAnn Madoni

No. OF PAGES: 3
(Including Cover Sheet)

PRIORITY: Y N

MESSAGE: Thank you for your help. Please

get us the memo and we will include in our

package. Call me with any questions.

103 SE
5-95

- **World Trade Appointment to Dispute Settlement Appellate Body:** Ambassador Kantor welcomed the World Trade Organization's appointment of the initial seven members of the WTO's Dispute Settlement Appellate Body. One of the seven members of the Appellate Body is former Congressman James Bacchus of Florida. Under the Dispute Settlement Understanding negotiated in the Uruguay Round, the Appellate Body is responsible for hearing appeals relating to issues of law covered in dispute settlement panel reports and legal interpretations developed by the panel in question.
- **European Union Agreement:** Ambassador Kantor announced that agreements have been reached with the European Union on EU enlargement compensation and EU gran import policies. The agreements create major new trade opportunities for U.S. exports to Europe.
- **China's Telecom Sector:** Ambassador Kantor met with Chinese Minister of Posts and Telecommunications Wu Jichuan to discuss the importance of opening China's value-added telecom sector as part of China's WTO accession package.

SMALL BUSINESS ADMINISTRATION

- **Conference on Small Business Recommendations:** SBA will host a National Legislative Conference on Small Business from December 6 - 8 to inform state legislators and their staffs of the progress the WH Conference on Small Business recommendations have made.
- **Administrator's Upcoming Activities:** On December 6, the Administrator will address the SBA Office of Advocacy's National Legislative Conference on Small Business and discuss the Administration's implementation of the White House Conference on Small Business recommendations. He will meet with several hundred SBA lenders in the Southern California area then present a check to a local company as one of the first participants in the SBA and DOD Defense Loan and Training Assistance program. On December 7, he will visit the Los Angeles District Office then present another DELTA check to a company in the LA area.

DEPARTMENT OF JUSTICE

- **NVRA Upheld:** On November 20, 1995, the court found the National Voter's Registration Act (NVRA) constitutional in *Condon v. Reno*, (D.S.C.). The court denied South Carolina's motion for preliminary injunction, declared the NVRA constitutional, enjoined South Carolina from refusing to comply with the NVRA, ordered "forthwith" implementation, and required South Carolina to file within thirty days a proposal for full implementation.

Ninth Circuit Oral Argument In Environmentalist's And Industry's Appeal From Decision Upholding The President's Northwest Forest Plan Scheduled For December 4, 1995: In *Seattle Audubon Society v. Lyons* (9th Cir.), environmentalists raise three issues: (1) whether the Plan complies with the Forest Service's wildlife viability regulation under the National Forest Management Act (NFMA); (2) whether the final Environmental Impact Statement (EIS) considered a "no-harvest" alternative; and (3) whether the agencies' assumptions regarding regulation of harvest on private lands has been fatally undercut. The

Urb
Rising
Kantor
Kantor
61647

timber industry raises two issues: (1) whether the agencies need specific statutory authorization to file cross-claims for declaratory relief against an industry group that was already a party; and (2) whether declaratory relief is appropriate in light of the fact that the issues were pending in the D.C. district court. The court has specifically asked counsel to address the impact of the Rescissions Act on the President's Forest Plan.

- **Supreme Court To Hear Argument In Voting Rights Act Cases:** On December 5, 1995, the Supreme Court will hear oral argument in *Shaw v. Hunt*, (S. Ct.). On remand by the Supreme Court (*Shaw v. Reno*), the three-judge district court sustained North Carolina's First and Twelfth Congressional Districts (the two "majority-minority" districts) in the face of the claim that they represented unjustified racial gerrymanders. The Deputy Solicitor General will argue that the district court's judgment should be affirmed.
- **The Supreme Court to Hear Oral Argument in *United States v. Vera*:** This case is a challenge, to the State of Texas's 1991 congressional redistricting plan. The three-judge district court held that three districts in the plan -- majority-black districts in Dallas and Harris Counties, and a majority-Hispanic district in Harris County -- separated voters into different districts on the basis of race without sufficient justification under *Shaw v. Reno*. The Deputy Solicitor General will argue that the district court applied an erroneous legal standard in its narrow tailoring analysis. In particular, the Deputy Solicitor General will argue that reasonably compact majority-minority districts could have been drawn in Dallas and Harris Counties, and that the State chose not to draw those districts -- and chose instead to depart from its traditional compactness principles by drawing the districts at issue -- because of the desire to serve its legitimate interest in protecting incumbents.
- **Senate to Consider Flag Burning and Partial-birth Abortion Measures:** The flag burning amendment and the partial-birth abortion ban measure may come up on the Senate floor this week.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- **Nation of Islam Security Issue:** On November 9th, HUD called for the immediate termination of the Nation of Islam Security Agency's (NOISA) contract with the Housing Authority of Baltimore (HABC) due to the housing agency's violation of federal procurement regulations during the contract's bidding process. Last week, NOISA filed a complaint with a federal court in Maryland in an attempt to reverse HUD's decision. NOISA requested the Court to grant a temporary restraining order on HUD and the HABC to block the federal and local agency from terminating their security contract. HUD is currently awaiting a hearing date and the Federal court's decision on the complaint. Secretary Cisneros was interviewed by NBC's *Dateline* on this matter. The *Dateline* story is expected to air next Tuesday, December 5th.
- **Dedication of Memorial for Oklahoma City Survivors:** On Sunday, December 10, Secretary Cisneros will be in Oklahoma City to participate in a private memorial service for the Department's survivors and families of the victims of the April bombing. The private service will include plaque presentations to the families who lost loved ones in the tragedy and the dedication of a memorial tree.

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

14-Dec-1995 10:13am

TO: Jack M. Quinn

FROM: Shelley N. Fidler
Council on Environmental Quality

SUBJECT: Elena

We love and are extremely impressed with Elena. That mtg was not ours - Martha did the inviting and wouldn't allow my substance person to come. It wasn't much of a problem because it was politics. Sorry if we didn't effectively brief Elena afterwards - we will get her and keep her in the loop to the max. She's great!

Byt the way - she was somewhat mistaken whehn she said Dicks didn't buy "known to be nesting" He just said it would be a hard sell. I told him that we'd have a better shot if he'd sell it with us.

Miss you.

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

12-Dec-1995 07:08pm

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: NW FORESTS II: WA rep proposes fed buyback of timber sales.

NW FORESTS II: WA REP PROPOSES FED BUYBACK OF TIMBER SALES

Rep. Norm Dicks (D-WA) and the Clinton admin. are trying to find \$50 million in the federal budget to buy back some old-growth timber the admin. sold to private firms for logging. With that much money, it might be possible to spare up to one-third of the ancient trees scheduled for harvest, Dicks said on 12/8.

Dicks has also asked the US Forest Service to find stands of second-growth trees that could be swapped for the old-growth. Although he voted for the FY '95 budget recisions package that included the salvage-logging rider, Dicks said he has enviro concerns about some of the sales that have resulted from it.

Northwest Forestry Assn.'s Mike Beard said it's in the best interest of the timber industry to treat the environment well, but "he wasn't keen on the idea of buybacks" (AP/Medford [OR] MAIL TRIBUNE, 12/11).

(c) The American Political Network, Inc.

Distribution:

TO: Martha Foley
TO: T J Glauthier
TO: Barbara C. Chow
TO: Brian J. Johnson
TO: Elena Kagan
TO: Jennifer M. O'Connor
TO: Ron Cogswell
TO: Mark A. Weatherly

CC: Kathleen A. McGinty

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

12-Dec-1995 09:47am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: LOGGING RIDER DOES NOT CONSTITUTE FAILURE TO ENFORCE LAWS,

LOGGING RIDER DOES NOT CONSTITUTE FAILURE TO ENFORCE LAWS, COMMISSION
A law that allows "salvage" logging in national forests does not constitute a failure to enforce U.S. environmental laws, the North American Free Trade Agreement's environment commission announced Dec. 11 (Commission for Environmental Cooperation -- Secretariat, Submission I.D. SEM-95-002, opinion letter 12/8/95).
The Commission on Environmental Cooperation, formed under a supplemental agreement to NAFTA, rejected a petition by more than 25 environmental groups concerning a rider in the fiscal 1995 rescissions package. That provision suspended enforcement of environmental laws to allow for "salvage" logging of diseased trees and logging in old growth forest through Dec. 31, 1996. President Clinton signed that legislation into law (PL 104-49) on July 27.
In their petition, the environmentalists argued that the rescission package rider prohibited enforcement of existing U.S. laws. Under that NAFTA side deal, the commission is empowered to investigate complaints that the United States, Canada, or Mexico failed to enforce their domestic environmental laws. Countries found in violation can face trade sanctions or fines.
New Legal Regime
In an opinion letter dated Dec. 8, CEC Executive Director Victor Lichtinger wrote, "The submission focuses on a later-enacted law that impacts on the implementation of an existing environmental law without directly amending or repealing it."
A new legal regime, it said, does not constitute a failure to enforce an old one.
The opinion letter said CEC found neither dereliction of duty nor other failure to enforce environmental laws on the part of the United States. The decision marks the second time the CEC, which began accepting petitions in July, has rejected a request for it to take action under Article 14 of the NAFTA environmental side agreement. Article 14 addresses a NAFTA country's failure to enforce domestic environmental laws through acts or omissions of the agencies charged with enforcing these statutes.
CEC noted that Article 14 does not address the operations of new laws enacted by elected officials.
A Sept. 25 opinion letter from CEC turned down a petition claiming that the United States failed to enforce the Endangered Species Act because of language

in a 1995 supplemental appropriation for the military. That law contained a provision that suspended listing of threatened and endangered species and designations of critical habitat under the ESA.

In the Dec. 8 opinion letter, Lichtinger wrote, "Where the new law explicitly exempts, modifies, or waives provisions of an earlier law, the later-enacted law will prevail."

The CEC secretariat -- its bureaucracy -- considers that only agencies and officials charged with enforcing environmental laws can fail to enforce, it continued. Charges of failure to enforce cannot apply to Congress or the U.S. president acting collectively to enact statutes, the latest opinion letter said.

Opinion Called 'Formalistic'

Patti Goldman, attorney for the Sierra Club Legal Defense Fund in Seattle and lead counsel for the environmentalists' logging rider petition, told BNA concerning the opinion, "They're missing the forest for the trees."

The CEC opinion is "formalistic" and is missing the overarching issue -- restricting environmental enforcement for short-term economic gains, said Goldman. She charged that the logging rider "short-circuits environmental laws for trade advantages."

In their petition, the environmental groups also took issue with a provision in the rider that limits administrative and judicial review of agency actions. They argued that this provision suspends citizen enforcement of federal environmental laws in violation of articles 5 and 6 of the NAFTA supplemental pact.

Article 5 says each NAFTA nation must ensure that judicial or administrative enforcement proceedings are available to remedy violations of domestic environmental laws and regulations. Article 6 requires each NAFTA partner to ensure that people with a legally recognized interest in a particular environmental matter are allowed to seek administrative or judicial remedies -- including sanctions or injunctions.

The opinion letter said, "Essentially, the submission is prospective in nature, alleging anticipated but unrealized enforcement consequences." It continued, "In the absence of a factual basis supporting the assertion that the United States is failing to effectively enforce, the secretariat is not provided with sufficient information to allow it review the submission."

Commission Report Possible

Goldman noted that CEC has not yet ruled on a related request in the the environmentalists' petition.

In addition to their allegations related to enforcement, the groups asked the CEC secretariat to prepare a report under Article 13 of the NAFTA side deal regarding the rider's limitations on administrative and judicial relief. Article 13 allows the secretariat to prepare a report for the CEC council -- composed of the top environmental officials of Canada, Mexico, and the United States -- on any ecological matter related to cooperation among the three nations.

Goldman said the CEC secretariat may wish to examine broadly the issue of deregulation and elimination of citizen environmental enforcement in all the NAFTA countries -- rather than just in the context of the U.S. logging rider. The opinion letter said the CEC would consider the request for an Article 13 report in a separate ruling.

Rachel Vincent, spokeswoman for the CEC, told BNA that the commission has responded to all three of the petitions it has received thus far.

CEC prepared an Article 13 report, as sought in the first petition filed with the commission, that concluded that botulism rather than industrial waste

discharges killed thousands of birds at an artificial lake in Mexico in December 1994. The second petition to CEC addressed the suspended listing of threatened and endangered species and designations of critical habitat under the ESA.

Among those submitting the third petition about the logging rider were the Sierra Club Legal Defense Fund, Friends of the Earth, the National Audubon Society, the Natural Resources Defense Council, the Pacific Rivers Council, and the Wilderness Society. In addition, a Canadian group and two Mexican organizations were parties to the petition.

-- By Cheryl Hogue

Job Safety

Distribution:

TO: Kathleen A. McGinty
TO: Shelley N. Fidler
TO: Brian J. Johnson
TO: Dinah Bear
TO: T J Glauthier
TO: Elena Kagan
TO: Jennifer M. O'Connor
TO: Martha Foley
TO: Mark A. Weatherly
TO: Ruth D. Saunders
TO: Christine L. Nolin

Timber Meeting

(1/2 hr late)

12/13/95

1. Communications - greater need for coordinated msg.

2. Litigation

a. Thundersoft - we were

review very limited - ltr to record

FS - actions perfectly approp in record.

Secy doesn't have to review all personally.

But - another Th. case still out there.

b. Next week - decision of (2) NFRC.

Have to report more sales - in line w/ Hogan's ruling - ?

Decide soon.

Hearing today - 1:30

↓
Timber at 10:30

(bad weather)

bad result - stay / rule & appeal
good result - look for rep timber.

If win on maneuver -
what to do?

what to tell Hogan re
replacement timber -

whether we have

whether we're looking etc.

(contempt problem on Lyne?)

3. Salvage

A. Forest Service

2 wks ago - testimony

performed beyond expectations - fulfilled commitment

generally no probs in implementing MORA.

B. BLM

Also - happy story on MORA

~~Not close to 96 commitment~~

Not come close to 96 commitment 65/115

Volume isn't there - in terms of sales

Meet commitment in terms of offer (probably)

Projections will come down.

Summit from Alaska

NMFS

Potential conflicts - Panther Creek / South Fork / Grandbar

FS: — 99% - no or informal
consultation
1% - formal

FWI-

Processing lots that don't have an effect at all.

Salvage success
ESA success
Reinventing FWI success

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-Dec-1995 06:35pm

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Meeting Reminder

The EOP/Agency timber working group will meet as regularly scheduled tomorrow, Tuesday, December 12th, at 2:00 p.m. at the CEQ conference room (722 Jackson Place).

As agreed at last week's meeting, the agenda will include only two items:

1. Recent events update - chair
2. Salvage program implementation review - chair

All representatives should come fully prepared to discuss your agency's views of the Administration's progress in implementing the salvage MOU and related activities.

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

cc
 →
 EOP NRD→
 61647
 ben kagan
 Jai
 [Signature]

December 6, 1995

The Honorable William Jefferson Clinton
 President of the United States
 The White House
 Washington, D.C. 20500

Dear President Clinton:

We understand that you are negotiating to obtain legislative modification of the "logging without laws" rider included in the 1995 budget rescissions act. The undersigned organizations urge you in the strongest terms not to simply modify some portion of the rider but to promptly pursue and obtain its complete repeal.

As you know, this logging rider is causing severe environmental damage to both the ancient forests of the Pacific Northwest which you have vowed to protect and to healthy federal forests across the country. Recent court rulings have revived long abandoned timber sales and forced other timber sales to move forward that would never have proceeded if our environmental laws were in place. The rider has truly become a mandate for logging without laws.

Only a straightforward repeal of all of the provisions of the rider holds any hope for returning the forests of the Northwest and the rest of the country to legally responsible and scientifically credible management.

There are at least three compelling reasons for seeking such a repeal immediately rather than negotiating for modification of the rider:

- o Your administration has indicated that Congress misled the White House about the scope and impact of the rider on Northwest ancient forests. Similar deceptions are embedded in every other provision of the rider and the damage they will cause the forests is only beginning to emerge. For example, in Idaho, salvage of the Thunderbolt timber sale is proceeding despite the uniform objections of federal scientists and the absence of any forest health benefits.
- o Your administration has said from the beginning that it opposed the rider. By negotiating for modification of this outrageous legislation, rather than repeal, you effectively endorse the provisions of the rider you do not change. Such an endorsement is at odds with your commitment to uphold the environmental laws and protect our national forests for all Americans.
- o The logging rider has re-opened old wounds, turned back the clock to the clearcutting practiced by prior administrations, and sharply escalated the conflict over forest management. A center piece of your environmental agenda has been to remedy each of these problems. Repeal of the rider will advance this agenda, modification will destroy it.

President Bill Clinton
December 5, 1995

Americans across the country have made it clear that the logging rider is unacceptable and should not be guiding management of our public forests. The rider is causing political and ecological chaos in the Pacific Northwest and other regions of the country. Your administration is losing credibility as healthy ancient forests fall, streams are destroyed, and fish runs are decimated - all because of the logging without laws rider.

