

NLWJC- Kagan

Counsel - Box 001 - Folder 006

Timber-memos, emails, etc. [6]

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. report	Phone No. (Partial) (1 page)	10/30/1995	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

Timber - memos, emails, etc. [6]

2009-1006-F

ke689

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]

Timber mtg - Harold 11/

1. Law re 318 Hojan Title has passed.

cong can "condemn" these sales -

↳ non-318 sales (Hojan)
318 sales

Requirement (3) a, b, c.

ability to engage in negotiations

↳ buy-back authority

payment or subst. timber.

or chit for future timber sales.

mechanism: thg? > pros/cons
K? > of each.

Frazier - if we're going for condemnatory legislation, cos. will cut the stuff tomorrow.

unilateral change in K - need leg in this too.
~~give chit~~ Lois: They'll cut tomorrow ~~if we so say~~ this too.

H: how much jeopardizes FP?

Lynn - trying to answer. Early in December.
1st priority - to save FP - focus on that timber which if cut would jeopardize FP.

DB - we have a sense of when most troublesome.

reg auth nco?
agencies need this.
BLM needs waiver - 3(5)
would like additional leg auth.

- ← a) negotiate w/ people - swapping ^{using 0.9 timber as part of your swap?} land trees
- ? < b) voluntary buy this back - need \$ - need leg? ^{do you have?}
- ← c) condemn - or provide power to change

need leg auth for this -

unilaterally the K

whether done by thg or terminating K.

+ money

↳ or modifying K

To evaluate, what do we need to know?

Leon will say: no chance to do; what's the point?

JGere: honoring a commitment

Let's - get rid of whole thing.

JG - don't wipe out salvage. That's not our problem.

focus on 318 + Option 9.

↙ a) released sales

↘ b) sales wrapped up in known to be nesting.

top there OK

add clear auth to condemn, buy back, substitute.

↓
Foley: Hatfield will say you agreed
on the non-Hogan 318

Katie - So what? we were accomplices -
but now we need it fixed.

JG - shouldn't look as if we've changed our mind on
S. 318.

change: option 9

known to be nesting

non-318/Hogan.

— : Before we were under duress. We can change the
whole. We don't have to be consistent.

HT: Character problem - can't be a flip/flop/flip.

}
Come back w/ proposal - let fix

Total repeal - real problem. Press: what are you doing?!

Other options - asking
stuff out the door - give as max flexibility

Two poss sources of funds

- Salvage Fund
 - Claims + Judgments Fund
- scoring issue w/
whatever by then is -
100 m or so.

Filer - need to explore leverage we have to get them to
table - e.g. we're not going ahead w/ salvage.
Need clear opinions.

Mtg on Monday.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY

November 8, 1995

MEMORANDUM FOR HAROLD ICKES

FROM:

KATIE MCGINTY

TJGoz KM

RE:

"GARAMENDI" PROPOSAL

Introduction and Summary

The proposal raised by John Garamendi at Wednesday's timber meeting amounts to the idea that timber planned for sale pursuant to the Forest Plan could be substituted for timber released under section 2001(k) of the rescissions act. Such substitution could occur under several different circumstances, but would generally be used to avoid logging of environmentally sensitive timber. The proposal would add a "tool" to the set of measures available to the Administration (i.e., buy-backs, negotiated modifications, legislation) to reduce the adverse impacts of logging under the rescissions act. This memo discusses the policy and legal implications of the proposal.

As a matter of policy, the proposal could reduce harvest of environmentally problematic timber, thus benefiting the environment and, possibly, the Forest Plan. On the other hand, the proposal could cause an unpopular redistribution of economic benefit among timber interests, at least in the near term. It might also cause a net reduction in timber sales under the Forest Plan. | 7

Politically, the proposal would be supported by environmental interests. The timber industry and related labor unions would oppose. It would initially be seen as constructive and reasonable by the general public, although that perspective could be seriously eroded by timber industry criticism that the President was not meeting his commitments under the Forest Plan.

A preliminary analysis does not reveal any insurmountable legal obstacles to the proposal, although our authority is not clear-cut.

Background

Section 2001(k) of the rescissions act has required release of old-growth, green timber in the following categories:

1. 318 sales released under their original terms and conditions, rather than in modified, environmentally responsible forms; and

2. Non-318 (or "Hogan") sales, which exceed the geographic or temporal scope of the "pure" 318 sales.

In addition, the law allows the Administration to withhold such sales where threatened or endangered bird species are "known to be nesting," but requires that we provide replacement timber of "like kind and value." The scope of this exclusion is in litigation.

The agencies are working now to determine with precision which timber sales, or portions of sales, released or subject to release under 2001(k) present significant environmental concerns.

The Administration has discussed two means to prevent logging of areas with environmental concerns. First, the Forest Service and BLM are asking beneficiaries of sales released under 2001(k) voluntarily to forego or reduce problematic cutting. Second, we would offer beneficiaries of 2001(k) sales compensation in the form of money or timber, or both, in exchange for not cutting certain timber. It is this latter approach that Mr. Garamendi's proposal applies to.

The Garamendi proposal could apply in three cases:

1. Green timber sales developed under the Forest Plan could be a source of equivalent timber under 2001(k)(3) [replacement volume for withheld "known to be nesting" sales];
2. Green timber sales developed under the Forest Plan could be used in exchange for section 318 timber already released or some of the additional timber sales released by Judge Hogan's injunction, and;
3. The volume of green timber sales developed and actually released under the Forest Plan could be reduced by an amount related to the volume released by section 2001(k).

Availability of Substitute Timber

The amount of timber available to be used in substitution for environmentally problematic 2001(k) sales is unclear, as are the terms under which it would be provided. The discussion so far has turned largely on the question whether timber sales planned for release under the Northwest Forest Plan are "available" as substitute volume.

The Bureau of Land Management has stated that it has some as yet unspecified volume of old-growth timber not accounted for under the Forest Plan available for substitution. In contrast, the Forest Service has maintained that it has no timber available for substitution, because all volume under its jurisdiction is allocated toward Forest Plan sales.

Whether to use Forest Plan timber as substitute volume for problematic 2001(k) sales is both a policy and legal issue.

commitments under the Forest Plan.

The general public would be receptive to a problem-solving effort and message. However, it would be difficult to rebut timber industry assertions regarding the Administration's failure to fulfill Forest Plan promises. The perception, merited or not, that we've failed to fulfill the plan may be as harmful as actually losing the plan in court.

Legal Concerns

No version of the Garamendi proposal is free from legal difficulties. But there is a perfectly credible, if not necessarily winning, argument that the Administration has authority either to use Forest Plan timber as replacement timber under 2001(k)(3) (Version 1) or to offer Forest Plan timber in exchange for other timber recently or soon to be released under 2001(k)(1) (Version 2). By contrast, the legal support for simply reducing the volume of Option 9 timber by the amount of timber released under 2001(k) (Version 3) is much more scanty.

The legality of the various Garamendi schemes rests largely on two sections of the Rescissions Act -- 2001(d) and 2001(k) -- and the relationship between them. Section 2001(d) -- the Option 9 section -- provides that the Administration "shall expeditiously prepare, offer, and award timber sale contracts" covered by the Forest Plan, often referred to as Option 9. Section 2001(k)(1) -- the Section 318 section -- provides that the Administration shall release all contracts previously offered or awarded in the area subject to Section 318 of a prior appropriations bill. (The scope of this provision -- specifically, whether it orders the release only of the particular sales referenced in Section 318 or of all sales ever awarded in the area covered by that section -- is currently before the Ninth Circuit.) Section 2001(k)(3) provides that if any of the sales under 2001(k)(1) cannot be awarded -- most notably, because of the existence of an endangered bird species known as the marbled murrelet -- the Administration shall provide the purchaser "an equal volume of timber, of like kind and value."

The question whether the Administration (pursuant to Version 1) can use Option 9 timber as replacement timber under 2001(k)(3), should the Administration win the marbled murrelet case and thus come under an obligation to provide replacement timber, is genuinely difficult. No language in 2001(d) or 2001(k) specifically prevents the Administration from using Option 9 timber as the source of replacement timber. Nor is there any legislative history specifically addressing this issue. The Administration, it might be argued, thus has the discretion to implement the statute in this way. (Of course, the Option 9 timber substituted -- like any other timber substituted -- will have to be of equal volume and like kind and value, as required by 2001(k)(3).) Timber industry lawyers will argue, however, that such a scheme subverts the broadest goals of the statute. Congress, it will be argued, intended for two sets of sales -- Option 9 sales and 318 sales -- to go forward as expeditiously and completely as possible: to use one as substitution for the other is a form of double-counting that undermines this purpose.

Reasonable people can disagree as to the strength of these arguments. DOJ lawyers handling this issue believe that industry lawyers will have the better of this argument. (See DOJ memo attached.) Lawyers from the White House Counsel's Office and CEQ think this analysis slightly overstates the strength of the industry's position. What is clear, as DOJ lawyers agree, is that there is at least a credible claim that the Administration has authority to adopt Version 1 of the Garamendi proposal.

The legal analysis relating to Version 2 of the Garamendi proposal proceeds in a similar manner, but with one prefatory caution. It is important to note that the Administration has no authority to force purchasers of timber released or soon to be released under 2001(k) to take Option 9 timber in its place. The purchasers of these sales have a property right to them; the most the Administration can do is to offer the purchasers the opportunity to take Option 9 timber instead. The ability of the Administration to make this offer turns on the same arguments discussed above. Again, nothing in the statute or legislative history specifically prevents this approach; but the approach does undermine the apparent intention of Congress to get out two separate sets of timber sales.