Perhaps most importantly for your administration, the timber being logged under the rider seriously undermines your Northwest Forest Plan and the Habitat Conservation Plans that have been, or are being, written for private and state timber lands in the region.

It is in the best interest of our forests and the nation that our environmental and forest protection laws be restored. You have an opportunity to pursue this goal now. A partial legislative modification of the rider will not accomplish this goal and will not have the support of the environmental community in the Pacific Northwest or elsewhere.

Only a complete repeal of the logging rider will restore the law and protect our national forests. Therefore, we urge you to stand strong for a complete repeal of the rider and accept nothing less.

Sincerely,

David J. Watkins
20/20 Vision California

Betsy Hibbits
Agrarian Effort

Dan Funsch
Alliance for the Wild Rockies

Charles Little
Ancient Forest Subcommittee of
the Bay Area Sierra Club

Tim Ingalsbee
Cascadia Fire Ecology Education
Project

Marion Hourdequin
Citizens Against Lawless
Logging

Joseph Bower
Citizens for Better Forestry

David Pyles
Coalition for Social Justice

Charlie Ogle
Constitutional Law Foundation

Neeru Paharia
Davis Student Co-op

Susan Prince
Eastside Protection Project

President Bill Clinton
December 5, 1995

Cecilia Lanman
Environmental Protection
Information Center

Gerry Leape
Greenpeace

Julie Norman
Headwaters

Karen Rosaman
Headwaters Forest Coordinating
Committee

Ric Bailey
Hells Canyon Preservation
Council

John McCarthy
Idaho Conservation League

Dennis Baird
Idaho Environmental Council

Mark Solomon
Inland Empire Public Lands
Council

Jim Britell
Kalmiopsis Audubon Society

Tim Coleman
Kettle Range Conservation
Group

Felice Pace
Klamath Forest Alliance

David West
Labor Coalition for
Environmental Responsibility

Arthur Farley
Lane County Audubon Society

Michael Evenson
Mattole Salmon Group

Betty and Gary Ball
Mendocino Environmental
Center

Don Morris
Mendocino Forest Watch

Susan Crampton
Methow Forest Watch

Rick Brown
National Wildlife Federation

Dan Ritzman
North Alaska Environmental
Center

Connie Stewart
Northcoast Environmental
Center

Mitch Friedman
Northwest Ecosystem Alliance

Mark Hubbard
Oregon Natural Resources
Council

Suzanne Pardee
Pacific Crest Biodiversity Project

Cyndi Deacon Williams
Pacific Rivers Council

John Stuart
Pend Oreille Environment Team

President Bill Clinton
December 5, 1995

Bonnie Phillips-Howard
Pilchuck Audubon Society

Paul Ketcham
Portland Audubon Society

Alex Bradley
Quilcene Ancient Forest
Coalition

Carl Ross
Save America's Forests

James Montelth
Save the West

Dr. Robert Schaeffer
Save Ancient Forest Ecology

Linda Modica
Sierra Club

Kevin Kirchner
Sierra Club Legal Defense Fund

Laurel Ames
Sierra Nevada Alliance

Hans Rilling
Siakiyou Audubon Society

Steve Marsden
Siakiyou Regional Education
Project

Susan Hunt
Soda Mountain Wilderness
Council

Kathy McDeed
South Carolina Forest Watch

Noah Najarian
Sunwise Co-op

Ned Daly
Taxpayer Assets Project

Timothy Bechtold
The Ecology Center

Bob Freimark
The Wilderness Society

Anna Aurilio
U.S. Public Research Interest
Group

Diana Wales
Conservation Committee
Umpqua Valley Audubon

Jim Ince
Umpqua Watersheds, Inc.

Gail Coyer
Upper Peninsula Environmental
Coalition

Jim Jontz
Western Ancient Forest
Campaign

Dave Willis
Wild Hope

David and Ellen Drell
Wilets Environmental Center

Catherine Lucas
Witness Against Lawless
Logging

President Bill Clinton
December 5, 1995

Angelo Kapparella
Illinois State University
Normal, Illinois

Donald Barnhart (U.S. citizen)
United Kingdom

Vern Cornell
Carbondale, Illinois

Bob Kummer
Seattle, Washington

John Leach
Portland, Oregon

Mark Robinowitz
Washington, D.C.

Dan Rosenberg
Point Reyes Station, California

Samual Rushforth
Aquatic Biologist

Paul Spitalny

EXECUTIVE OFFICE OF THE PRESIDENT

11-Dec-1995 03:19pm

TO: Elena Kagan

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

SUBJECT: RE: timber rider language

I just faxed over the revised legislation. Let me know if LRD missed any of your proposed changes. As far as status, I will forward to you a report from Katie McGinty. Also, Congresswoman Furse introduced a bill last week to repeal the entire rider. Also FYI, in case you haven't rec'd a copy, over 50 enviro groups signed a letter to the POTUS requesting repeal rather than modification of the rider.

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

08-Dec-1995 11:54am

TO: Martha Foley

FROM: Elena Kagan
 Office of the Counsel

CC: T J Glauthier

CC: Jennifer M. O'Connor

SUBJECT: RE: 9th circuit argument on forest plan

My best guess is that Rutzick didn't address the issue of how the rescissions act affects the forest plan because he didn't want this panel to decide it -- because this panel is much more likely to come down on our side than on his. Rutzick's worst nightmare would be for this panel (1) to issue a decision on the effects of the rescissions act in line with our views; and (2) having done so, to try to declare itself the "rescissions act" panel for purposes of future appeals on the meaning of the statute. Better, from Rutzick's point of view, to act as if the Forest Plan case has nothing to do with the rescissions act, so that this panel will not say anything about the act's meaning.

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

08-Dec-1995 10:20am

TO: Elena Kagan

FROM: Martha Foley
 Office of the Chief of Staff

CC: T J Glauthier
CC: Jennifer M. O'Connor

SUBJECT: RE: 9th circuit argument on forest plan

This was re your memo from some time ago -- what do you make of Rutzick's (sp?) silence?

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

08-Dec-1995 08:51am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: This is what I meant to send earlier. Sorry -CANADA LUMBER

U.S. SETS DEADLINE OF DEC. 15 FOR PROGRESS IN CANADA LUMBER TALKS
U.S. Trade Representative Mickey Kantor said Dec. 7 that the Clinton administration has set a deadline of Dec. 15 for making "some decisions" in talks now under way to resolve the U.S. dispute with Canada over softwood lumber.

Kantor said that U.S. officials had met representatives of the Canadian province of British Columbia late last month to discuss the issue and had rejected a proposal for settling the dispute, which centers on U.S. industry charges that Canadian exporters engage in unfair trade practices.

"They put what they considered to be a comprehensive proposal on the table," he said. "It fell far short of what we need to do."

Industry sources in Canada said Dec. 5 that the representatives from British Columbia had suggested in the meeting, held in Chicago, raising stumpage fees and reducing timber allocations as a means of resolving the dispute.

Kantor said that the two sides have scheduled a number of additional meetings between now and Dec. 15.

"We'll try to make progress and move toward an effective agreement," he said. "If we don't have one on the 15th, we'll certainly have to recess and make some decisions as to where we go at that time."

Kantor said that the fact that the Canadian provinces have jurisdiction over the timber issue has "complicated" the discussions.

The U.S. softwood industry has threatened to file a countervailing duty complaint with the U.S. government.

-- By Gary G. Yerkey
International Trade

Distribution:

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

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

08-Dec-1995 06:39am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: NYT Article

Tom,

I hope things are going well out there.

I know you're travelling, but wanted to share some reactions to the NY Times article on rescissions act logging in which you are quoted.

It struck me that your reassuring remarks are somewhat at odds with the message being sent by the President and his senior folks. This is not a good situation.

I know you feel strongly that the Forest Plan has the resilience to withstand the impacts of some or all of the unanticipated old-growth logging. You may be right and I hope you are. I appreciate the fact that you do not want to contribute to a crisis atmosphere or engage in the kind of hyperbole favored by many people involved in this issue.

Nonetheless, it is important for all of us that we send a consistent message. It's probably just a matter of emphasis, or perhaps the consequence of unhelpful editing by the Times, but your remarks could be taken as disagreeing with the President. I know you don't, but one could easily get a different impression from the article.

It makes sense to me that, as you and Clarence discuss the issue, you should emphasise the President's views. His statement from late October is a good script to follow and I'll get you a copy if you don't have one already.

If you want to express your confidence in the resilience of the Forest Plan (a very sound point, after all), it might work well to say something like "We're all very concerned that the Forest Plan remain in effect. If it doesn't, there is a good chance that the region will return to gridlock. That doesn't help anyone. It is a strong plan, with lots of room for adaptation to change, but the

scale and impacts of the old-growth logging allowed under the court's interpretation of the rescissions act create an immense challenge. We know that attorneys for some timber interests believe that the rescissions act overrides the standards and guidelines in the Forest Plan and, if a court upholds that view, we'll have a real problem on our hands."

Give me a ring when you get back to town.

Distribution:

TO: Remote Addressee

CC: Kathleen A. McGinty

CC: Shelley N. Fidler

CC: Dinah Bear

CC: Brian J. Johnson

CC: Elena Kagan

EXECUTIVE OFFICE OF THE PRESIDENT

07-Dec-1995 07:22pm

TO: (See Below)

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: Furst legislation was introduced today

contrary to the earlier message, apparently Furse did introduce a bill today to completely repeal the timber salvage rider. She has 31 co-sponsors; don't have list yet; 28 are Ds, 3Rs.

Distribution:

TO: Kathleen A. McGinty
TO: Shelley N. Fidler
TO: Michelle Denton
TO: T J Glauthier
TO: Christine L. Nolin
TO: Elena Kagan
TO: Martha Foley
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

08-Dec-1995 05:48am

TO: (See Below)

FROM: Thomas C. Jensen
Council on Environmental Quality

SUBJECT: RE: Furse legislation was introduced today

The Furse legislation is both a problem and a help to us.

On the one hand, with some of the most vocal and highly mobilized elements of the environmental community, it will become the benchmark for "fixing" the rescissions act. Anything we do will be compared and contrasted with the Furse approach. We fall short (in their eyes), and will be criticized. We will be pushed hard to explain why it is we're not seeking repeal of the salvage provisions, too. Even if we win repeal of the green timber provisions, controversial salvage sales will keep popping up around the country for months (years?) to come, and many of them will trigger "Clinton could have fixed this one, but chose not to" types of criticism.

On the other hand, her bill may help build momentum for a "fix" and could push some tacitly or actively pro-timber members toward a compromise containing our highest priority elements.

In light of these considerations, it will be very important to maintain steady communications with Cong. Furse and folks in the environmental community. They need to understand what we're seeking and why. Our approach is rational and, in contrast to Elizabeth's, has a chance of success. While some in the enviro camp will criticize us whatever we do, others are more reasonable and will respond well to a success on our terms. Let's prepare them to cheer us for meeting our goal, rather than criticizing us for failing to meet Elizabeth's.

Distribution:

TO: Dinah Bear

CC: Kathleen A. McGinty
CC: Shelley N. Fidler
CC: Michelle Denton
CC: T J Glauthier

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

08-Dec-1995 08:52am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: FURSE OFFERS BILL TO REPEAL TIMBER SALVAGE RIDER IN RESCISSI

FURSE OFFERS BILL TO REPEAL TIMBER SALVAGE RIDER IN RESCISSIONS ACT
Rep. Elizabeth Furse (D-Ore) introduced a bill (number not yet available)
Dec. 7 that would repeal a provision included in the Rescissions Act of 1995
(PL 104-19) that directed the Forest Service to sell an unspecified amount of
damaged timber in the Northwest.
Furse said in a Dec. 7 statement that "Congress was misled when it
approved the rider."
She said that although members of Congress were told that the provision was
an emergency measure to remove dead and dying trees, it is being used to:
o Clearcut healthy forests, some as old as 500 years;
o Subsidize "bargain basement logging of our national forests by
special timber interests;" and
o Damage property rights of private timberland owners by driving down
timber prices.
She said the provision also has allowed clearcutting of timber on steep
slopes next to streams in forests that provide habitat for salmon, marbled
murrelets, and other types of rare wildlife.
In addition, she said one section of the rider led to a court ruling that
compelled federal land management agencies in Oregon and Washington to release
a number of sales of green timber (Northwest Forest Resources Council v.
Glickman, DC Oregon, No. 95-6244-HO, 9/13/95).
The Pacific Rivers Council Dec. 7 issued a statement praising Furse's bill
to end what the group called "lawless logging."
Monetary Policy

Distribution:

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

EXECUTIVE OFFICE OF THE PRESIDENT

07-Dec-1995 07:01pm

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

FROM: Elena Kagan
Office of the Counsel

SUBJECT: Judge Hogan's latest

Judge Hogan issued another decision yesterday on the scope of 2001k, ruling that two sales awarded under the President's Forest Plan fall within the section's scope. Hogan's ruling does not require us to do anything we do not wish to do in this case: it does not order us to release any timber sales we would prefer to withhold. If followed in future cases, however, the ruling MAY force us to release such timber sales. We need to conduct factual investigation to determine the existence and magnitude of this danger.

The decision came in a case brought by environmental plaintiffs against the Forest Service, challenging the legality of two sales awarded under the Forest Plan prior to the enactment of the rescissions act. (The enviros also challenged two other sales, but these are irrelevant to the key aspect of Hogan's decision.) Timber companies intervened on the Forest Service's side. The Forest Service argued that the plaintiffs had a right to bring suit, but that the sales should be upheld because not arbitrary and capricious. The timber companies argued that the plaintiffs did not even have a right to contest the sales, because they fell within the scope of section 2001k and thus were immunized from legal challenge.

Hogan agreed with the timber companies, using reasoning that is by now familiar. He said these sales were within the geographical area subject to 318 and were awarded prior to enactment of the rescissions act: hence, they fell within 2001k. Under that section, the Forest Service was required to release the sales, and the plaintiffs could not challenge them.

In this case, all Hogan's ruling does is to shield a sale we wanted to make from environmental challenge. The ruling, if followed, will work similarly in any case in which a plaintiff is challenging a sale awarded under the Forest Plan. Effectively, Hogan's decision, if followed in other cases, makes the sales we award under the Forest Plan non-judicially reviewable. That's not something for us to get terribly upset about.

DOJ believes that the principal danger of the ruling relates to any sales that were offered in one form, but subsequently modified to comply with the standards of the Forest Plan. The implication of Hogan's ruling may be that, under 2001k, the Administration must release these sales in accordance with their original terms. We currently do not know whether such sales exist or, if they do, how much timber they involve. DOJ can work with the Forest Service to discover this information. A secondary concern is that the ruling, if followed, may prevent the Secretary from now modifying any sales offered or

awarded under the Forest Plan. And of course, industry lawyers may try to make further creative use of the decision in ways that cannot now be predicted. (The ruling also suggests what Hogan is likely to do next week regarding previously enjoined sales and pre-FY 91 sales; he seems to be consistently taking the position that everything under the sun falls under section 2001k.)

We won the case and thus cannot appeal Hogan's decision. But the environmental plaintiffs have told the Justice Department that they will appeal. When they do so, we will take the same position we took below: (1) that the sales do not fall within 2001k and hence are judicially reviewable, but (2) that the sales ought to be upheld.

Poss interps of Hogan's recent order:

1. Shield apt enviros

Makes unreviewable all sales under FP

Then - AOK with us.

Not forcing us to release anything we would not have

2. Sword used by industry

Allows timber cos. to demand sales as originally offered,
rather than as offered under the str of the FP.

So If reconfigured under FP (to comply w/ FP) - new industry
can come back + ask for orig. sale.

How much is there like this? Don't know

So would us to release sth we do NOT
want to.

Also means have to list all these
in compliance reports to Dwyer.

Is there anything here to appeal?

Can we appeal it, given that we are the
beneficiaries of the ruling?

Will the enviros appeal?

Can we then intervene?

We've been told

BTTS

Going to appeal -

We'll replicate our papers below
25016 - does not apply!

but BTTS not entitled to relief
(dec. not a+c)

Dinah Bear -

Issue: 2001(d) sales incl. sales offered ^{under Forest Plan} prior to RA.

Enviro TTS (ONRC) sued - alleging vials of env laws.

Ind intervened: These sales now u. rider - exempt from JR.

We said: They're NOT -

bec. Rider does NOT trump Forest plan.

DOJ did chart - 375/16.

2001(d) + (1)

Actual

Result - no JR of these sales - FP sales under pre-rider.

Implication - if all sales u. FP now fall u. rider - This supports notice that r. replaces FP - don't have auth to follow stds/guidelines of FP. Legal reasoning - FP sales comes under rider.

quantity of sales ↑.

These are sales would have released anyway.

But now - no one can bring suit to make sure we've done things rt.

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

07-Dec-1995 09:24am

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

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: Latest Hogan rule brings Forest Plan sales under timber ride

Hogan ruled yesterday on a group of sales, including 2 sales that were offered under the President's Forest Plan and were not, in our view, Section 318 sales in any way. We took the position that these sales were not any in way under the Rescissions Act and that plaintiffs were free to bring suit under the normal environmental laws (while arguing that we had complied with those laws). This is the issue that stimulated the DOJ chart showing that Hatfield had said in legislative history that 375 million board feet were at issue in this bill and that if Hogan bought the industry's interpretation, 1.0880 billion board feet would come under the bill.