The proposal to reduce Option 9 output by the amount of timber released under 2001(k) (Version 3 of the Garamendi plan) presents a different set of questions; the legality of such an approach is far more dubious. First, this proposal might be thought to violate the specific directive of 2001(d) to award Option 9 contracts expeditiously. Second, the proposal appears to violate 2001(l), which prevents any revisions to land management plans, including the President's Forest Plan (Option 9), "because of implementation or impacts" of sales required by 2001. And even if this action were legal, adopting it might invite further challenge to the President's Forest Plan, because the action seems to concede that significant new circumstances, vitally affecting the Plan, have arisen.



U.S. Department of Justice

Environment and Natural Resources Division

Policy, Legislation & Special Litigation
P.O. Box 4390
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PC
version
W/K

November 6, 1995

TO: Lois J. Schiffer
Assistant Attorney General

Peter Coppelman
Deputy Assistant Attorney General

FROM: Ted Boling
Attorney-Advisor
Policy, Legislation and
Special Litigation Section

Lisa Holden
Paralegal
General Litigation Section

RE: Legal Implications of Using Option 9 green timber as
replacement timber pursuant to 2001(k) (3) and for other
purposes.

Section 2001(k) (1) of Public Law 104-19 requires the Forest Service and Bureau of Land Management to release certain timber contracts offered or awarded prior to July 27, 1995. Under Judge Hogan's October 13 ruling, this release requirement includes timber contracts offered throughout Washington and Oregon. Section 2001(k) (2) requires the Forest Service and the Bureau of Land Management to withhold from release those timber sale units that have threatened or endangered birds "known to be nesting within the acreage that is the subject of the sale unit." The Forest Service has withheld 55 timber sales, of approximately 228 million board feet (MMBF) of timber, and the BLM has withheld 14 timber sales, of approximately 20 MMBF, pursuant to 2001(k) (2). For each withheld timber sale, the Rescissions Act requires the agencies to "provide an equal volume of timber, of like kind and value, which shall be subject to the terms of the original contract and shall not count against current allowable sale quantities." Section 2001(k) (3).

As we understand them, three questions have been raised regarding using President's Forest Plan timber as [the] a source

timber -- Section 2001(k) for the release of previously offered timber sale contracts and Section 2001(d) directing the expeditious award of timber contracts on lands covered by the President's Forest Plan (referred to by its designation in its environmental impact statement, Option 9). Section 2001(k)(3) requires the Secretaries to provide replacement timber if a sale cannot be released and completed under 2001(k), subject to the terms of the original contract, but does not explain what law applies to the location and operation of these replacement timber contracts except to say that they "shall not count against current allowable sale quantity." Section 2001(d) requires the Secretaries, notwithstanding any other law, to "expeditiously prepare, offer and award timber sale contracts on Federal lands described in" the President's Forest Plan. Section 2001(f) provides for limited judicial review of the record for any decision to prepare, offer, award or operate a timber sale under 2001(d), but does not address the judicial review of replacement timber decisions under 2001(k)(3).

Consistent with our position in Northwest Forest Resource Council (NFR) v. Glickman & Babbitt, we could argue that green timber sales developed under the President's Forest Plan can be used as replacement timber and that Section 2001(d) provides a vehicle for replacement timber sales (under 2001(k)(3)). The scope of Section 2001(k) is defined by reference to timber sale contracts "in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318" of the 1990 Interior and Related Agencies Appropriations Act, Public Law 101-121. § 2001(k)(1). In NFR we argued that Section 2001(k) is limited to the remaining timber sales offered under Section 318 of the 1990 Interior Appropriations Act, which applied ecological standards to National Forests and BLM lands within the range of the northern spotted owl. Section 2001(d)'s scope, which is defined by reference to the President's Forest Plan, overlaps the area of Section 318 under the government's interpretation.² Because the scope of 2001(d) is defined by, and encompasses, the range of the threatened and endangered bird species that 2001(k)(2) is designed to protect, the replacement timber mandated by 2001(k)(3) arguably falls within the scope of 2001(d). Under Judge Hogan's interpretation of 2001(k) as applicable to all of Oregon and Washington this argument is

Might be so even if wrong in that case? no?

² Section 318 applied ecological standards and procedures to timber sales in thirteen National Forests in Oregon and Washington known to contain northern spotted owls and to timber sales in the BLM districts of western Oregon, also within the range of the northern spotted owl. Fiscal Year 1990 Interior Appropriations, Pub. L. 101-121, 103 Stat. 745. The President's Forest Plan applies to all BLM districts and National Forests, or portions thereof, within the range of the northern spotted owl. ROD at 11-12.

weaker because the two provisions overlap, but are not congruent. However, the argument is still available because the species of concern, the marbled murrelet and the northern spotted owl, nest within the forests affected by either interpretation.