Since Hogan has now ruled that all Forest Plan sales come under the Rescissions Act, DOJ now believes we must include all of those sales in the next compliance report which, to quote, Ellen, will include an unbelievably large quantum leap in the number of sales and go over one billion board feet. The disparity in these numbers will be a key feature of our appeals brief.

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

07-Dec-1995 05:16pm

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: Furse announces timber rider legislation

Rep. Furse announced plans today to introduce legislation to repeal the entire timber rider. According to press reports, she is trying to get DeFazio, Pat Williams, Wyden, and much of the Claif. Democratic delegation as co-sponsors, while enviros are asking moderate Rs. to co-sponsor. We're not sure at this point precisely when the legislation will be introduced, but it seems certain to include repeal of both the salvage and green timber sides of the bill.

Distribution:

TO: Kathleen A. McGinty
TO: Shelley N. Fidler
TO: Michelle Denton
TO: T J Glauthier
TO: Christine L. Nolin
TO: Elena Kagan
TO: Martha Foley
TO: Jennifer M. O'Connor

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

06-Dec-1995 06:01pm

TO: T J Glauthier

FROM: Elena Kagan
 Office of the Counsel

CC: Martha Foley
CC: Jennifer M. O'Connor

SUBJECT: RE: 9th circuit argument on forest plan

In response to TJ's questions:

1. We don't know when the Ninth Circuit will issue a decision in the Forest Plan case. The briefing was done on an expedited basis, so presumably the Ninth Circuit panel will make an effort to decide the case as quickly as possible. But there's no real way to predict when the decision will come down: d-day may be many months away. There's one new complication on this front. After the appellate argument, the Sierra Club Legal Defense Fund filed a motion for leave to file a brief concerning the effect of the rescissions act on the Forest Plan. The motion stated that the rescissions act "may directly implicate these appeals by requiring the government to proceed with timber sales that conflict with the standards and guidelines of the ROD and fundamentally alter the bases for the district court's ruling [upholding the Forest Plan]." The Ninth Circuit has not yet decided whether to grant the motion.
2. We also don't know when Hogan will decide the murrelet issue. I've heard lots of different theories about why we've waited so long for this. (A) Hogan is genuinely conflicted about the issue. (B) Hogan is waiting for a really pro-industry Ninth Circuit motions panel, which will be sure to deny our request for a stay of his decision. (It seems that the composition of the Ninth Circuit motions panel changes every couple of weeks, and district court judges always know who is on the panel.) (C) Hogan is waiting until he is also ready to issue rulings on previously enjoined sales and pre-1991 sales. (Hogan is having a hearing on the previously enjoined sales on Dec. 12, and the pre-91 sales may also come up at that hearing.) Of these, I think (C) is the most likely.

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

07-Dec-1995 12:38pm

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: Second Cong. amicus brief in timber case

As you know, Senator Leahy and 8 Congressmen filed an amicus brief in support of the government's position in NFRC v. Glickman, regarding the scope of the timber rider requirement to release old growth green sales.

Senators Craig and Murkowski, Congresswomen Chenoworth and Linda Smith and Oregon State Rep. Rod Johnson have responded with an amicus brief supporting industry's position.

It was anticipated that Senator Gorton might also go on the brief, but he did not.

Distribution:

TO: Kathleen A. McGinty
TO: Shelley N. Fidler
TO: T J Glauthier
TO: Thomas C. Jensen
TO: Elena Kagan
TO: Brian J. Johnson
TO: Christine L. Nolin
TO: Jennifer M. O'Connor
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

06-Dec-1995 05:11pm

TO: Elena Kagan

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: RE: timber

Elena,

The Headwaters forest issue is being handled with real seriousness by a bunch of folks. CEQ, OMB, Treasury, FDCI, RTC, and god knows who else are involved. Here, my colleague Elizabeth Blaug has been working the issue and I know she'd be happy to speak with you.

On timber generally, earlier today Martha, Jennifer, Shelley Fidler and (I think) TJ went up to meet with Norm Dicks and Sen. Murray. Shelley tried to get grunts like you and me into the meeting, but Martha said no to grunts, apparently. I gather that Dicks was interested in most of our concepts, except the murrelet stuff. Murray said she'd be supportive but wasn't going to take the lead since we made the mess and should clean it up.

I'll keep you advised if I learn more. Be prepared for poorly coordinated last minute drafting requests and summonses to the Hill or some of the bigger offices around here. That's how it goes.

Tom

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

06-Dec-1995 02:52pm

TO: T J Glauthier

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

CC: Christine L. Nolin
CC: Mark A. Weatherly
CC: Thomas C. Jensen
CC: Alice E. Shuffield

SUBJECT: Furse bill to repeal rescission provisions

In case you're not already aware of this, I heard from USDA today that Congresswoman Furse will be introducing a bill on Friday to repeal the timber provisions in the Rescissions Act. Furse is apparently shopping around for cosponsors and various democratic members have requested USDA's position on the bill.

USDA has not stated a position given the uncertain status of our pending legislation.

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-Dec-1995 09:44pm

TO: Elena Kagan

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

CC: Martha Foley

CC: Jennifer M. O'Connor

SUBJECT: RE: 9th circuit argument on forest plan

 Sounds good. What is the timing for a decision? And,
do we know when to expect a decision on our "nesting" hearing?

EXECUTIVE OFFICE OF THE PRESIDENT

06-Dec-1995 07:47am

TO: (See Below)

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

SUBJECT: RE: Logging Amendments

We do have the opportunity, but it's not our only opportunity. The bill we will be sending up consists of items that we can put into play through this submission.

But we can also introduce other measures later, during the negotiations. Since the consultations are so important here, we just can't get out front with the language before we've vetted it with the key members.

Distribution:

TO: Thomas C. Jensen

CC: Martha Foley
CC: Kathleen A. McGinty
CC: Elena Kagan
CC: Dinah Bear
CC: Ron Cogswell
CC: Mark A. Weatherly
CC: Bruce D. Beard
CC: Ruth D. Saunders
CC: Jennifer M. O'Connor
CC: Barbara C. Chow
CC: Brian J. Johnson
CC: Wesley P. Warren

Agency Timber Group Meeting 12/5/95

1. Litigation update - see sheet
9c Appeal | We said:

Plan still viable
Too soon to know what
impact would be ←←

Sierra - motion - asking for op. to
brief - submitted detailed motion
Interaction of R.A. + Plan may req.
remand. - need briefing.

↓ 2 > ~~But what did it say?~~
Note Rudzick's argument

Point out there are these issues.
Would like to brief them?

Talk to
Tom J.

2. Time for filing
starts again after each new advertisement,
assuming any change in terms.

3. Extend 45 days / Thunderbolt?

4. Boulder Knob

1 of units is in a certig. stand w/ market site
subj to k2

FS - understood R.A. to mean needed nesting in the sale unit.
This is the ind's position - not cups.

Purchaser - Scott Timber

DOT rec: FS should inform purchaser - subj to k2 -
must be suspended.

Tom J. → Use this mtg to ensure
adequate implementation!

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

04-Dec-1995 05:24pm

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Meeting Reminder

The EOP/Agency timber working group will meet as regularly scheduled tomorrow, Tuesday, December 5th, at 2:00 p.m. in the CEQ conference room (722 Jackson Place).

The agenda will include:

1. Recent Event Update (emphasizing last week's hearing) - chair
2. Litigation update - Justice
3. Formation of a communications group - Dinah Bear
4. New information process - Dinah Bear
5. Other business - chair

If you have other matters for the agenda, please contact me or Dinah. 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

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

04-Dec-1995 10:48am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Logging Amendments

In developing a new Administration budget offer for the current talks with the Hill, we have the opportunity to include the rescissions act amendments on logging that we've discussed recently.

There are problems, to be sure, in offering statutory language in advance of the kinds of consultations we all agreed were necessary. Nonetheless, the opportunity does present itself....

If we may help in such an effort, we'd like to do so.

Distribution:

TO: T J Glauthier
TO: Martha Foley

CC: Kathleen A. McGinty
CC: Elena Kagan
CC: Dinah Bear
CC: Ron Cogswell
CC: Mark A. Weatherly
CC: Bruce D. Beard
CC: Ruth D. Saunders
CC: Jennifer M. O'Connor
CC: Barbara C. Chow
CC: Brian J. Johnson
CC: Wesley P. Warren

THE WHITE HOUSE

WASHINGTON

EXECUTIVE OFFICE OF THE PRESIDENT

01-Dec-1995 11:10am

TO: Thomas C. Jensen

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

SUBJECT: Heads-up on Forest Plan Timber Numbers

Just wanted to give you a heads up, but please don't shoot the messenger, in case you were not aware that the President's commitment of 1.1 bbf (which was really only 1.054 bbf to begin with) from the Forest Plan area is being undercut slightly by the on-the-ground reality.

Planned offer for the Forest Plan area in 1997 is now 763 mmbf from the Forest Service and 211 mmbf from BLM for a total of 974 mmbf. This result has occurred because fish screens in California have reduced the ASQ.

I recently met with the Forest Service to determine whether there was anything we could do to get to the 1.1 bbf. I offered dollars and FTEs (at least hypothetically) for FY 96 and 97.

Their response was that it is not a matter of resources, but of on-the-ground possibility. Tom Tuchman's office agrees.

Four possibilities immediately suggest themselves, there may be others:

One, some cutting that is not covered by the ASQ may happen, such as from LSRs, etc., maybe even including 318 sales. That could be used to bump up the number.

Two, OFED is looking at the riparian reserves to see if they can be modified to allow more cut.

Three, although the Forest Service says you can't accelerate sales because over the 10-year period of the Forest Plan, you would still have years that were under the target (and you can't steal from the 11th year), it seems that you policy folks could decide in which years it would be more desirable that a shortfall would appear. If you want to do this you should make a policy decision soon. This might not be technically feasible, since you'd be exceeding the ASQ.

THE WHITE HOUSE

WASHINGTON

Four, we could continue to say we are shooting for 1.1 and hope nobody notices until after the final numbers are in for FY 1997. This choice requires cooperation from the Forest Service, when they release numbers to the Hill, etc.

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-Nov-1995 01:24pm

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

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

SUBJECT: Hill contacts on timber legislation

Barbara and I spoke this morning about a draft plan (for discussion purposes) for outreach to the Hill on our timber proposal. I've sketched the draft plan below. Please e-mail back your comments.

1. As soon as the exercise in looking for administrative "sticks" is completed, Leon would make phone calls to Dicks and Hatfield and Murray. He'd lay out the general scheme and ask to send up a team to brief them on details.
2. Soon thereafter, more or less contemporaneously, we would sent a team to fully brief Dicks, Hatfield and Murray and gauge their reactions. A possible team would be: Katie, Martha, TJ, Barbara, and me. An option would be to see if Dicks wanted to accompany us to meet with Hatfield.
3. Assuming the conversations above were not a dead end, we would later brief DeFazio, Wyden, Gorton, Murkowski and Craig as a courtesy.
4. If the conversations above produced a strong "no," we would reconnoiter about which of the "sticks" to threaten to use.

11/30 Meeting Lois Schiffer, Joe, TJenn, C. Quinn

2001d

- check legislative history

- on face of statute -

But we've given #

arg that we're expecting the Plan, but the Plan doesn't itself commit us to anything.
words of commitment in the ROD? ok then.

Probability of an injunction.

→ what of unannounced slowdown? "Work-to-rule"
would end up in full hearing.
then we'd say: we're being very careful, etc.
Then - suit
Depends on judge.

Salvage timber -

We've also given a # (Y. Sun) (in leg hist?)

→ Pres/Secretarial letter - what we expect to move under salvage provisions.

Lots of FS employees want this out - think it's wrong to have it there. (this is def of salvage is much broader in this statute)

so we can say: going to do most meticulous review ever done. Secretary's discretion to do environmental study

But we'll be slammed because of the #

Joe: Incl decisions have strained resources - now we can't get out the salvage.

Lois - do Demo hearing. Our context - where we can talk abt jobs, as well as enviro. We're saving jobs.

40 Rule / HEPs - No problem legally.

This is best option.

Big timber cos are nervous - good to get them on.

Selective enforcement case - very hard to win;
but there to be brought
(don't talk abt this in such an upfront way)

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

30-Nov-1995 10:48am

TO: (See Below)

FROM: Kathleen A. McGinty
 Council on Environmental Quality

SUBJECT: RE: Log Export Rider

the states (or and wash) have been supportive of the log export bans and in fact last year i believe all members of the washington delegation was in favor. fighting this is a way for us to do something positive for small mill owners. most of our initiatives to date have been more geared to larger mill owners. so, i think this is helpful to us to fight against.

Distribution:

TO: Thomas C. Jensen

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

30-Nov-1995 08:38am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Log Export Rider

I was told yesterday that some fine soul in Congress was working to place a rider on the Interior appropriations bill that would lift the current ban on exports of logs from Northwest forests. My source, someone at Interior, was unclear on the additional details.

If this is true, and such a rider is afoot, it is germane to our overall effort to encourage congress to accept amendments to the logging provisions of the rescissions act.

Lifting the ban on exports would run counter to the purported thrust of the rescissions act, namely to put wood in Northwest mills. Small mill owners and workers won't much like it. On the other hand, lifting the ban would benefit large timber companies who play in world markets (e.g., Weyerhaeuser) and also would benefit longshore workers.

It is, thus, something that some timber interests want and some would oppose. It may be useful in our efforts.

I'll continue to try to find out and share more details, but we ought to coordinate on this one.

Distribution:

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

EXECUTIVE OFFICE OF THE PRESIDENT

30-Nov-1995 08:20am

TO: Jennifer M. O'Connor
TO: Elena Kagan

FROM: Thomas C. Jensen
Council on Environmental Quality

CC: Dinah Bear
CC: Thomas C. Jensen

SUBJECT: Leverage Summary memo

Elena and Jennifer:

Here is a one page summary of the leverage options we discussed yesterday. I did not hear from Lois last night, but assume that she will be at Elena's at 9:00. Jennifer, I expect you to tell Harold we got it on one page.

Actions directly based on actual or expected environmental effects of 2001(k) logging

Suspend or delay Administration initiatives to help timber land owners comply with Endangered Species Act

Suspend or delay release of green timber sales under Forest Plan

Suspend or delay release of salvage sales in areas where 2001(k) logging will occur

Actions not directly based on actual or expected environmental effects of 2001(k) logging

Suspend or delay release of salvage sales in areas that include forests without 2001(k) logging

Increase Customs Service scrutiny of log imports and exports

Increase Transportation Department safety inspection of logging trucks and drivers

Increase FAA/DOT inspection of helicopters/pilots used in logging

Increase OSHA inspection of worksite (harvest areas, mills)
safety

} only in these areas?
why?
oh, I see
↓

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-Nov-1995 07:06pm

TO: Dinah Bear

FROM: Kathleen A. McGinty
 Council on Environmental Quality

CC: Thomas C. Jensen
CC: Elena Kagan

SUBJECT: RE: Appeal on President's Forest Plan

one question is whether the rescissions bill overrides the forest plan. another question is whether the impact of the implementation of the rescissions bill undermines the plan. will that second question be addressed?? that could be much dicier for us.

EXECUTIVE OFFICE OF THE PRESIDENT

29-Nov-1995 06:23pm

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

FROM: Dinah Bear
Council on Environmental Quality

CC: Elena Kagan

SUBJECT: Appeal on President's Forest Plan

As you know, arguments before the 9th Circuit regarding the appeals from both industry and enviro plaintiffs will take place this coming Tuesday, Dec. 4th.

While none of the litigants asked for supplemental briefing on the issue of how P.L. 194-19 affects the validity of the ROD, the 9th Circuit panel (Goodwin, Schroeder and Pregerson) has just asked, sua sponte, that the government address that issue. Thus, the issue of whether the timber rider overrides the Forest Plan and the appropriate scope of judicial review may be discussed.

In this afternoon's moot court session, there was a consensus that the government's position was very clearly that the timber rider did NOT override our authority to implement the ROD and that judicial review was precluded only in respect to individual timber sales (i.e., not the whole plan).

I think it's safe to say that there is a reasonable degree of optimism - even on the part of usually pessimistic lawyers - that we will achieve success on all issues, with perhaps some direction to focus on the analysis of new information. Should the collective judgment be in error the 9th Cir. find that any of the plaintiffs' arguments have merit or that the ROD was in jeopardy because of the timber rider, they, of course, have the option of remanding to Dwyer or to the agencies for further work.

Tom Jenner - telecon 11/29

JOC - memo advert. 4 or 5 key steps
will forward
Katie to respond

1st draft - admin choices to create coverage re timber
industry, employees.

↳ to: TJ, Katie, Jennifer

haven't heard from TJ or JOC

Katie - wanted to include additional shot-epic
stuff.

Approaches to Hill -

likely to start w/line 24-48 hrs

Dix, Murray, Hatfield.

progressive expansion

Team -

Katie, TJ, Barbara, Martha

TJ: need someone to translate
into written form.

Jennifer - 11/29/95

Admission sticks to have Repubs to make leg charges.

T. Jensen - mails over a draft. Let it / word it.

Then - small deleg will go up to Cap Hill to talk.

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

27-Nov-1995 06:29pm

TO: Jennifer M. O'Connor
TO: Elena Kagan
TO: Barbara C. Chow

FROM: Thomas C. Jensen
 Council on Environmental Quality

CC: Kathleen A. McGinty

SUBJECT: Heads Up

The Senate Energy Committee and the House timber task force are having a joint hearing Wednesday morning on the Administration's implementation of the timber provisions of the rescissions act. Apparently the hearing will focus primarily, but not exclusively, on timber salvage activities.

As of this moment, we're waiting for draft testimony from USDA/USFS and for clarification as to who the USDA witness will be. Katie and TJ both feel strongly that Lyons, not Thomas, should represent the Administration. TJ is trying to reach Greg Frazier now to make sure things are on track.

We're expecting the committee/task force members to use the event to grill our witnesses on the President's plans for amendments to the timber provisions of the rescissions bill.

I'll be following this closely, as will Ruth Saunders at OMB. If you'd like more info, give me a ring or e-mail and I'll try to get you what you need.

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-Nov-1995 09:05am

TO: Thomas C. Jensen

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

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

SUBJECT: RE: Heads Up

We need to see and clear possible answers to questions regarding legislation. Could you see what they have done already and if nothing, ask them to send over qs and as as soon as possible. Thanks.

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

28-Nov-1995 09:28am

TO: Jennifer M. O'Connor
FROM: Thomas C. Jensen
 Council on Environmental Quality
CC: Elena Kagan
CC: Barbara C. Chow
CC: Kathleen A. McGinty
SUBJECT: RE: Heads Up

Jennifer,

Will do. We've still not seen any draft testimony.

Tom

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

27-Nov-1995 10:46am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Meeting Notice

The White House/Agency timber working group will meet as regularly scheduled tomorrow, Tuesday, November 28th, at 2:00 p.m. in the CEQ conference room (722 Jackson Place).

The agenda will include:

1. Recent events update - chair
2. Litigation update - Justice
3. Discussion of Wednesday's Senate/House hearing on timber -
 Chair
4. Other business - chair

Please be prepared for the meeting to last 1.5-2 hours.

If you would like to discuss the agenda, or distribute materials in advance, please contact me at 395-7415.

Thank you 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

*Ted + Peter -
Do we have to
worry about this?
Call me this aft. or
tmrw morning.
Elena*

EXECUTIVE OFFICE OF THE PRESIDENT

20-Nov-1995 02:21pm

TO: T J Glauthier
FROM: Ruth D. Saunders
Office of Mgmt and Budget, NRD
CC: Elena Kagan
Thomas C. Jensen
Mark A. Weatherly
Christine L. Nolin
SUBJECT: Buy-back language in timber draft

Justice is working on a revised draft of the timber language -- we expect to see it sometime this afternoon.

USDA has raised a significant concern with the addition of language that would authorize up to \$100 million in compensation.

As you know, this amount assumes contract holders receive essentially their gain in replacement value in settlement. This is contrary to the contract provision which limits compensation to out of pocket expenses only when termination is due to a threatened, endangered, or sensitive species.

USDA's specific concern regards a current case in Federal Claims Court ("Reservation Ranch vs US") where DOJ and USDA counsel will litigate for the contract provision and hope to settle the case by paying only out of pocket expenses. They believe that including the \$100 million figure in our proposed legislation would weaken their arguments for the contract provision in this case.

One alternative we discussed with them would be to keep the authority, but be silent on the specific dollar amount in our bill. This would leave the door open during negotiations with the Hill on whether settlement would proceed according to the contract terms or greater.

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-Nov-1995 09:46am

TO: Ruth D. Saunders

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

CC: Elena Kagan
CC: Thomas C. Jensen
CC: Mark A. Weatherly
CC: Christine L. Nolin

SUBJECT: RE: Buy-back language in timber draft

Ruth, can you give me an example of the different amounts that an individual purchaser would receive under the two bases? For example, if the market value of the old growth timber were \$450 per 1000 bd ft, would the out of pocket payment be under \$50, whereas the fuller payment (value less cost of production, transportation, etc.) would be \$300. Is that possible?

If the difference is that large, then I don't see how we can argue for just the out-of-pocket approach.

I need information on this by early afternoon, plus any additional information you have on buy out costs.

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-Nov-1995 09:09am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Meeting Notice - Nov. 21, 1995

The EOP/Agency timber working group will meet tomorrow, Tuesday, November 21st, at 2:00 p.m., in the CEQ conference room (722 Jackson Place).

The agenda will include:

1. Recent events update - chair
2. Litigation update - Justice
3. "New Information" process update - Dinah Bear
4. Admin. position in litigation involving salvage sales for which there is no bidder - Justice
5. Implementation of Salvage Program - USDA/BLM
 - Problems obtaining bids
 - Implementation of MOA
 - Other salvage related issues
6. Other business - Chair

If you have comments or questions, or would like to distribute materials prior to the meeting, please contact me or Dinah Bear.

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
TO: Dinah Bear
TO: Remote Addressee
TO: FAX (92084684, Don Barry)
TO: FAX (94821041, Bob Ziobro)
TO: Remote Addressee
TO: Remote Addressee
TO: FAX (92191792, Kris Clark)
TO: FAX (96902730, Mike Gippert)
TO: FAX (92085584, John Leshy)
TO: FAX (95144240, Jim Kilbourne)
TO: Remote Addressee
TO: Thomas C. Jensen
TO: Ruth D. Saunders
TO: Remote Addressee
TO: FAX (92083877, Bob Baum)

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-Nov-1995 08:19am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: final version of long timber memo

Assuming Harold Ickes approves, the text of the backgrounder memo on timber is completed. Jennifer has the copy for signature and we'll make sure copies get around, along with the shorter decision memo that's being coordinated out of TJ's office.

Distribution:

TO: Kathleen A. McGinty
TO: Shelley N. Fidler
TO: Dinah Bear
TO: T J Glauthier
TO: Alice E. Shuffield
TO: Elena Kagan
TO: Martha Foley
TO: Ray Martinez
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

19-Nov-1995 05:53pm

TO: (See Below)

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

SUBJECT: Decision Memo for Panetta on Timber

Attached is a WP 5.2 file containing the revised draft decision memo for Leon Panetta on legislative fixes for the timber rider on the recissions bill.

Harold Ickes has gone over this memo carefully, and is expected to discuss this with Leon Panetta tomorrow, Monday.

Distribution:

TO: Jennifer M. O'Connor
TO: Elena Kagan
TO: Thomas C. Jensen

CC: Kathleen A. McGinty
CC: Kathryn Higgins
CC: Kris Balderston
CC: Martha Foley
CC: Barbara C. Chow
CC: Charles E. Kieffer
CC: Jacob J. Lew
CC: Mark A. Weatherly
CC: Alice E. Shuffield

SUMMARY: Section 318/Non-Section 318 Timber Sales

as of 11/16/95

Timber sold/released under Section 318 FY 90 Approps. prior to enactment of P.L. 104-19 (FS & BLM 4.1 billion board feet

VOLUME RELEASED & AWARDED UNDER Section 2001 (k) of P.L. 104-19:

	Forest Service			BLM			Total		
	mmbf	%FP	sales	mmbf	%FP	sales	mmbf	%FP	sales
o SECTION 318 SALES	66	100%	14	64	100%	14	130	100%	28
(Non LSR Acres	47		3	n/a		10			13
Additive) Key Watershed	51		11	n/a					
NMFS Fish Concern	27		6	n/a		13			19
o NON-SECTION 318 SALES (1990-95)	59	0%	18	116	100%	28	175	66%	46
(Non LSR Acres	0		0	n/a		8			8
Additive) Key Watershed	0		0	n/a		9			9
NMFS Fish Concern	50		8	n/a		5			13
Total, released under P.L. 104-19	125	53%	32	180	100%	42	305	80%	74
REMAINING SALES SUSPENDED, UNAWARDED, OR PENDING:									
o SECTION 318 SALES	269	100%	61	10	100%	2	279	100%	63
Not subject to release under known to be nesting	228		55	10		2	238		57
Enjoined/delayed by court cases	41		6	0		0	41		6
o NON-SECTION 318 SALES	323	2%	50	31	100%	8	354	13%	58
Pre- Oct. 1990 sales	270	n/a	35	21		4	291		39
Not subject to release under known to be nesting	0	0%	0	10		4	10		4
Enjoined/delayed by court cases	15	0%	3	0		0	15		3
Purchaser out of business	38	4%	12	0		0	38		12
Total, suspended or pending	592	81%	111	41	100%	10	633	51%	121
TOTAL 2001(k) volume:	717	47%	143	221	100%	52	938	60%	195

November 18, 1995

MEMORANDUM FOR CEQ (KATIE MCGINTY, DINAH BEAR, TOM JENSEN)
T.J. GLAUTHIER
JENNIFER O'CONNOR

FROM: ELENA KAGAN
SUBJECT: TIMBER PROPOSALS

After our meeting yesterday, I had another session with DOJ lawyers to go over statutory language. Here's what we came up with:

1. 318 sales: Our proposal would delete the language in 2001(k) that refers to geographic units and would provide for the release of "all timber sale contracts offered in Fiscal Years 1989 and 1990 under the authority of, and in compliance with, Section 318(b) of Public Law 101-121 (103 Stat. 745)."

Note: The above language makes one technical change (the addition of FY 1989) to the language used in our memos. The memos should be amended accordingly.

2. Forest Plan: Our proposal would delete the language in 2001(d) that refers to geographic units and provide that the Secretary shall expeditiously prepare timber sale contracts "allowed under and consistent with the standards and guidelines specified in" the Forest Plan. Our proposal also would strike language in 2001(l) that prevents us from making changes to the Forest Plan to account for sales released under 2001(k).

Note: The above language is the same as the language used in our memos.

3. Administrative tools: Our proposal would authorize the Secretary of Interior or Agriculture to "replace, modify, suspend, or terminate" any timber sale contract released under 2001(k) "where the Secretary in his discretion finds that such replacement, modification, suspension, or termination is authorized pursuant to originally advertised terms" or where proceeding with the original contract "would have an adverse effect on the environment or natural resources." The proposal would further provide for appropriate compensation not to exceed a cumulative total of \$100,000.000.

Note: The above proposal, aside from making minor technical changes, contains a different standard for triggering buy-out authority than the one we previously have suggested. This change is a response to Ron Klain's concern that the standard we were using ("is necessary to avoid substantial damage to the environment") was both too stringent and too

novel, prompting recurrent litigation. The "adverse effects" language comes from NEPA and many environmental regulations. DOJ proposed that the Secretaries' buyout authority should kick in whenever going forward with the contract "may" have an adverse effect, but I thought use of the word "would" was more appropriate in this context.

4. Murrelets: Our proposal would replace the phrase "known to be nesting" with the phrase "known to occupy for nesting or breeding purposes the sale unit." The proposal would further state that "The Secretary concerned shall make this determination of occupancy in accordance with scientifically recognized principles, such as the Pacific Seabird Group protocol."

Note: The above language makes minor technical changes to the language used in our memos. The memos should be changed accordingly.

5. Replacement timber: Our proposal, by replacing "shall" with "may," would permit, rather than require, the government to provide alternative timber to the purchaser when an old growth sale cannot be released.

Note: The above language reflects the broader of the two options currently set out in our memos. The practical effect of this proposal would be to give the government a choice in any case where a sale could not be released: the government could provide alternative timber or subject itself to an almost certainly successful takings claim. If we wish to make more clear that no purchaser will go uncompensated, we could draft language stating that the Secretaries "shall" provide either alternative timber or appropriate monetary compensation.

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-Nov-1995 03:22pm

TO: Elena Kagan
TO: T J Glauthier

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

SUBJECT: edits

Attached is a codume document with Harold's edits to both the shrt and long documents. Please e-mail me back with the new da drafts. I am having trouble with my e-mail, and can't retrieve attachments. Please e-mail me back the new drafts as text of a message, ie use pct mtm instead of pct mdf. Thanks!!

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

18-Nov-1995 03:11pm

TO: Thomas C. Jensen

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

SUBJECT: edits

I'm having trouble with my e-mail. Here is a document with Harold's edits. Please send me back the final documents as a text file, i.e. use pct mtm instead of pct mdf. Thanks,.

TO: TJ, Tom, Elena

From: Jen

Subject: Harold's edits to both documents.

Below are Harold's edits to the short and long documents. Please e-mail me back copies of the edited docs tonight or tomorrow. We're working on the assumption that by the end of the day Sunday, there will be final drafts Harold can show to Leon first thing Monday.

1. The short memo (TJ's)

Page 1, para 3, line 7: insert "very" before "serious"; insert after "problems" ", probable jeopardy to the Forest Plan,"

Page 1 -- the President's quote: take out the quotation marks. Also, the quote says "rescission act", which Harold thinks is incorrect (it is a rescissions act) so he wants a "(sic) after "rescission".

Page 2, bullet 2, line 5: after the word effects add "or other criteria in the Forest Plan"

Page 2, bullet 3: after the heading (re buyout authority) insert a new first sentence: "Unfortunately, due to recent court rulings, title to timber which we did not understand to be included in the act has already passed to timber companies."

Same para, line 6, after "unilaterally" add "require a holder to accept substitute timber or"

Page 3, first full para: he's got lots of edits to the leg. lang. but I will spare you since I think we are rewriting it to be consistent with the contract language. I will read the redone version with his comments in mind and let you know if any are still relevant.

Page 3, birds bullet: s2 para, 3rd line, add a comma after "including"

Page 3, 2d bullet, 2d para: again, he marked this up, but we are editing it. It is clear he thinks we are going with a version of "b" that also adds buyout language -- so that we are making our obligation a discretionary authority, whether for birds or any other reason, and will allow buyout if replacement timber is not available.

THAT'S IT FOR THE SHORT DOCUMENT -- NOW FOR THE COMMENTS ON THE LONG DOCUMENT:

page 1, para 2: change "produced" to "caused"

page 1, para 3: cut "in addition" in 2d line

page 1, para 3, line 3: add a comma after "Washington"

page 1, para 3, line 4: after Forest Plan add " ("Forest Plan")

page 1, para 4, line 3: cut "now"; after "concerning" add

"interpretations of"; put a comma after "provisions"

page 1, para 4, last line -- need to reword "as well as some disagreements we did not resolve" so that it is clearer what we are talking about

page 1, bullets -- footnote 5 is now footnote 7

Page 1, formatting: Instead of making issues in dispute an "a" under "intro and summary" he suggests making "issues in dispute and adverse effects" a major section -- section II -- and then leave a. issues in dispute and b. adverse effects beneath it.

One general comment -- in headings, he doesn't like to capitalize anything other than the first word. Please change throughout.

Page 2: top para (which began on p1) -- in line 2, right before "Judge Hogan" add: The Court of Appeals for the 9th Circuit denied the government's request for a stay of his ruling pending appeal. Argument before the 9th circuit on the merits of Judge Hogan's ruling is scheduled for (date). Meanwhile, title to old growth timber is being transferred to logging companies and trees are being cut. (Then put in a paragraph break).

same para, 5th line -- need an "of" between "question" and "whether"

footnote 1: need to make the numbers consistent with TJ's chart -
- and need to include the enjoined sales, etc, so the total ends
up the same as on TJ's chart too. Then, we need to make all the
numbers consistent throughout the piece. In addition, in line 2,
instead of "we have released" use "have been released"; in line
3, instead of "force us to release" use "force release of". In
line 4, instead of 248 mbft more, use "an additional 248 mbft".

Also, in this fn, he would like an estimate of the volume we
could be forced to release if we lose on the interpretation of
the Forest Plan provision (current it says "untold")

In the last sentence of this fn. change "could" to "may"; after
"688mbft more" add "than we intended when we agreed to the
provisions of the rescissions act"; instead of "any volume we are
forced to release" say "any volume we may be forced to release"

page 2 -- section 1 (geog scope)

para 1 -- start with "The Administration's" instead of "our"

para 1 -- first sentence: he finds the "but" clause confusing --
perhaps you should cut it and place footnote 2 at the end of this
sentence.

footnote 2 -- line 3, 130 sales shld be 130 million board feet;
line 4: after "understood" add "and agreed"

para 2: line 2, after "pure 318" sales" add "(about 130 mbft)";
at the end of the first sentence add "(estimated to be an
additional 175 mbft)

para 2, 2d sentence, after "according to Judge Hogan" add
"previously offered". Harold has a general concern here that
"sale" is a hard concept to deal with -- can you add a footnote
somewhere early that defines "sale."

foontote 3: please explain what you refer to as a "windfall" --
this concept needs to be further developed -- that the timber
cos. will get cash for not cutting down trees, and no one will
get a job out of it.