I don't think it's clear to understand this argument

As noted above, 2001(k) does not indicate what law applies to the development of replacement contracts, except that the timber shall not count against the current allowable sale quantity. The term "allowable sale quantity" (ASQ) is a legal term of art under the National Forest Management Act of 1976 (NFMA), 16 U.S.C. §§ 1603 et seq. The NFMA mandates that "the Secretary of Agriculture shall limit the sale of timber from each national forest to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained-yield basis" 16 U.S.C. § 1611. Regulations further define ASQ as "[t]he quantity of timber that may be sold from the area of suitable land covered by the forest plan for a time period specified by the plan." 36 C.F.R. § 219.3. Courts and the Forest Service have interpreted the ASQ as operating as a ceiling for timber production in the Land and Resource Management Plans for individual National Forests. See Resources Ltd v. Robertson, 8 F.3d 1394, 1399 (9th Cir. 1993); Sierra Club v. Cargill, 11 F.3d 1545 (10th Cir. 1993); Sierra Club v. Robertson, 845 F.Supp. 485 (S.D. Ohio 1994); 36 C.F.R 219.3, 219.16.

Section 2001(k)(3)'s provision that replacement timber contracts "shall not count against current allowable sale quantity" (ASQ) does not clearly prohibit the "double counting" of replacement timber as timber offered under the President's Forest Plan. The timber output under the President's Forest Plan is described as "probable sale quantity" in order to "estimate sale levels likely to be achieved" under the President's Forest Plan "as opposed to estimating ceiling or upper-limit harvest levels (ASQ)." FSEIS, 3&4-263. Probable Sale Quantity ("PSQ") is defined as "the allowable harvest levels for the various alternatives that could be maintained without decline over the long term if the schedule of harvest and regeneration were followed." FSEIS Glossary at 13. Option 9, as adopted by the Secretaries on April 13, 1994, contained an estimated PSQ of 1.1 bbf. ROD at 24.³ It is logical to construe 2001(k)(3)'s

³ The PSQ was devised to assist FEMAT team members in evaluating the alternatives. In particular, the PSQ was used instead of the ASQ to provide an estimate, instead of a more defined ceiling. See FSEIS at 3&4 263-274. The PSQ does not set "minimum levels that must be met nor maximum levels that cannot be exceeded." ROD at 19. Further "it is unlikely that the annual PSQ estimates" will be achieved during the first several years. Id. The ROD acknowledges that the estimated level of 1.1 bbf is significantly lower than that obtained in the early (continued...)

reference to ASQ as a waiver of ASQ limitations for particular National Forests, allowing replacement timber to be concentrated in a particular National Forest. However, if the language of 2001(k)(3) were interpreted as precluding the agencies from counting replacement timber value towards the ASQ for an individual National Forest Plan, rather than simply waiving ASQ limitations, then arguably it also precludes the agencies from considering the replacement timber under the President's Forest Plan. Because ASQ has a specific and well-known meaning, the better argument is for an interpretation limited to that meaning.

what meaning?

Subsection 2001(d), as noted above, is an entirely separate provision for the expeditious preparation, offer and award of timber sale contracts on Federal lands described in the Record of Decision for the President's Forest Plan. If the Administration tries to substitute Forest Plan timber for 2001(k) timber, the timber industry would challenge us by arguing that [T]he clear intent of this provision is to supply timber on the open market, and use of the term "offer" would ordinarily implicate a competitive bidding process. Using this authority to "prepare, offer, and award" timber sale contracts to those purchasers that the Secretary is obligated to "provide" replacement timber under 2001(k)(3) is inconsistent with the intent of 2001(d).

100 show - what is this? Land on.

Legislative History

Counting replacement timber under 2001(k) as Option 9 timber would appear to be [is] inconsistent with the legislative [drafters'] intent to expedite timber sales under both section 2001(d) and 2001(k). The intent of subsection 2001(k) is to foster the expedited sale of timber contracts to avoid government liability for their cancellation. The House Report stated, "Release of these sales will remove tens of millions of dollars of liability from the government for contract cancellation." 104 House Report 71, 104th Cong., 1st Sess. (1995). The Senate Appropriations Committee, which added subsection 2001(d) and paragraphs 2001(k)(2) and (3), explained the intent of 2001(d) by reference to the current PSQ of the Forest Plan:

100 show - just a arg. - no clear intent to this This is only the most precise study intent.

The Committee has also included bill language to provide the Forest Service and the Bureau of Land Management the authority to expedite timber sales allowed under the President's forest plan The Committee is concerned that the administration has not taken the efforts necessary to fulfill the commitment it made to the people of the region to achieve an annual harvest level of 1.1 billion board feet and has

³(...continued)
1980's but this was necessary due to the high level of timber harvested in the 1980s and current environmental laws. ROD at 41, FSEIS at 3&4 at 267.

included bill language to assist the administration in this effort.

S. Rep. 104-17 at 123. There is no indication of a linkage between 2001(d) and 2001(k) (3), or any explanation of the standards applicable to replacement timber.

That's for a law as!

In debate, Senator Gorton, the author of these provisions, made numerous references to the Forest Plan's 1.1 billion board feet of timber in describing the intent behind 2001(d). He argued that 2001(d)'s waiver of environmental laws is necessary to achieve this harvest level because "almost no single action taken pursuant to this option will escape an appeal within the forest Service and a lawsuit being stretched out forever and ever." 141 Cong. Rec. S 4875 (daily ed. March 30, 1995). While 2001(d) requires that these Forest Plan be expedited, Senator Gorton stated that 2001(d) "simply says the President can keep the promises he made . . . under option 9 and not be subject to constant harassing lawsuits." *Id.* He made clear that 2001(d) "does not require him to get to the 1.1 billion board feet of harvest that he promised . . ." *Id.* Similarly, Senator Hatfield emphasized that 2001(d) was designed to "give the administration all possible tools to meet its promises to get wood to the mills of the Pacific Northwest in the next 18 months." *Id.* at 4882.

reference?