PAGE 3

para 1: line 1-2, cut "us to" and use "release of 46 sales";
make this same change in the next sentence -- take out "us to"
and say "reuire release of". Also, check the numbers in this
para -- Harold thinks, based on TJ's chart, that it is 345 mbft,
not 265.

Section2 -- known to be nesting

para 1, line 1 -- take out "is" and "and"

line 2, take out "dispute"

line 3, add "(ESA) after Endangered Species Act
line 4, after "this is important because" add "under the rescissions act"
line 7, after "in contrast" add "our position is" and cut "we take a view that is"

footnote 5 -- cut "on this issue" in the first line.

para 2: line 1 -- cut "if we lose this dispute" and add "If the court rules against the Administration" ; from this first line, cut "for harvest"; and in this para, fix all the numbers to be consistent with chart

PAGE 4

SECTION3 -- OVERRIDE OF FP

para 1 -- line 4 -- cut "from forests: and replace with "of timber"

also in same sentence -- he asks what "squarely" means -- is it in litigation or not? if not, take out the squarely.

line 5 -- after "and" add "an adverse decision"

SECTION B -- ADVERSE EFFECTS

para 2: line 4, cut "a second"

bottom line, cut "endangred specis act" and replace with ESA;
after "could" add "also"

footnote 7 , 2d para, underline "e.g."; ladt para, last sentend -
- he wants to know what "litigation was turned back " means --
was it dismissed, did enviro plaintiffs lose on the merits, etc -
- what happened here?

PAGE 5

first para, cut "last week" and replace with "during the week of November 6"

para 2: White House and EOP are redundant -- use one or the other or spell out CEQ and OMB; in line 4, cut most, the and community and instead say "favord by most environmentalists"; lin the last sentence, start with "Option 3" instead of "it"

para 4: instead of "'deal" we beleived we attained" use "what the Admiistration believes it agreed to with Congress"
2d sentence -- use "characterization" instead of "denunciation"
3rd sentence: cut "Some" and start with "other"; cut "however"

PAGE 6

para 1, line 2 : after "directive" add "of (date)"and after "interagency agreement" add "of (date)".

2d sentence: instead of legislation "we recommend" use "recommended below"; instead of "broken" use "divided"

in the bullets at top of page: cut all "our" or "us" and use "the administration's" -- also do this in the heading to section a. --

amendments to restore the administration's agreement, etc.

SECTION 1 -- OLD GROWTH SALES --

para 1, sentence 1 -- cut "embedded in" and replace with "regarding"
don't capitalize section 318 or fiscal year
put a date on the NFRC v Glickman

he again asks for a definition of sales in this paragraph -- so if you define it somewhere, that will fix this question

footnote 8 -- cut "further"

para 2 -- line 3 -- change "we have already released" to "have already been released"
the last sentence of this para is confusing -- the practical effect is that pre-90 won't have to be released and that any other non-318 sales that are held up by injunction or that have birds in em or for which buyers have disappeared won't have to be released either -- can we make this more clear -- what is affected by this provision, in total?

SECTION 2 -- FOREST PLAN:

para 1 -- cut "while upholding" and replace with "under the Forest Plan, consistent with

PAGE 7

top para, first sentence, which began on p 6 -- cut "Congress" and replace with "section 2001(d) of the rescission act", before Forest Plan insert "criteria in the" and cut "in section 2001d of the rescissions act."

at the end of the next sentence, after "Northern California," add "which could include up to approximatley XX mbft."

footnote 9 -- change one half billion to an accurate figure

SECTION B -- TOOLS

cut "us" from the heading

para 1 -- cut "President's"

bottom line of para 1 -- cut "some" and cut "us" and replace with "the Administration"

para 2 -- line 5 -- after unilaterally, add "require a holder to accept substitute timber or permit the government to"

PAGE 8

top para -- make the legislative language consistent with TJ's/Elena's changes

SECTION 1 -- BIRDS

para 3 -- cut "at present"; fix the number of sales - is it 56 or 57

para 4, insert a comma after "including"

SECTION 2 -- FOR ANY REASON

don't capitalize "section" (should do global replace for whole document to make "section" lowercase)
also -- the formatting is off between section 1 and 2 -- make consistent

line 5 of section 2 para 1 -- cut "could arguably" and replace with "may"; line 6 -- "man" should be "may"

PAGE 9

need to make legislative language consistent with TJ's docs and Elena's changes

PHEW...THAT'S IT. Please e-mail me back a new draft. Thanks.

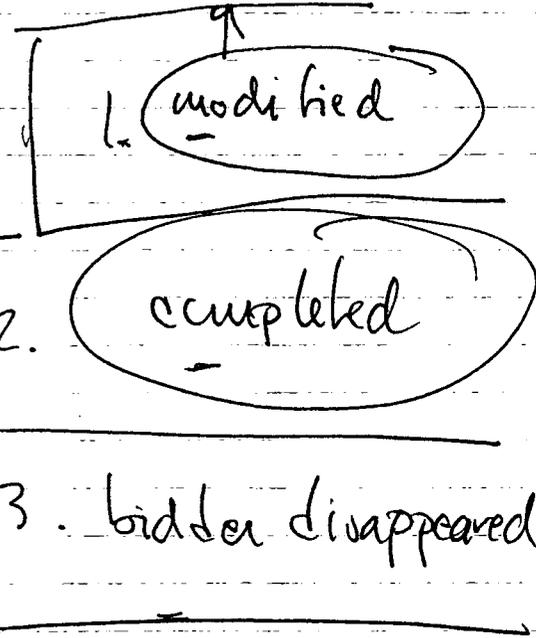
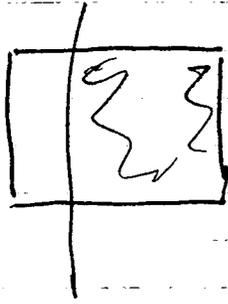
Again -- please e-mail it back as a text of a message le.
Thanks instead of as an attached file



(really only pre-1990)

Real 318 sales - have to release

except if reconfigured



what does this mean?
 if completed, what would
 be the cash flow?

Any cases in pure-318?

— Telecom w/ Lois re latest draft of statute —

~~may choose to~~

would - serious proof problems
likely? - proof problems.
no guar - that pops will fall off.

in c(3) - Really need to come up w/ language
that will provide the greatest amt of
flexibility as to govt's ability to provide
either alternative timber or \$ damages.
Drafting problem - Lois to respond.

966-9703

SUMMARY: Section 318/Non-Section 318 Timber Sales

as of 11/16/95

Timber sold/released under Section 318 FY 90 Approps. prior to enactment of P.L. 104-19 (FS & BLM 4.1 billion board feet

VOLUME RELEASED & AWARDED UNDER Section 2001 (k) of P.L. 104-19:

	Forest Service			BLM			Total		
	mmbf	%FP	sales	mmbf	%FP	sales	mmbf	%FP	sales
o SECTION 318 SALES	66	100%	14	64	100%	14	130	100%	28
(Non Additive)									
LSR Acres	47		3	n/a		10			13
Key Watershed	51		11	n/a					
NMFS Fish Concern	27		6	n/a		13			19
o NON-SECTION 318 SALES (1990-95)	59	0%	18	116	100%	28	175	66%	46
(Non Additive)									
LSR Acres	0		0	n/a		8			8
Key Watershed	0		0	n/a		9			9
NMFS Fish Concern	50		8	n/a		5			13
Total, released under P.L. 104-19	125	53%	32	180	100%	42	305	80%	74
REMAINING SALES SUSPENDED, UNAWARDED, OR PENDING:									
o SECTION 318 SALES	269	100%	61	10	100%	2	279	100%	63
Not subject to release under known to be nesting	228		55	10		2	238		57
Enjoined/delayed by court cases	41		6	0		0	41		6
o NON-SECTION 318 SALES	323	2%	50	31	100%	8	354	13%	58
Pre- Oct. 1990 sales	270	n/a	35	21		4	291		39
Not subject to release under known to be nesting	0	0%	0	10		4	10		4
Enjoined/delayed by court cases	15	0%	3	0		0	15		3
Purchaser out of business	38	4%	12	0		0	38		12
Total, suspended or pending	592	81%	111	41	100%	10	633	51%	121
TOTAL 2001(k) volume:	717	47%	143	221	100%	52	938	60%	195

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-Nov-1995 09:33am

TO: T J Glauthier

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: timber memo

You did an absolutely super job editing the short memo. Can I make a few more small suggestions?

1. On p. 2, in the 2nd indented paragraph, "Section 318" should read "Section 318(b)"
2. On p. 2, in the last paragraph, it seems a bit disingenuous to say we need the authority to "work with purchasers" when the critical element of this authority is the unilateral power to condemn. Can we just say in that sentence that the Departments "need the authority to modify or buy out problematic contracts etc."?
3. On p. 3, in the first paragraph add the word "suspend" after "modify" and before "or terminate." Also, add the phrase "or agency regulations" after the phrase "original contract terms." Finally, I think it would be better to take out the compensation clause (" and to provide compensation ... total of \$1,000,000") and instead to add the following sentence after the end of the quotation: "The amendment would further provide for appropriate compensation from the timber salvage fund not to exceed a cumulative total of \$1,000,000." This is more faithful to the way the statute is actually going to look.

Thanks.

EXECUTIVE OFFICE OF THE PRESIDENT

17-Nov-1995 10:55am

TO: Elena Kagan

FROM: Thomas C. Jensen
Council on Environmental Quality

SUBJECT: Your confusion on numbers

As you point out, the additive increment of timber may be greater than the 440mbf figure. It may include some of the pre-FY90 volume. The problem with adding that figure to the 440, is that we have no idea how much of that is real trees. Remember, the forest service maintains that some of that volume was cut under differently named subsequent sales. I'm a bit hesitant to treat what may be only bookkeeping entries as real timber volume.

That said, I get your point and will put in some note to the effect that the actual volume may be even higher, depending how the pre-FY90 issue is finally resolved.

My nightmare, by the way, is that Hogan interprets the act to give anyone who ever had any fleeting expectation of buying and profiting from a particular timber sale some kind of vested property right that we now have to satisfy through "replacement timber" or other compensation. If he carries his core interpretation forward, somehow erasing from history the fact that many sale purchasers knew, or reasonably should have known that their "sale" was subject to defeasance (in whole or part) for environmental or other reasons, then we've got a massive problem.

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-Nov-1995 10:44am

TO: Thomas C. Jensen

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: timber memo

This looks excellent. But a few more comments.

1. I still don't see how the numbers add up. 175 (Hogan sales) + 265 (possible more Hogan sales) + 248 (murralets) = 690 (not 440). Also, where are we getting this 265 number? Is it real?
2. I'd delete the first full para. on p. 2 ("These existing..."). It doesn't belong in this section and you make the exact same points both earlier and later.
3. I'd delete the last para of FN 5. It's too summary, too cryptic, too confusing.
4. On p. 5, I'd say "much," not "most" of Option 3 represents a restoration.
5. I found the last half of p. 6 pretty confusing. I would do the following: Take out the "and (l)" in the second to last sentence of the first para of this section. Then prior to the last sentence, insert the first sentence of the next paragraph. (But is it true that the industry's interpretation would include areas not covered by the Forest Plan? How could this be given that the industry is relying on a geographic descriptor???) Then start a next paragraph, saying: "For a different reason, section 2001(l) also may pose a threat to the Forest Plan. Section 2001(l) specifically prohibits the Administration from revising or amending the Plan prior to December 1996 -- even to taken into account etc. Given the expnasive way in which 2001(k) has been interpreted and the unexpectedly large quantities of old-growth timber it releases, this prohibition puts the Forest Plan etc."
6. In the first paragraph on administrative tools, I would delete the material starting "In addition" and ending "fulfill this mandate." This really belongs in the next section, but you don't need it there because you already say the same thing.
7. I would make more clear in the last paragraph of p. 7 that the agencies think they just don't have the quantity of relacement timber needed.
8. Should there be a separate section (a la the short memo) on legislative vehicles?

I am sending you a copy of the e-mail I sent to TJ proposing a few changes in the way we describe the statutory proposal. Could you check with TJ as to whether he made these changes and if so, incorporate them here as well?

EXECUTIVE OFFICE OF THE PRESIDENT

16-Nov-1995 01:05pm

TO: Thomas C. Jensen
TO: T J Glauthier
TO: Jennifer M. O'Connor

FROM: Elena Kagan
Office of the Counsel

SUBJECT: timber legislation

Here are the results of our "lawyers' meeting":

1. Section 318 sales. Our proposal would delete the language in 2001(k) that refers to geographic units and would provide for the release of "all timber sale contracts offered in Fiscal Year[s] [1989 and 1990] under the authority of, and in compliance with, Section 318[] of Public Law 101-121 (103 Stat. 745)." The brackets await Ted Bolling's efforts to confirm (1) in which Fiscal Years pure 318 sales were offered and (2) under which subsection of 318 they were offered.

2. Murrelets. Our proposal will prohibit release when a threatened bird species is known to be occupying a unit, for nesting or breeding purposes, as determined by "scientifically recognized principles, including in the case of the marbled murrelet, the Pacific Seabird Group Protocol." There is a technical issue still to be worked out in this section concerning whether occupation of a unit or a "stand that is the subject of the unit" is critical. Resolution of this issue may slightly affect the drafting of the scientific principles language. It may be that we will put this language at the end of the sentence preceded by the words "as determined by" (as above). It may be that we will add a second sentence stating that "The Secretary shall make this determination of occupancy in accordance with scientifically recognized principles, including in the case of the marbled murrelet, the Pacific Seabird Group Protocol." In any case, you get the idea. [NB: As we have discussed, this is a real change -- not just a correction of a misunderstanding.]

3. Forest Plan. Our proposal will make changes in both 2001(d) and 2001(l) in order to protect the Forest Plan. In 2001(d), we will delete the language that refers to geographic units (as we are also doing in 2001(k) -- see above) and provide that the Secretary shall expeditiously prepare timber sale contracts "allowed under and consistent with the standards and guidelines specified in" the Forest Plan. In 2001(l), we will strike language that prevents us from making changes to the Forest Plan to account for other sales required to be released. [NB: DOJ says that we fought for this amendment to 2001(l) in the original negotiation sessions. Of course, we did not know then how necessary it would be; but it is hard to present this change (as opposed to the 2001(d) change) as just a correction of a misunderstanding.]

4. Securing necessary administrative tools. Our proposal will give the government a sort of condemnation authority by empowering the Secretary, in certain circumstances, to terminate, modify, or exchange timber sale contracts. This authority carries with it the authority to reach a voluntary agreement with the holder of the contract, under which the holder accepts substitute timber or money. The circumstances under which such condemnation authority exists are two: where the Secretary, "in his discretion" finds that the action (1) is authorized under original contract terms or (2) is "necessary to avoid [substantial] damage to the environment or public resources." DOJ would prefer not to include the bracketed word ("substantial"), on the ground that it may involve us in extensive litigation; the phrase "in his discretion" (or perhaps "in his sole discretion") is designed to mitigate this problem. [NB: Although this provision is primarily intended to deal with sales we did not know we would have to release, it will also allow us to deal with sales we knew perfectly well we would have to release. Hence, it is not in toto -- though it is in large part -- a simple response to misunderstanding.]

5. "If for any reason." This is actually a misnomer for DOJ's current proposal. That proposal is to relieve the government of ANY obligation to provide alternative timber, and instead to PERMIT the government to provide alternative timber whenever a sale cannot be released (for bird reasons OR other reasons). An alternative, narrower proposal would continue to require the government to provide alternative timber when the sale can't be released for reasons relating to birds, but relieve the government of this obligation (and simply permit the government to provide alternative timber) when the sale can't be released for other reasons. We should figure out which of these proposals we feel more comfortable with. DOJ says that each of these categories of sales -- i.e., sales that can't be released for bird reasons and sales that can't be released for other reasons -- is potentially large. [NB: Once again, this proposal (in either of its two forms) cannot be understood as a simple correction of a drafting error or a response to a misunderstanding.]

Questions or comments?

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-Nov-1995 07:27pm

TO: (See Below)

FROM: Kathleen A. McGinty
 Council on Environmental Quality

SUBJECT: 'timber and dicks' office

dicks' staff called today to relay the following on timber:

1. dicks had talked to regula as well as hatfield. both are supportive of doing something on this issue. focus is on 318, though mike said that provisions relating to the forest plan, itself also had to be changed.
2. regula actually sought dicks out because he was interested in trying to do these fixes on the interior bill. he thought the marbled murrelet language in that bill gave them a place to do this.
3. i mentioned the needed buyout authority and our concern that that could not be done on interior approps due to offset problem. i told mike that he may want to talk to tj about that, tho i also told him that we were not prepared to talk to them about any specifics just yet.
4. he asked that norm be briefed before the repubs so that he could "give us advice as to how the r's will receive our ideas". while i think we need to talk to dicks at least simultaneously with the other guys, i obviously gave no commitment on this front.
5. two other matters regula wants to talk about:
 - a. tongass: as you know, house instructed conferees completely to strike the tongass rider. regula, however, feels he needs to give stevens something to get that done. he says that there are 8 sales in particular that are of interest to stevens and asks, therefore, if envtl protections were put in, would we be willing to allow those to go forward. i said that first, we are in a very strong position here (given the house vote), and that i did not see why we would therefore be interested in giving anything. however, if regula was willing to deliver on our other problems with the bill, maybe we could take a look at this issue.
 - b. tom tuchmann: they are prepared to get language

extending his office as proposed in the rivlin letter. dicks' staff suggests that we add this language to any legis pkg we prepare to fix the rescissions bill. i think we will need to revisit this with him. the tuchmann language should go on the interior bill, period. we still don't know where the rescissions bill stuff should go or, indeed, if we will have the opp'y to put it anywhere. we should just separately get tuchmann fixed.

good nite.

Distribution:

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

Mtg - Timber 11/17/95

Katie - Ask Cong 1st - Then decide what to do.

Why put long forward if will just leave us in (big)
If they don't want to coop - go for whole ball
of wax - or for little pieces.

BT - Tactics driven by timing.

Funding auth - can't be done on approval bill, w/out
coming up w/ OFATS.

can do on reconciliation bill.

Other stuff can't go on reconcil.

Need 2 bills

Do funding auth now - ^{auth to modify etc.} + funding

keep discussing other elements

→ rest: Interim Bill attractive

→ recommitment: could come up very quickly.

Replacement timber -

Not permissive

Obligation - timber or \$

→ Final, ready for loan on Monday.

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-Nov-1995 08:50am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Meeting notice - Tomorrow 2:00

The EOP/Agency timber working group (or what's left of it under current conditions) will meet tomorrow, Friday, November 17, 1995, at 2:00 p.m. in the CEQ conference room (722 Jackson Place).

The agenda will include:

1. Recent Events Update - Chair
2. Litigation Update - Justice
3. Standard of judicial review for sales under Forest Plan - Justice
4. Status of "Stipulated" sales - USDA
5. Dealing with New Information - Dinah Bear
6. Other business

Please phone or fax me or Dinah with additional items you believe need to be addressed.

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

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-Nov-1995 05:13pm

TO: Jack M. Quinn

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: timber

I think you're going to be receiving (or maybe you already have received) a call from Katie to request your attendance at a grand strategy meeting re timber. For the last couple of days, CEQ staff (Tom Jensen and Dinah Bear), Jennifer O'Connor, T.J. Glauthier, agency folks, and I have been working on a specific legislative proposal that Harold will present to Leon and the President. As I told you the other day, I think Katie basically agrees with this legislative proposal. But she has become concerned that Harold and others have not addressed some broad strategic questions relevant to the decision whether to present this proposal (or, alternatively, to present a much more dramatic demand) to Congress. Let me know if she calls you, and what she says. Thanks.

Small mtg
w/ Harold

? | ¹⁹⁸⁹⁺¹⁹⁹⁰ need in FY₃ - under the authority of + in
compliance w/ section -

1. subject to / consistent w/ 318
not quite precise enab.
better - e.g. - sales ordered released by 318.
tighten the language

ordered
released
by

2. known to be nesting
reference, linking "occupy" phrase to the
science
as determined by ... (scientific protocols etc)
get language

3. language re 2001d -
also make stronger
subject to / consistent w/

authorized
by?

4. Administrative tools -

buyback
exchange

modify, terminate; suspend.

necessarily implied - if you have
authority to conduct,
you have authority
to settle.

anything? -

or NOT bad for env
but
state env laws.

need right phrase -
reverse enab.

FS 16 - probably not strong enb.
Language in bill overrides.

5. If for any ~~other~~ reason.

How many are we talking about?
(s This completely unnecessary?)

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

15-Nov-1995 06:23pm

TO: Kathleen A. McGinty
TO: T J Glauthier
TO: Thomas C. Jensen
TO: Christine L. Nolin
TO: Ruth D. Saunders

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: Affidavits: progress

All of DOJ's concerns have now been cleared up - both the prose and the chart are now being reworked. The FS remains convinced there is no reason to ask Records Mgt. for the records; that the explanation as to why they didn't ask is true (of which I have no doubt); they feel strongly it's their document and they stand by it.

DOJ will fax the draft to the entire group asap, but there will be very little time between the fax and the time it must be filed in District Court.

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

15-Nov-1995 05:44pm

TO: Kathleen A. McGinty
TO: T J Glauthier
TO: Thomas C. Jensen
TO: Christine L. Nolin
TO: Ruth D. Saunders

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: Where are the affidavits?

Re the affidavits on the pre fy-91 sales: here's the status -

1) We have to ask Judge Hogan for an extension for BLM because the folks who handle the records on furloughed.

2) Forest Service - there is a draft, which should be faxed to you shortly. DOJ has several concerns about wording and presentation which they are trying to work out, but have so far been unsuccessful in doing so. I have just looked at the draft and would be inclined to defer to Justice's call on most of the issues (Lois may call Frazier).

I do have one concern, which is that the Forest Service has not put in a request to the Federal Record Center for records dated prior to 10-1-90. Their explanation is that the records pertinent to the judge's order are not retained for more than 5 years. My concerns are that: a) the FS told Hogan in the earlier affidavit asking for a 2 week delay that they would ask for archived records; b) if there aren't any records, why not ask and get a reply that there aren't any records, but at least provide an administrative record showing that we've gone through the process; c) it would be really nice to know for the Admin.'s own purposes that we have identified the total universe. However, for some reason, the FS folks are extremely stubborn about this.

Here we are again, of course, at the midnight hour. At this point, it seems we only have a couple of options: 1) let the affidavit go out the way the FS wants it to (clearly, they will scream about pressure from DOJ and the rest of us if we do anything but - recall prior inaccurate allegations) and take our chances - in fact, the 5 year rule sounds right and there probably aren't any records; 2) make them file a request today and say that

they also need an extension because Records Mgt. is furloughed (I don't know if the later is true) or I don't know if #2 is an option. I have a call back into DOJ and will raise this with them and also ask them to fax the draft affidavit to everyone.

Also, there are 90 some sales on the chart they are attaching. Many of these sales have already been reported, and the FS won't separate them out to show which have and which haven't, so I can't say right this minute how much new board ft. this represents - but not as much as it will look like on first glance.

EXECUTIVE OFFICE OF THE PRESIDENT

15-Nov-1995 03:41pm

TO: Thomas C. Jensen

FROM: Elena Kagan
Office of the Counsel

CC: T J Glauthier
Jennifer M. O'Connor

SUBJECT: timber memo

Tom: A few more questions on the timber memo:

1. Where does the 265 mbf figure on p. 2 come from? Is that number still highly uncertain? Or have we now determined what pre-90 sales are out there?
2. On pp. 3-4, I'm not sure I get where the 440 mbf figure comes from. Why isn't the total 175+265+248? Also, in this paragraph, which category(ies) of sales come from within LSRs: the post-90 Hogan sales? the pre-90 Hogan sales? the murrolet sales? And finally which of these categories of sales opens the Forest Plan to challenge?
3. Should we say on p. 4 that the nesting amendment is different from the others in the sense that we knew this issue existed and knew the statutory language didn't resolve it in our favor (though we thought the language left open our interpretation)? The other amendments are to fix issues no one knew of at the time. Perhaps the way to fix this is to insert here the discussion that now is at p.2 of the Attachment. NB: JOC's question on p. 2 of Att B is relevant to the way in which we characterize the "agreement to disagree" on the murrolet issue.
4. On p. 5, we should talk about ^{whether} the amendmenents specified in the first bullitt (and in attachment B) are clear enough. I think they can be made to reflect our position more strongly and more precisely.
5. In the second bullitt, on p. 5, I would clarify why the amendment to 2001(1) is needed: so that we can amend the Forest Plan to take into account, and respond to, the unforeseen release of certain sales (e.g., the Hogan sales).
6. And in the third bullitt, why don't we specify the administrative tools, to this extent: that we are asking for condemnation authority, buy-back authority, and exchange authority.
7. I think JOC's edits are great, except for the one in FN 1, which I think changes the meaning. Would this make it more clear: Keep the first two sentences the same. Then say, "Prior to the passage of the rescissions act, BLM and the Forest Service had been working etc. etc. Section 2001k, even under our interpretation, required release of these offered but not released sales on their original, problematic terms, without the beneficial modifications. Administration negotiators etc."

Provision we known to be vesting -
Ted & Dinali: fifth approaches.

3 of us should talk - 20 mins

45352

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES DIVISION
P.L.S.L., ROOM 2133
WASHINGTON, D.C. 20530

FAX NUMBER (202) 616-8543
CONFIRMATION NUMBER (202) 514-1442

DATE: November 13, 1995

FROM: Edward A. Boling

PHONE NUMBER: 202-514-2715

NUMBER OF PAGES TO BE TRANSMITTED (including cover): 3

TO: Tom Jensen & Dinah Bear

PHONE NUMBER: 395-7415 -7412

MESSAGE: Option 3 in draft. This has not been reviewed by Lois, Peter, the rest of Environment Division, Civil Division, Forest Service and BLM -- all essential. I'm working the DOJ comment process. Please coordinate with trusted advisors elsewhere.

RECEIVING FAX NUMBER: 456-0753

DRAFT

LEGISLATIVE PROPOSALS

A legislative package developed under Option 3 would contain the following elements:

a) Geographic and temporal scope: We understood the provisions of Section 2001(k) to require the release of sales previously offered under the provisions of Section 318, a rider attached to a 1989 appropriations bill. Those sales were defined by both specific geographic and temporal boundaries and were subject to environmental requirements provided for in Section 318. Indeed, the common way of referring to this part of the timber rider in the Rescission Act had been "the 318 sale provision".

Judge Hogan's recent decision in NFRC v. Glickman dramatically changes that universe by requiring the release of all timber sales on Forest Service and BLM lands in the geographic area covered by §318, regardless of whether they were actually offered under Section 318. The injunction issued by Judge Hogan requires the release of all timber sales in the geographic area from FY 91-95, and purchasers of sales that did not proceed for environmental or other reasons prior to the passage of §318 are now coming forward to claim rights to such sales.

The proposed amendment would conform the legislation to our original understanding of the geographic and temporal scope of this provision. The practical effect of the change would be to prevent release of sales that had been withdrawn prior to the passage of §318, as well as clarifying that certain sales currently in dispute do not fall within the parameters of this legislation unless they were truly "§318 sales."

The proposed amendment would amend Section 2001(k)(1) to clarify that the sales subject to release are those "subject to and consistent with" Section 318 of Public Law 101-121.

b) "Known to be nesting": The only exception to the release of sales mandated in Section 2001(k) is for sale units in which threatened or endangered bird species are "known to be nesting". There are a few northern spotted owl nests in sale areas, but the controversy regarding this issue revolves around a number of sales that containing marbled murrelet breeding habitat. Marbled murrelets are a seabird which breed in coastal forests and have extremely elusive nesting habits. Several Administrative initiatives, including the Forest Plan and proposals to provide relief to private landowners under the Endangered Species Act could be at risk if these sales are released.

While there was clearly disagreement between Congress and the Administration about the definition of "known to be nesting" during the legislative debate, no statutory definition was ultimately adopted. Industry plaintiffs are suing the land management agencies at present to force the release of sales unless certain physical evidence, such as eggshell fragments, are identified. On the other hand, the land management agencies are relying on the best scientific protocol for determining where murrelets are "known to be nesting". Our proposed amendment to Section 2001(k)(2) would explicitly authorize the agencies to rely

*already claimed
as the
down
post-318*

*Also maybe
pre-91
again pre-91
undecisive*

on the current and best science as developed in the Pacific Seabird Protocol.

c) Protecting the President's Forest Plan: Contrary to our understanding of Congress' intent, the current language of the timber provisions [is being interpreted] by industry attorneys as completely overriding the standards and guidelines required for timber sales offered under the President's Forest Plan. Specifically, industry attorneys are arguing that Section 2001(d) references timber sales in the geographic area covered by the Forest Plan, but that Congress specifically overrode the Forest Plan in adopting the Rescission Rider. Further, Section 2001(l) specifically prohibits the Administration from revising or amending the Plan to take into the account changes in the environmental baseline caused by green timber sales under Section 2001(k). In other words, it requires the land management agencies to assume trees that have been cut are still standing. This prohibition puts the Forest Plan at serious risk of being overturned by the courts.

too strong
"

Our proposed amendment would modify Section 2001(d) to clarify that the provisions of this section apply only to timber sales that conform with the requirements of the President's Forest Plan. The amendment would also delete the prohibition in Section 2001(l) that constrains needed modification to the Plan.

d) Securing Necessary Administrative Tools: Under our proposed amendments, the basic requirement to release certain timber sales would remain. However, currently, the only alternative to releasing sales falling under Section 2001(k) under the original terms of the contract is to offer replacement timber of equal volume, kind and value subject to the terms of the replacement original contract. The Forest Service in particular believes it is extremely constrained in the amount of alternative timber it has available. We have developed several administrative tools which, if authorized, would give the agencies flexibility in modifying or terminating sales, exchanging other kinds of timber configurations for harvest rights under Section 2001(k) or buying back vested harvest rights. We would also like to eliminate the need to provide either replacement timber or compensation if an originally configured sale cannot proceed because of physical impossibility or "other reasons" currently suggested by language in Section 2001(k)(3).

No New Tools

include

Our proposed amendment would authorize the Secretaries to suspend, terminate or modify timber contracts where the Secretary finds that such termination or modification is necessary pursuant to the original contract terms (Forest Service contracts already carry modification and termination language for environmental issues) or to otherwise avoid damage to the environment or public resources. Claims by a contractor against the government would be subject to the Contract Disputes Act. The "for any reasons" language in Section 2001(k)(3) would be deleted.

exchange contracts

do separately not a tool

what about buy-back / exchange

Take this out - not necessary.

my change of contract

specifically authorize or encompass

Section ____ Amendments to Section 2001 of the Rescissions Act of 1995, Public Law 104-19.

(a) Finding. -- The Congress hereby finds and declares that it is in the national interest to (i) clarify the intent of Congress with regard to certain provisions of Section 2001 of the Rescissions Act, (ii) protect the Administration's discretion to implement the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl, (iii) provide the Secretaries concerned with authority necessary to purchase, modify or exchange certain timber contracts in order to assure that valuable public resources in Oregon and Washington are protected and wisely managed and to prevent environmental injury to forest resources, chinook salmon and other wildlife, and rivers and streams, and jeopardy to the livelihoods of those who depend on commercial and sport fisheries and other natural resources.

(b) Award and Release of Timber Sale Contracts Subject to Section 318 of Public Law 101-121 -- Subsection 2001(k) is amended --

(1) in paragraph (1) by striking "or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to" and inserting "subject to and consistent with";

(2) in paragraph (2) by striking "be nesting within" and inserting "occupy for nesting or breeding purposes the stand that contains";

(3) in paragraph (3) by striking "for any reason a sale cannot be released and completed under the terms of this subsection within 45 days after the date of the enactment of this Act, the Secretary concerned shall" and inserting "a sale cannot be released and completed at any time under paragraph (2) of this subsection, the Secretary concerned may";

(4) by adding at the end thereof the following new paragraph:

(4) Suspension, Termination or Modification

(A) Notwithstanding the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.) and any other provision of law applicable to the suspension, termination or modification of timber sale contracts, the Secretary concerned is hereby authorized to suspend, terminate or modify any timber sale contract where the Secretary concerned in his discretion finds that such suspension, termination or modification is necessary to avoid damage to the environment or natural resources or pursuant to original contract terms. Any suspension, termination or modification shall be effective immediately upon issuance of the Secretary's finding.

(B) All claims by a contractor against the government relating to a contract suspended, terminated or modified pursuant to subparagraph (A) shall be subject to the Contract Disputes Act.

(C) The Secretary concerned is hereby authorized to settle any claim by a contractor against the government relating to a contract suspended, terminated or modified pursuant to subparagraph (A) by payment of money or exchange of timber sale contracts.

(c) Timber Sales on Lands Subject to Option 9 -- Subsection 2001(d) is amended by striking "described in" and inserting "subject to".

(d) Effect on Plans, Policies and Activities -- Subsection 2001(l) is amended by striking "or permit" and ", except that such administrative action with respect to salvage timber sales is permitted to the extent necessary, and the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b) (1) of this section or to reflect the effects of the salvage program".

57426
Lisa

To: Distribution List
From: Dinah Bear
CEQ
(202) 395-7421
Date: November 13, 1995
Re: Conference Call on Tuesday, November 14, 1995 at 10 a.m.

Please be advised that a conference call is scheduled for tomorrow, November 14, 1995 at 10 a.m. In order to participate in the call, please dial (202) 456-6755. The access code is 1577. The agenda is as follows:

1. Standard of judicial review for salvage timber sales (Kentucky Heartwood case).
2. Standard of judicial review for option 9 timber sales under the Rescissions Act.
3. Status of other litigation.
4. Other business.

6-6777

Inhiser
EPA
NOAD

Thank you.

Justice
Ag

Distribution List:

Lois Schiffer	514-0557
Don Barry	208-4684
Ellen Athas	272-6815
Peter Coppelman	514-0557
Elena Kagan	456-1647
Kris Clark	208-4444

Timber mts - agency 11/14/95

1. std of review for salvage sales (by Heartwood)

Brief - to extent there is review, we satisfied it here.