While there is some discussion of 2001(k) in the legislative history, there is no thought given to the law applicable to replacement timber sales under 2001(k) (3). On this provision, the Senate report and the Conference report simply state that the Secretary must provide substitute volume for timber sales withheld for nesting birds. S.Rep. 104-17, at 123; H.R. Conf. Rep. No. 5116, 141 Cong. Rec. H 3049.

so no clear reference?

However, there is no indication in the legislative history that the replacement timber sales should proceed regardless of the standards and guidelines of the Forest Plan. Sen. Hatfield, the floor manager of the bill, stated that most of the sales being discussed had already been determined under President Clinton's Pacific Northwest Forest Plan "not to jeopardize the existence of any species." 141 Cong. Rec. S 4881 (daily ed. March 30, 1995). Rep. Taylor, the bill's House sponsor, similarly commented that "the preponderance of these sales were approved for harvest . . . as not jeopardizing the continued existence of any of the numerous species of wildlife . . ." 141 Cong. Rec. H 3233 (daily ed. March 15, 1995). The Conference Report states:

reference?

For emergency timber salvage sales, Option 9 and sales in the section 318 area, the bill contains language which deems sufficient the documentation on which the sales are based and significantly expedites legal action Environmental documentation, analysis, testimony and studies concerning these areas are exhaustive and the sufficiency language is provided so that sales can proceed.

H.R. Conf. Rep. No. 5116, 141 Cong. Rec. H 3049.

I don't get how any of this is relevant, let alone harmful to our position. (That this is actual possible)

3. Post-enactment Litigation

On the day the President signed the Rescissions Act into law, Senator Gorton, Representative Taylor and chairmen of committees with jurisdiction over the Forest Service and Bureau of Land Management provided the Administration with a letter that serves as a road map for litigation issues in the implementation of 2001(k). In it, they state that compliance with subsection 2001(k)(3) "does not require compliance with environmental laws or other federal statutes in light of the "notwithstanding any other provision of law" language in subsection (k)(1)." As if to acknowledge the paucity of legislative history on this point, the letter states that if the agencies "were confused on this point, they should have raised it in our deliberations." The letter reiterates the industry view that alternative timber must be provided quickly so that it may be harvested in fiscal years 1995 and 1996.

I don't see how this is particularly relevant there.

Given this statement, we can expect that industry will use any opportunity to challenge a decision to limit replacement timber by requiring that it be consistent with the Forest Plan. Indeed, if the government prevails in its interpretation of 2001(k)(2) as actually protecting the nesting sites of threatened and endangered birds, we can expect that 2001(k)(3)'s mandate of replacement timber will be used to force the waiver of the Forest Plan's standards and guidelines.

And any lawsuit would be using this as all.

Finally, as noted in footnote 1, the injunction of the U.S. District Court for the District of Oregon has required the government to "award, release, and permit to be completed . . . all timber sale contracts offered or awarded between October 1, 1990, and July 27, 1995, in any national forest in Oregon and Washington or BLM district in western Oregon, except for sale units in which a threatened or endangered bird species is known to be nesting." October 17 Order at 2. Approximately 4 sales have been withheld under the "known to be nesting" provision. While a few timber sales are currently within the scope of conflicting injunctions, other sales timber sale contracts within the scope of this order are released. Any released timber sales would have to be replaced at the election of the contract holder, as we have no authority to force their return.

Question 3 -- Whether the Administration Can or Should Reduce the Annual Timber Volume Projection for the Forest Plan by an Amount Related to the Volume Released by Section 2001(k).

Any declaration of a reduction of Forest Plan timber volume to account for the release of Section 2001(k) timber would likely be inconsistent with Section 2001(l), congressional intent to "achieve an annual harvest level of 1.1 billion board feet" through 2001(d), and would probably expose the Forest Plan to

Why this? Will same total w/?

Jan?

attacks on its continuing validity. While it is illogical to not account for the landscape changes caused by the release of a large quantity of poorly or critically configured timber harvests, that is the intent of Section 2001(l). Section 2001(l) does not permit any revisions or other administrative action "in or for any land management plan," including the President's Forest Plan, "because of implementation or impacts, site-specific or cumulative, of activities authorized or required" by 2001(d) or (k). Language negotiated by the Administration allows for revisions or other administrative action to the extent necessary "to reflect the effects of the salvage program." Senator Gorton explained, in the only post-negotiation legislative history, that this language "allows for modifications under extremely limited circumstances . . . to reflect the particular effect of the salvage sale program." 141 Cong. Rec. S 10464 (July 21, 1995). It would be difficult to argue that this language allows revision of the Forest Plan to account for unanticipated effects of the release of Section 318 and other timber sales.