Ag - wants no std. / no law to apply.

Legally - options are equally justifiable

Practical effects - courses likely to be same?

Political perception - option 2 (std of rev) - favoring
envidos.

If there's IR, people will do it right more often, in
the ground.

← implementation?

↓

1) environmental documentation

- review for adequacy?

2) review of decision for a+c

- " " a+c?

} Both

or
only

~~option 2~~

no review

"Option 2"

a+c review
of decision

a+c review of decision.
adequacy review - of doc.

Mtg - Friday aft. - 1:00

THE WHITE HOUSE

WASHINGTON

November 13, 1995

MEMORANDUM FOR MARTHA FOLEY

FROM: ELENA KAGAN

RE: SCOPE OF SECTION 2001(D)

The attached is from DOJ's brief in Judge Hogan's court on the scope of 2001(k). As you'll see, in the course of making its argument on 2001(k), DOJ goes some way toward arguing the timber industry's probable position on the scope of 2001(d)-- i.e., that the reference to the Forest Plan is just a "geographic descriptor." I discovered this when I saw similar language in a draft brief on the 2001(k) issue to be submitted this week to the Ninth Circuit; when I called DOJ to insist that the language be deleted (which DOJ agreed to do), the author of the brief informed me that the same argument had appeared in the brief filed in Judge Hogan's court. We should not be surprised if the timber industry quotes this back to us in some future litigation on the meaning of 2001(d).

Harold - timber mts 11/13/95

Present to learn later this wk.

Option 3 - restore our understanding of the deal (?!-di?)
shut or sweeping pol shut that envisions cut rule.
not changing our position - just restoring what
we thought.

Barbara - convs w/ Hatfield, Tex, Murray.

but ... + know - have to talk.

present more than we would get.
specifically were talking about buy-back.

Elements of Option 3

- known to be nesting - ask for use of protocol.

- num. 318 (to extent not same deal) (e.g. 7ue-1950)
↳

(we tried to get this - specifically did NOT get)
(is there a middle position on this?)

- amend provisions in Forest Plan -
2001(d)/2001(i)

- discretionary authority/administrative pleg.

• #

• dip into O.9 sales?

Apply
to
everything
↓
318
Hogan

voluntarily delayed
exchange
invol. terminate
or modify

Also re 2001(d) - if
That is not repealed.

- anything under
2001h.

In drafting proposal - need to consider BLM problem re
authority to buy-back
Repeal "if for any reason"

Exchange provision -

be explicit as to using 0.9?

or just broad provision, encompassing this?

BC: Cuy will want to know
how to use discret auth -
espec. condemnation.

Withdrawal/Redaction Marker Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Phone No. (Partial) (1 page)	11/11/1995	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

Timber - memos, emails, etc. [5]

2009-1006-F
ke688

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]

MEMORANDUM

TO: KATIE McGINTY
T. J. GLAUTHIER
MARTHA FOLEY
JENNIFER O'CONNOR
BARBARA CHOW
ELENA KAGAN

7 PAGES TOTAL

FR: TOM JENSEN *tcj*

RE: ATTACHED TIMBER LEGISLATION OPTIONS

DT: NOVEMBER 11, 1995

Please review the following documents prepared after Friday's meeting of the timber working group.

First, you will find a one-page summary table of the six legislative options we discussed.

Second, you will find a two-page table showing the same six legislative options, described in more detail.

Third, you will find a textual description of the six options.

[001]

I invite your comments. You may reach me at home at P6/(b)(6) or at the office on Monday at 395-7415.

Handwritten notes:
...
...
...

Summary of Legislative Options (November 12, 1995)

#	Major Features	Strengths	Weaknesses
1	<ul style="list-style-type: none"> ● Repeal entire timber rider ● Secure buy back, exchange and modification authorities 	<ul style="list-style-type: none"> ▶ Strongest, most favorable message to environmentalists ▶ Useful if congressional fix unlikely 	<ul style="list-style-type: none"> ■ Appears to be a flip-flop ■ Extremely unlikely to gain congressional support
2	<ul style="list-style-type: none"> ● Repeal all green timber and Forest Plan provisions ● Secure buy back, exchange and modification authorities 	<ul style="list-style-type: none"> ▶ Strong message to environmentalists ▶ Prevents release of problematic sales and interpretation that Forest Plan overridden 	<ul style="list-style-type: none"> ■ Conflicts with agreement with congress on some 318 sales ■ Could appear to be a flip-flop ■ Difficult to gain congressional support
3	<ul style="list-style-type: none"> ● Amend provisions applicable to listed birds and non-318 sales to match our interpretations ● Repeal Forest Plan provisions ● Secure buy back, exchange and modification authorities 	<ul style="list-style-type: none"> ▶ Favorable message to environmentalists ▶ Prevents release of problematic sales and interpretation that Forest Plan overridden <p>STAFF RECOMMENDATION</p>	<ul style="list-style-type: none"> ■ Difficult to gain congressional support ■ Narrower "fix" than may be desired by environmentalists
4	<ul style="list-style-type: none"> ● Amend provisions applicable to listed birds to match our interpretation ● Repeal Forest Plan provisions ● Secure buy back, exchange and modification authorities 	<ul style="list-style-type: none"> ▶ Prevents release of some problematic sales and interpretation that Forest Plan overridden 	<ul style="list-style-type: none"> ■ Appears tepid to environmentalists ■ Difficult to gain congressional support
5	<ul style="list-style-type: none"> ● Repeal Forest Plan provisions ● Secure buy back, exchange and modification authorities <p>+ non-318?</p>	<ul style="list-style-type: none"> ▶ Prevents judicial interpretation that Forest Plan was overridden 	<ul style="list-style-type: none"> ■ Environmentalists would condemn as inadequate ■ Difficult to gain congressional support
6	<ul style="list-style-type: none"> ● Secure buy back, exchange and modification authorities 	<ul style="list-style-type: none"> ▶ Possible to win congressional support 	<ul style="list-style-type: none"> ■ Environmentalists would condemn as inadequate

Summary of Legislative Options (Nov. 10, 1995)			
#	Major Features	Strengths	Weaknesses
1	<ul style="list-style-type: none"> ● Repeal entire timber rider (salvage, 318, and Forest Plan provisions [2001]) ● Secure discretionary authority to: <ul style="list-style-type: none"> • buy-back vested harvest rights under 2001(k) • exchange timber for harvest rights under 2001(k) • terminate or modify (with compensation) timber harvest rights under 2001(k) 	<ul style="list-style-type: none"> ▶ Sends strongest, most favorable message to environmentalists ▶ Restores legal status quo ante ▶ Forestalls salvage-related controversies around country and eastside litigation ▶ Consistent with POTUS environment message ▶ Most protective of state and private timber land interests ▶ Useful if congressional fix unlikely 	<ul style="list-style-type: none"> ■ Conflicts with agreement with congress on salvage and some 318 sales ■ Appears to be a flip-flop ■ Extremely unlikely to gain congressional support ■ Costly
2	<ul style="list-style-type: none"> ● Repeal all green timber sale provisions [2001(k)] ● Repeal provisions applicable to Forest Plan to eliminate override interpretation [2001(d)&(l)] ● Secure discretionary authority to: <ul style="list-style-type: none"> • buy-back vested harvest rights under 2001(k) • exchange timber for harvest rights under 2001(k) • terminate or modify (with compensation) timber harvest rights under 	<ul style="list-style-type: none"> ▶ Strong, favorable message to environmentalists ▶ Prevents release of additional problematic sales (nesting & non-318) ▶ Prevents judicial interpretation that Forest Plan was overridden ▶ Provides authorities to address released, unharvested problem sales ▶ Consistent with POTUS environment message ▶ Protective of private/state timber land interests ▶ Reduces risk of eastside litigation 	<ul style="list-style-type: none"> ■ Conflicts with agreement with congress on some 318 sales ■ Could appear to be a flip-flop ■ Difficult to gain congressional support ■ Does not eliminate all risk of new adverse interpretations ■ Costly
3	<ul style="list-style-type: none"> ● Amend provisions applicable to listed birds and non-318/Hogan sales to match our interpretations of "occupancy," and temporal/geographic scope ● Repeal provisions applicable to Forest Plan to eliminate override interpretation [2001(d)&(l)] ● Secure discretionary authority to: <ul style="list-style-type: none"> • buy-back vested harvest rights under 2001(k) • exchange timber for harvest rights under 2001(k) • terminate or modify (with compensation) timber harvest rights under 2001(k) 	<ul style="list-style-type: none"> ▶ Sends largely favorable message to environmentalists ▶ Prevents release of additional problematic sales (occupancy and pre-FY90) ▶ Prevents judicial interpretation that Forest Plan was overridden ▶ Provides authorities to address released, unharvested problem sales ▶ Reduces risk of eastside litigation ▶ Protective of private/state timber land interests ▶ Most consistent with Administration view of agreement with congress 	<ul style="list-style-type: none"> ■ Difficult to gain congressional support ■ Narrower "fix" than may be desired by environmentalists ■ Does not eliminate all risk of unforeseen adverse interpretations ■ Could appear to be a flip-flop regarding listed birds ■ Costly

Summary of Legislative Options (Nov. 10, 1995)

#	Major Features	Strengths	Weaknesses
4	<ul style="list-style-type: none"> • Amend provisions applicable to listed birds to match our interpretation • Repeal provisions applicable to Forest Plan to eliminate override interpretation [2001(d)&(l)] • Secure discretionary authority to: <ul style="list-style-type: none"> • buy-back vested harvest rights under 2001(k) • exchange timber for harvest rights under 2001(k) • terminate or modify (with compensation) timber harvest rights under 2001(k) 	<ul style="list-style-type: none"> ▶ Prevents release of some additional problematic sales ▶ Prevents judicial interpretation that Forest Plan was overridden ▶ Provides authorities to address released, unharvested problem sales 	<ul style="list-style-type: none"> ■ Does not resolve problems with pre-FY90 Hogan sales ■ Appears tepid to environmentalists ■ Little or no help reducing risk of eastside litigation or protecting private/state timber land interests ■ Difficult to gain congressional support ■ Costly
5	<ul style="list-style-type: none"> • Repeal provisions applicable to Forest Plan to eliminate override interpretation [2001(d)&(l)] • Secure discretionary authority to: <ul style="list-style-type: none"> • buy-back vested harvest rights under 2001(k) • exchange timber for harvest rights under 2001(k) • terminate or modify (with compensation) timber harvest rights under 2001(k) 	<ul style="list-style-type: none"> ▶ Prevents judicial interpretation that Forest Plan was overridden ▶ Provides authorities to address released, unharvested problem sales 	<ul style="list-style-type: none"> ■ Does not resolve problems with <u>non-318</u> or listed bird sales ■ Environmentalists would condemn as inadequate ■ Little or no help reducing risk of eastside litigation or unforeseen adverse interpretations ■ Difficult to gain congressional support ■ Costly
6	<ul style="list-style-type: none"> • Secure discretionary authority to: <ul style="list-style-type: none"> • buy-back vested harvest rights under 2001(k) • exchange timber for harvest rights under 2001(k) • terminate or modify (with compensation) timber harvest rights under 2001(k) 	<ul style="list-style-type: none"> ▶ Possible to win congressional support ▶ Provides authorities to address released, unharvested problem sales 	<ul style="list-style-type: none"> ■ Environmentalists would condemn as inadequate ■ Speculative protection for Forest Plan, private/state timber land interests ■ Little or no help reducing risk of eastside litigation/unforeseen adverse interpretations ■ Does not eliminate controversy over non-318 and listed bird sales ■ Costly

could do this too.

SUMMARY OF LEGISLATIVE OPTIONS
(With staff recommendation - November 12, 1995)

Option 1.

- Repeal entire timber rider (salvage, 318, and Forest Plan provisions [2001])
- Secure discretionary authority to buy-back vested harvest rights under 2001(k)
- Secure discretionary authority to exchange timber for harvest rights under 2001(k)
- Secure discretionary authority to terminate/modify (with compensation) timber harvest rights under 2001(k)

Pro: *Sends strongest, most favorable message to environmentalists*
Restores legal status quo ante
Forestalls salvage-related controversies around country and eastside litigation
Consistent with POTUS broad message on environment
Most protective of state and private timber land interests
Useful if congressional fix unlikely

Con: *Conflicts with agreement with congress on salvage and some 318 sales*
Appears to be a flip-flop
Extremely unlikely to gain congressional support
Costly

Option 2.

- Repeal all green timber sale provisions [2001(k)]
- Repeal provisions applicable to Forest Plan to eliminate override interpretation [2001(d)&(f)]
- Secure discretionary authority to buy-back vested harvest rights under 2001(k)
- Secure discretionary authority to exchange timber for harvest rights under 2001(k)
- Secure discretionary authority to terminate/modify (with compensation) timber harvest rights under 2001(k)

Pro: *Sends strong, favorable message to environmentalists*
Prevents release of additional problematic sales (nesting & non-318)
Prevents judicial interpretation that Forest Plan was overridden
Provides authorities to address released, unharvested problem sales
Consistent with POTUS broad message on environment
Protective of private/state timber land interests
Reduces risk of eastside litigation

Con: *Conflicts with agreement with congress on some 318 sales*
Could appear to be a flip-flop
Difficult to gain congressional support
Does not eliminate all risk of new adverse interpretations
Costly

Option 3. (Staff Recommended Option)

- Amend provisions applicable to listed birds and non-318/Hogan sales to match our interpretations of "occupancy," and temporal/geographic scope
- Repeal provisions applicable to Forest Plan to eliminate override interpretation [2001(d)&(l)]
- Secure discretionary authority to buy-back vested harvest rights under 2001(k)
- Secure discretionary authority to exchange timber for harvest rights under 2001(k)
- Secure discretionary authority to modify/terminate (with compensation) timber harvest rights under 2001(k)

Pro: *Sends largely favorable message to environmentalists*
Prevents release of additional problematic sales (occupancy and pre-FY90)
Prevents judicial interpretation that Forest Plan was overridden
Provides authorities to address released, unharvested problem sales
Reduces risk of eastside litigation
Protective of private/state timber land interests
Most consistent with Administration view of agreement with congress

Con: *Difficult to gain congressional support*
Narrower "fix" than may be desired by environmentalists
Does not eliminate all risk of unforeseen adverse interpretations
Could appear to be a flip-flop regarding listed birds
Costly

Option 4.

- Amend provisions applicable to listed birds to match our interpretation
- Repeal provisions applicable to Forest Plan to eliminate override interpretation [2001(d)&(l)]
- Secure discretionary authority to buy-back vested harvest rights under 2001(k)
- Secure discretionary authority to exchange timber for harvest rights under 2001(k)
- Secure discretionary authority to terminate/modify (with compensation) timber harvest rights under 2001(k)

Pro: *Prevents release of some additional problematic sales*
Prevents judicial interpretation that Forest Plan was overridden
Provides authorities to address released, unharvested problem sales

Con: *Does not resolve problems with pre-FY90 Hogan sales*
Appears tepid to environmentalists
Little or no help reducing risk of eastside litigation or protecting private/state timber land interests
Difficult to gain congressional support
Costly

Option 5.

- Repeal provisions applicable to Forest Plan to eliminate override interpretation [2001(d)&(l)]
- Secure discretionary authority to buy-back vested harvest rights under 2001(k)
- Secure discretionary authority to exchange timber for harvest rights under 2001(k)
- Secure discretionary authority to terminate/modify (with compensation) timber harvest rights under 2001(k)

Pro: *Prevents judicial interpretation that Forest Plan was overridden
Provides authorities to address released, unharvested problem sales*

Con: *Does not resolve problems with non-318 or listed bird sales
Environmentalists would condemn as inadequate
Little or no help reducing risk of eastside litigation or unforeseen adverse interpretations
Difficult to gain congressional support
Costly*

Option 6.

- Secure discretionary authority to buy-back vested harvest rights
- Secure discretionary authority to exchange timber harvest rights
- Secure discretionary authority to terminate/modify (with compensation) timber harvest rights under 2001(k)

Pro: *Possible to win congressional support
Provides authorities to address released, unharvested problem sales*

Con: *Environmentalists would condemn as inadequate
Speculative protection for Forest Plan, private/state timber land interests
Little or no help reducing risk of eastside litigation/unforeseen adverse interpretations
Does not eliminate controversy over non-318 and listed bird sales
Costly*

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

SEATTLE AUDUBON SOCIETY, et al.,)	No. C89-160WD
)	
Plaintiffs,)	
)	
v.)	Seattle, Washington
)	November 1, 1994
JOHN L. EVANS, et al.,)	10:30 a.m.
)	
Defendants.)	
)	
and)	
)	
WASHINGTON CONTRACT LOGGERS ASSOCIATION, et al.,)	
)	
Defendant-Intervenors.)	

TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE WILLIAM L. DWYER
 UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Seattle Audubon Society, et al.:

Mr. Todd D. True
 Ms. Patti Goldman
 Sierra Club Legal Defense Fund
 705 Second Avenue
 203 Hoge Building
 Seattle, Washington 98104-1711

For the Defendant (By telephone):

Mr. Wells Burgess
 U.S. Department of Justice
 P.O. Box 663
 Washington, D.C. 20044-0663

For the Defendant-Intervenors-CLA

Mr. Mark C. Rutzick
 Attorney at Law
 500 Pioneer Tower
 888 S.W. Fifth Avenue
 Portland, Oregon 97204-2089

Q: How 2001 orders sales endangering environment etc.

how can 2001 be harmonized w/ implementation
of The Forest Service, which is directed by the
Questions are raised about the coverage of the statute. ³⁷
same statute?

In our view, what the court should do is stay the
ruling on this motion and continue the injunction in effect
until the Ninth Circuit rules on the government's appeal from
Judge Hogan's order. That would also permit the environmental
plaintiffs to either file a consolidated action, as the court
suggests, or to pursue their appeal from denial of intervention.
Again, that would seem to us to be the prudent course of action
to take.

THE COURT: All right. Thank you. Mr. Rutzick,
anything further?

MR. RUTZICK: Yes, please. On the question of
harmonizing section K with section D. Section D does not direct
the implementation of Option 9. Section D directs the expedited
preparation of timber sales, quote, on federal lands described
in, and then it continues to name the record of decision.

Congress was extremely careful and precise in not
directing or endorsing Option 9. What they have done in section
D is to allow timber sales to go forward in the Option 9 region,
notwithstanding any other law. But there is no direction that
sales must comply with Option 9.

THE COURT: What does the phrase "sales described in
Option 9" mean, do you think?

MR. RUTZICK: I'm sorry, if I said that, I misspoke.
Let me read the part of the sentence that we are talking about,

1 "Notwithstanding any other law, the secretary concerned shall
2 expeditiously prepare, offer and award timber sale contracts on
3 federal lands described in the record of decision, April 13,
4 1994." And rather than directing sales be prepared under or
5 consistent with or according to Option 9, it simply directs the
6 sales to go forward in the region.

7 THE COURT: So how would one define the sales that
8 section is talking about?

9 MR. RUTZICK: Sales in the national forests and BLM
10 districts that are subject to Option 9, which is 19 national
11 forests, I believe, and six BLM districts, it's another
12 geographic area definition as in section k. So there is no
13 disharmony.

14 There isn't a -- I want to say there is not a
15 prohibition that the government can't follow Option 9 to the
16 extent the law allows it. But there is no direction at all. In
17 fact, in the legislative history there is some considerable
18 discussion that Congress was not endorsing Option 9.

19 The issue of interpreting section D is also in front of
20 Judge Hogan in a different case called Oregon Natural Resources
21 Council v. Thomas, a case filed by the Sierra Club Legal Defense
22 Fund, challenging timber sales in the Umpqua National Forest.
23 There is a summary judgment hearing in that case scheduled for
24 November 21st in front of Judge Hogan.

25 Judge Hogan, for whatever reason, has gotten all the

1 section 2001 cases, and this is a D case, and he has gotten all
 2 the K cases. But this issue is already in front of him on the
 3 precise question of whether sales have to be consistent with
 4 Option 9.

5 Our reading of the statute is that sales do not have to
 6 be consistent with Option 9. I represent some intervenors in
 7 that case and we have taken that position once again that the
 8 government has not taken that position, they have said something
 9 that Mr. Burgess would have to explain, although Mr. Burgess
 10 isn't handling that case.

11 THE COURT: The sales have to be consistent with Option
 12 9 under this court's December order, do they not?

13 MR. RUTZICK: Well, that may have been true before July
 14 27th, 1995. But on the date of enactment of section 2001(k),
 15 the Rescissions Act, the notwithstanding any other law provision
 16 in subsection D, supersedes the preexisting laws and Option 9.

17 Let me say that ~~this is our view.~~ The administration
 18 has said we are going to follow Option 9 anyway, and that seems
 19 to be what they are doing.

20 THE COURT: If they did not follow the plan that was
 21 approved, what standards would they use?

22 MR. RUTZICK: Our judgment is that Congress did not
 23 prescribe them the standards.

24 THE COURT: So they could just order sales anywhere
 25 they wanted to, the National Forest Management Act

prescribes sales generally?

M...

1 notwithstanding?

2 MR. RUTZICK: That's our interpretation of what
3 Congress has done here. They directed sales to be prepared
4 expeditiously, notwithstanding any other law.

5 THE COURT: And in the process, all environmental laws
6 and all wildlife protection laws could be ignored?

7 MR. RUTZICK: Yes.

8 THE COURT: Would it not take a more explicit statement
9 by Congress to do that?

10 MR. RUTZICK: I don't think you can get more explicit
11 than notwithstanding any other law. *"should be proposed"*

12 THE COURT: All right. Thank you. I will get an order
13 out to you before your November 7 hearing before Judge Hogan.
14 If there is any more briefing needed on WCLA's motion to
15 transfer or stay, I will set a schedule for that. But at the
16 moment I do not expect any additional briefing will be needed.

17 I hope and expect to get an order out to you this week.
18 I hope that will be of maximum help to all of you. It has been
19 a pleasure to work with all of you again. Mr. Burgess, can you
20 hear?

21 MR. BURGESS: Yes, I can, Your Honor.

22 THE COURT: All right. We are about to adjourn. Court
23 will be in recess.

24 (11:30 a.m., end of proceedings)

25

*but again
what sales?
that was
the motion
that has
been reported
according to
union.*

Nov 10 - Mtg re legislation - timber.

Disc. w/ Dix, Murray, Hatfield, (Gorton thru Hatfield)

preliminary - support for change if narrow

pros + cons -

effects on private owners?

easiest

Admin tools -

2001d + 2001(i) -

non - 318 rules -

29

murvlets

repeal 2001k

repeal whole rules

hardest.

AM land swap - includes & whether
| can we Forest Plan timber-
beremendi proposal
Also. make clear this cuts
and k3?

DRAFT -- DRAFT -- DRAFT (Nov. 9th; 4:40 p.m.)
SUMMARY OF LEGISLATIVE OPTIONS

Option 1.

- Repeal entire timber rider (salvage, 318, and Forest Plan provisions [2001])
- Secure discretionary authority to buy-back vested harvest rights
- Secure discretionary authority to exchange timber harvest rights
- Secure discretionary authority to condemn (and compensate) timber harvest rights

Pro: *Sends strongest, most favorable message to environmentalists*
Restores legal status quo ante
Useful if we determine there is little or no likelihood of congressional support
for any kind of fix

Con: *Conflicts with agreement with congress on salvage and 318 sales*
Appears to be a flip-flop
Extremely unlikely to gain congressional support
Costly

Option 2.

- Repeal all green timber sale provisions [2001(k)]
- Repeal provisions applicable to Forest Plan to eliminate override interpretation [2001(d)&(l)]
- Secure discretionary authority to buy-back vested harvest rights
- Secure discretionary authority to exchange timber harvest rights
- Secure discretionary authority to condemn (and compensate) timber harvest rights

not salvage;
every thing else

Pro: *Sends strong, favorable message to environmentalists*
Prevents release of additional problematic sales (nesting & non-318)
Prevents judicial interpretation that Forest Plan was overridden
Provides authorities to address released, unharvested problem sales

Con: *Conflicts with agreement with congress on 318 sales*
Could appear to be a flip-flop
Difficult to gain congressional support
Costly

Option 3.

- Amend provisions applicable to listed birds and non-318/Hogan sales to match our interpretations (
- Repeal provisions applicable to Forest Plan to eliminate override interpretation
- Secure discretionary authority to buy-back vested harvest rights

not salvage;
not pure 318;
every thing else

(especially or only as to pre-1910.)

- Secure discretionary authority to exchange timber harvest rights
- Secure discretionary authority to condemn (and compensate) timber harvest rights

Pro: *Sends strong, favorable message to environmentalists*
Prevents release of additional problematic sales
Prevents judicial interpretation that Forest Plan was overridden
Provides authorities to address released, unharvested problem sales
Most consistent with agreement with congress

Con: *Difficult to gain congressional support*
Could appear to be a flip-flop regarding listed birds
Costly

↓
 not so much this as...

Option 4. ← also here

- Amend provisions applicable to listed birds to match our interpretation]
- Secure discretionary authority to buy-back vested harvest rights
- Secure discretionary authority to exchange timber harvest rights
- Secure discretionary authority to condemn (and compensate) timber harvest rights

Pro: *Sends favorable message to environmentalists*
Prevents release of additional problematic sales
Provides authorities to address released, unharvested problem sales

Con: *Does not resolve problems with non-318 sales*
Appears tepid to environmentalists
Speculative protection for Forest Plan
Difficult to gain congressional support
Costly

Option 5.

- Secure discretionary authority to buy-back vested harvest rights
- Secure discretionary authority to exchange timber harvest rights

and condemnation?
 ↲

Pro: *Possible to win congressional support*
Provides authorities to address released, unharvested problem sales

Con: *Environmentalists would condemn as inadequate*
Speculative protection for Forest Plan
Does not eliminate controversy over "nesting" sales
Costly

Why not option 3 minus birds:
 that's the plug that we can say
 is basically a response to
 misanderstandings.

• NB - option 9 shift is not
 a flip-flop.

514-2701

Peter Coppelman

- Marla Marvic - Sen Murray's office
- Enviros have asked for amicus issue in 9th Cir. from her.
- Nuts/counterproductive - atty's perspective. Completely politicize it - throws in opinion of someone who doesn't care for a bill of laws.

} ETC
And whose own amendment failed -
a fact which the Dist Ct used!
(see her amend - consistent w/ an
interp)

MEMORANDUM

TO: Katie McGinty
T.J. Glauthier
Martha Foley
Jennifer O'Connor
Elena Kagan

CC: Mark Weatherly
Chris Nolin

FR: Tom Jensen

RE: Draft Timber Legislation Options

I've prepared a draft summary of possible legislative options related to the logging provisions of the rescissions act. I would appreciate your comments, by 4:00 today, so that we can ship copies to agency representatives in time for our meeting with them tomorrow morning.

Thanks for your help.

DRAFT -- DRAFT --DRAFT
SUMMARY OF LEGISLATIVE OPTIONS

Option 1.

- Repeal entire timber rider (salvage and green timber sale provisions)
- Amend provisions applicable to Forest Plan to eliminate override interpretation] why only amend?
- Secure discretionary authority to buy-back vested harvest rights
- Secure discretionary authority to exchange timber harvest rights

Pro: *Sends strongest, most favorable message to environmentalists*
Restores legal status quo ante
Useful if we determine there is little or no likelihood of congressional support for any kind of fix

Con: *Conflicts with "commitment" to congress on salvage and 318 sales*
Appears to be a flip-flop
Extremely unlikely to gain congressional support
Costly] how so?

Option 2.

- Repeal all green timber sale provisions
- Amend provisions applicable to Forest Plan to eliminate override interpretation] see above?
- Secure discretionary authority to buy-back vested harvest rights
- Secure discretionary authority to exchange timber harvest rights

Pro: *Sends strong, favorable message to environmentalists*
Prevents release of additional problematic sales (nesting & non-318)
Prevents judicial interpretation that Forest Plan was overridden
Provides authorities to address released, unharvested problem sales

Con: *Conflicts with "commitment" to congress on 318 sales*
Could appear to be a flip-flop
Difficult to gain congressional support
Costly] see above

Option 3.

- Repeal green timber provisions applicable to listed birds and non-318/Hogan sales
- Amend provisions applicable to Forest Plan to eliminate override interpretation] see above
- Secure discretionary authority to buy-back vested harvest rights
- Secure discretionary authority to exchange timber harvest rights

Pro: *Sends strong, favorable message to environmentalists*
Prevents release of additional problematic sales
Prevents judicial interpretation that Forest Plan was overridden
Provides authorities to address released, unharvested problem sales

Con: *Difficult to gain congressional support*
Costly

~~Even here a part of
strip floor as to unharvested?~~

Option 4.

- Repeal green timber provisions applicable to listed birds
- Secure discretionary authority to buy-back vested harvest rights
- Secure discretionary authority to exchange timber harvest rights

~~What about just
non-318/10 year rules?~~

Pro: *Sends favorable message to environmentalists*
Prevents release of additional problematic sales
Provides authorities to address released, unharvested problem sales

Con: *Does not resolve problems with non-318 sales*
Appears tepid to environmentalists
Speculative protection for Forest Plan
Difficult to gain congressional support
Costly) see above

Option 5.

- Secure discretionary authority to buy-back vested harvest rights
- Secure discretionary authority to exchange timber harvest rights

Pro: *Possible to win congressional support*
Provides authorities to address released, unharvested problem sales

Con: *Environmentalists would condemn as inadequate*
Speculative protection for Forest Plan
Does not eliminate controversy over "nesting" sales
Costly) see above

Is any of this more long going to
get us anywhere?
If dist or ~~denies~~ upholds ind 705 +
all cts deny stay...

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY

November 9, 1995

MEMORANDUM FOR JENNIFER O'CONNOR

CC: KATIE McGINTY
SHELLEY FIDLER
ELENA KAGAN
DINAH BEAR
T.J. GLAUTHIER

FROM: TOM JENSEN

RE: YOUR REQUEST FOR OVERVIEW MEMO ON TIMBER

Jennifer, per our conversation last evening, here's a one-page overview of the timber situation. I'll be in my office early and would be happy to incorporate your comments.

Update on Federal Forest Policy Issues in Oregon and Washington

Overview

Economic conditions

The Northwest's economy is strong in virtually all sectors. Oregon and Washington economies are diversifying and moving away from their traditionally high dependence on the forestry sector. Forest product industries have enjoyed record profits, relying largely on timber cut from private and state-owned lands. Lumber prices have dropped some in recent months, due largely to reduced national housing construction and Canadian competition.

Implementation of Northwest Forest Plan

The Forest Service and Bureau of Land Management report that the volume of federal timber offered for sale in FY 1995 exceeded Forest Plan targets. The target was 600 million board feet (mbf); 610 mbf was actually put on the market. The agencies expect also to exceed the FY 1996 Forest Plan target of 800 mbf.

Implementation and Effects of Rescissions Act

Litigation

Every major feature of the logging provision of the rescissions act is in litigation now or is expected to be shortly. To this point, most litigation has focused on the old-growth provisions of the rescissions act, but an increasing number of suits concern salvage sales around the country and new challenges to the Forest Plan itself are on the horizon (30-60 days).

There are at least 20 rescission act timber cases pending before eight federal district courts and the Ninth Circuit panels. Timber industry plaintiffs continue to challenge the legality of the Forest Plan and seek to expand the scope of the old-growth sale section of the rescission act. Environmental plaintiffs are seeking to restrain old-growth and salvage sales.

The Administration's posture in litigation has been oriented toward protecting the Forest Plan from undermining by adverse environmental impacts of old-growth sales and, in the case of salvage sales, ensuring our discretion to apply environmental standards.

District court and appellate rulings on old-growth sales have been adverse to our position, raising significant concerns that the Forest Plan is in jeopardy.

Timber sales under Rescissions Act

The Administration has released for sale 305 mbf of old growth timber under the rescissions act. Another 358 mbf is in dispute for various, largely environmental reasons and has not been released. Figures are not immediately available for salvage sales under the act, but FY

1995 salvage timber offered for sale exceeded 1.8 billion board feet, considerably in excess of pre-rescissions act planned levels.

Stakeholder Views

The timber industry appears generally to be pleased by the new law and their courtroom victories. There is a sense that the industry has gained revenge against environmental interests and this Administration. Some have speculated that major, national timber interests are uncomfortable with, particularly, the old-growth logging under the rescissions act.

The environmental community continues to feel fundamentally betrayed by the new law. They are pleased that the Administration has taken litigation positions largely coincident with their views, but doubt Administration assertions that we did not know that the act would be construed and applied as broadly as it has. Environmental interests have been involved in numerous civil disobedience actions protesting rescissions act logging. Most controversy has attended old-growth sales in Oregon, but disputes are expected to spread to salvage sales around the country.

The general public in the Northwest can be expected to sense that the Administration's "solution" for forest policy is unraveling, and that gridlock is returning.

Administration Actions

Under White House leadership, the Administration is working to defend the Forest Plan. Staff is developing various options for legislation repealing, amending, or otherwise addressing problems arising under the rescissions act. Staff is also developing a coordinated message plan for the Northwest, emphasizing the successes of the Forest Plan.

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

08-Nov-1995 09:10pm

TO: Elena Kagan

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

SUBJECT: RE: Garemandi plan

the idea being, I assume that it is a litigable issue twhether we could do it anyway?

You are right, I think -- perhaps we should hve TJ work it into his draft as a legislative option, and have him also point out that we can do it possibly without legislation.

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

08-Nov-1995 06:06pm

TO: Thomas C. Jensen

FROM: Elena Kagan
Office of the Counsel

SUBJECT: geremendi memo

In future editions of the Geremendi memo, could you use the attached section? I've deleted a couple of sentences relating to the particular positions of particular lawyers. Also, I'm going to fax to you the new, final Boling memo on this subject.