Secondly, we invite challenge to the continuing validity of the Forest Plan by announcing that changes to the Forest Plan's green timber sale program are necessary to account for the release of the Section 2001(k) timber contracts throughout Oregon and Washington. Such an announcement would emphasize existing questions regarding the impact of those 2001(k) timber sales already released and the implications of that impact for the management strategy of the Forest Plan. The likely result would be a new lawsuit for supplementation of the Forest Plan and its environmental impact statement.

Supplementation is required when there is "significant new circumstances or information relevant to environmental concerns or bearing on the proposed action or its impact." 40 C.F.R. § 1502.9(c)(1)(ii); Marsh v. Oregon Natural Resources Council, 109 S.Ct. 1851, 1858 (1989). While the timber sales released under Judge Hogan's ruling posed irreparable harm to salmon, their impact on the Forest Plan is at least debatable. The pending question of the scope of authority to protect the nesting sites of endangered and threatened birds is generally regarded as more critical. If the government announces that we will reduce the Forest Plan output to account for replacement timber impacts, we admit that replacement timber has an impact that is significant for the Forest Plan as a whole.

Litigation could be forestalled for a year or so on grounds that 2001(l) states "[c]ompliance with [] Section [2001] shall not require or permit any administrative action, including revisions, amendment, consultation, supplementation, or other action, in or for any land management plan, standard, guideline, policy, regional guide, or multiforest plan." However, Section 2001(l) may be construed to still allow a wide variety of challenges to agency actions that are related to, or affected by, the environmental impact of timber sales, and could even allow timber sales to be enjoined. For example, Section 2001(l) could allow challenges to all ongoing land management activities,

*about it
we talking
about here*

including timber sales, through a claim that land management plans have not been updated to comply with new information regarding the status of threatened or endangered species under the Endangered Species Act. Thomas v. Pacific Rivers Council, 30 F.3d 1050 (9th Cir. 1994).

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 03:00pm

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Redraft of Garamendi Proposal Memo

Attached is a redraft of the memo on John Garamendi's proposal.

Hard copies are to be delivered to your offices prior to the 4:00 meeting today.

Distribution:

TO: Martha Foley
TO: Jennifer M. O'Connor
TO: T J Glauthier
TO: Kris Balderston
TO: Elena Kagan
TO: Dinah Bear
TO: Alice E. Shuffield

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY

November 3, 1995

MEMORANDUM FOR HAROLD ICKES

FROM: KATIE MCGINTY

RE: "GARAMENDI" PROPOSAL

Introduction and Summary

The proposal raised by John Garamendi at Wednesday's timber meeting amounts to the idea that timber planned for sale pursuant to the Forest Plan could be substituted for timber released under section 2001(k) of the rescissions act. Such substitution could occur under several different circumstances, but would generally be used to avoid logging of environmentally sensitive timber. This memo discusses the policy and legal implications of the proposal.

As a matter of policy, the proposal could reduce harvest of environmentally problematic timber, thus benefiting the environment and, possibly, the Forest Plan. On the other hand, the proposal could cause an unpopular redistribution of economic benefit among timber interests, at least in the near term. It might also cause a net reduction in timber sales under the Forest Plan.

A preliminary analysis does not reveal any insurmountable legal obstacles to the proposal.

Background

Section 2001(k) of the rescissions act has required, or may in the future be found to require release of old-growth, green timber in the following categories:

1. 318 sales released under their original terms and conditions, rather than in modified, environmentally responsible forms;
2. Non-318 (or "Hogan") sales, which exceed the geographic or temporal scope of the "pure" 318 sales; and
3. 318 and non-318 sales where listed bird species are "known to be nesting."

The agencies are working now to determine with precision which timber sales, or portions of sales, released or subject to release under 2001(k) present significant environmental concerns.

The Administration has discussed two means to prevent logging of areas with environmental concerns. First, the Forest Service and BLM are asking beneficiaries of sales released under 2001(k) voluntarily to forego or reduce problematic cutting. Second, we would offer beneficiaries of 2001(k) sales compensation in the form of money or timber, or both, in exchange for not cutting certain timber. It is this latter approach that Mr. Garamendi's proposal applies to.

Availability of Substitute Timber

The amount of timber available to be used in substitution for environmentally problematic 2001(k) sales is unclear, as are the terms under which it would be provided. The discussion so far has turned largely on the question whether timber sales planned for release under the Northwest Forest Plan are "available" as substitute volume.

The Bureau of Land Management has stated that it has some as yet unspecified volume of old-growth timber not accounted for under the Forest Plan available for substitution. In contrast, the Forest Service has maintained that it has no timber available for substitution, because all volume under its jurisdiction is allocated toward Forest Plan sales.

Whether to use Forest Plan timber as substitute volume for problematic 2001(k) sales is both a policy and legal issue.

Policy Concerns

The approach outlined by Mr. Garamendi offers the valuable benefit of avoiding problematic sales, thus protecting the environment and, possibly, the integrity of the Forest Plan. It does, however, raise some concerns.

The first concern is one of distributional economics. Timber sales under 2001(k) and the Forest Plan apparently benefit somewhat different groups of timber and related economic interests. Allowing beneficiaries of 2001(k) to draw volume from Forest Plan sales may displace, at least in the short term, other companies and interests who expected to benefit from the plan.

The second concern is largely practical. Preparation of Forest Plan sales for this fiscal year has consumed virtually all available Forest Service and BLM personnel resources. The sales have been designed (documented, marked, and so on) to meet plan standards and guidelines. They are not configured as trade items for undesirable 2001(k) sales. Volumes, species, location, and other important features of Forest Plan sales do not necessarily match what would be needed for substitution.

The Forest Service and BLM both have expressed concern that the administrative effort required to go back and reconfigure Forest Plan sales would impede their ability to meet Forest Plan sale volume targets for this and subsequent fiscal years. In other words, the land

management agencies believe that, because of limited administrative resources, there might be a net reduction in volume offered under the Forest Plan this fiscal year if they are asked to create "substitute" sales.

Finally, the Forest Service has argued that using Forest Plan sales to substitute for problematic 2001(k) sales will lead some to charge that the Administration is engaged in "double counting." That is, the agency believes that Congress intended the legislation to lead to additive timber harvest above Forest Plan levels, rather than a zero-sum process.

Legal Concerns (Preliminary; pending Department of Justice review)

Statutory Authorities

Section 2001(k)(3) of the Rescissions Act states that:

"If 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 provide the purchaser an equal volume of timber, of like kind and value, which shall be subject to the terms of the original contract and shall not count against current allowable sale quantities."

Section 2001(d) states that:

"Notwithstanding any other law (including a law under the authority of which any judicial order may be outstanding on or after the date of enactment of this Act), the Secretary concerned shall expeditiously prepare, offer, and award timber sale contracts on Federal lands described in the "Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl", signed by the Secretary of the Interior and the Secretary of Agriculture on April 13, 1994. The Secretary concerned may conduct timber sales un this subsection notwithstanding any decision, restraining order, or injunction issued by a United States court before the date of the enactment of this section."

Legislative History

There appears to be no legislative history relevant to the issue of whether the timber sales referred to in Section 2001(d) can be used as replacement timber under Section 2001(k). Analysis and opinions offered by proponents of the bill after it became law (for example, the July 27th letter from six members of Congress and the August 7th memo from Mark Rey to Senate Energy and Natural Resources Committee) also fail to address this issue.

Authorities for Offering Sales Under Forest Plan

The Record of Decision (ROD) cited in Section 2001(d) supports the adoption of standards and guidelines for management of habitat for late successional and old growth forest related species for a number of national forests and Bureau of Land Management units in Oregon and Washington. The ROD amends various Forest Service and BLM planning documents with which timber sales offered in these areas must conform. However, while anticipating timber sales in particular areas of those federal lands, the ROD neither authorizes nor compels any particular timber sales.

Whatever policy concerns may exist in regards to using Forest Plan sales as replacement timber, no legal barriers to implementing this scheme appear to exist. Nothing in the language of the Rescission Act or the legislative history limit the land management agencies' legal ability to use these sales as replacement timber, providing that they meet the statutory requirements of:

1. equal volume
2. "like kind and value"
3. adhere to the terms of the original contract, and
4. do not count against current ASQ.

The requirements in Section 2001(d) to expedite the preparation, offering and award of the timber sale contracts within the Forest Plan are not inherently inconsistent with their use as replacement timber under Section 2001(k)(3). Indeed, one could argue that there is a logical symmetry in using sales which Congress wants expedited to meet another requirement to provide replacement timber. At any rate, in the absence of any articulated prohibition, the land management agencies are legally free to substitute any timber sales on their lands for Section 2001(k) sales so long as they meet the four criteria outlined above.

Arguments Against Offering Sales from Forest Plan

Whatever policy concerns may suggest the desirability of substituting one set of timber sales for another, the fact remains that two sets of timber sales are required to be released under Section 2001 of the Rescission Act. Congress intended the holder of the Section 2001(k) sales to be entitled to their sale contracts under original terms and contracts; it also intended for the Forest Plan contracts to be expeditiously released.

Broadly speaking, there are two possible factual results from an interpretation which allows Forest Plan contracts to be substituted for Section 2001(k) sales: first, if the holder of a Section 2001(k) sale would happen to be the purchaser of a Forest Plan sale, that purchaser would benefit from only one timber sale instead of two sales. Second, in the more probable instance that the purchasers are different (or in the case of future Forest Plan sales, unknown), there would be one less purchaser of timber in the areas covered by this statute. Congress intended for their to be two separate sets of timber sales, not one. A contrary

reading makes Section 2001(d) meaningless in those instances in which individual timber sales are used as substitutes for timber under Section 2001(k), and thus runs against the rule of construing statutes to give them independent 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-Nov-1995 09:32am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Request from O'Connor re: timber

Harold Ickes, through Jennifer O'Connor, has asked that "we" prepare a chart with timber information for Panetta. The request is for "a cleaned up version of TJ's chart -- showing timber moved, timber in litigation, etc. With a cover memo that explains what it is and what the (status is on relevant court cases) and other key issues."

Let's talk, folks. This sounds like a request for an overall portrait of timber markets and related social policy in Oregon and Washington, if we're not careful.

Distribution:

TO: T J Glauthier
TO: Ruth D. Saunders
TO: Christine L. Nolin
TO: Ron Cogswell

CC: Kathleen A. McGinty
CC: Dinah Bear
CC: Shelley N. Fidler
CC: Elena Kagan

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

08-Nov-1995 09:37am

TO: (See Below)

FROM: Shelley N. Fidler
 Council on Environmental Quality

SUBJECT: RE: Request from O'Connor re: timber

I think your all points was not wise. let OMB take care of the updated chart and ask Elena to do the update on the cases and we'll be fine. what say you?

Distribution:

TO: Thomas C. Jensen

CC: T J Glauthier
CC: Ruth D. Saunders
CC: Christine L. Nolin
CC: Ron Cogswell
CC: Kathleen A. McGinty
CC: Dinah Bear
CC: Elena Kagan

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

07-Nov-1995 08:16pm

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: today's "knownh to be nesting" arguments

Reports from Eugene, Oregon, re today's arguments in front of Judge Hogan:

- o he didn't rule today; indicated that he will rule next week;
- o our attorneys did a terrific job;
- o but Hogan is clearly predisposed against the government;
- o he also ordered additional briefing on the issue of the enjoined sales that are before him;
- o unclear about the specifics on this one, but apparently enviro plaintiffs filed something in Hogan's court today seeking information regarding the methods we're using to identify the pre-FY 91 sales

Distribution:

TO: Kathleen A. McGinty
TO: T J Glauthier
TO: Thomas C. Jensen
TO: Elena Kagan
TO: Shelley N. Fidler
TO: Ruth D. Saunders

Timber mtg 4/3/95

Define proposal

Legal

Policy

Political

Process - In moving forward

1. Definition

JG-swap green sales for environmentally damaging sales

Maintain 800m / ecen activ.

Not based on content -

just substitute.

less strict modification - 800m - can go up if some of
Hofan is not environmentally damaging.
Go above 800 w/ more reasonable Hofan sales.

To extent can't swap, just lower others?

One possibility. Last resort.

Barry - primary focus in discussing this might to be in
preserving the forest plan.

Shelley - has to consider salmon too (east side)

2. Legal -

DOT preparing more legal analysis.

200ld - shall offer option 9 }
3/8

how can you use sales
under 1st section as subst
for sales under 2nd section
Tough one.

Lots of provisions/ by list - force
us to do more than we will 4/16.

JG - "who cares?"

2) O9 - long term commitment. Can still meet this over time, even if not now.

PC - If we win KTBW - obligated to come up w/ altern timber.

Part of this proposal - use O9 as altern.

Req. - like kind + volume

Is this?

Ag - Yes - we don't have old growth to substitute. ^{Regardless of G. proposal.} Just don't have it.

DB - Won't always find LK+V; but may sometimes - keep this in toolbox.

but no auth ← Modify 10%
Substitute 10%
Rest - just buy cut

No timeframe for subst timber?

If win market

Have to substitute.

Can we use O9 timber?

As to all other substitutions

Only voluntary

Can we use O9 timber?

} Diffic issue

3. Is this good policy? Do we want to? mand: KTBN
VOT: other voters

TJ - Administrative nightmare - will result in amt of timber.
Loss of momentum - loss of volume in a partic yr.
Not so simple as 1-for-1 swap.

DB - Just keep this in toolbox.

What are downsides?

Any side deals - informal understandings - w/ Congress?

KM - extremely nervous abt this -

made com. to do certain things in FP.

how it's viewed.

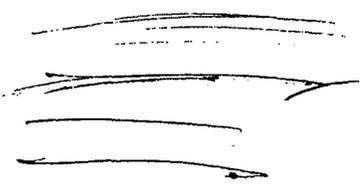
Volume commitment very imp.

EK - But this won't interfere

w/ that, will it?

DB - Commitment was in part
to env safety.

There are not.



Legal section 7

6 elements sections
-arg

E-mail

credible / may not win

on my own notes re yesterday's wkly.

} H args - pro + con < number of points

H diff views

H - 3rd proposal presents diff legal situation

~~Brown~~
~~2000~~

Cinda Popper
re: clinical assistance
697-9333
thru.

5/8/52

4. Known to be Nesting -

Assume: appeal a negative decision

Need agencies to do fire drill again in irreparable harm.



Problem - if we say irrep harm, then we sink the Forest Plan.

Barry - has to be careful about how we state the irrep harm.

(Is there a way of arguing harm in a way that doesn't endanger the plan? i.e. - is there harm + harm?)

PLUNG TO
FOLKS'
ATTN
AFTER
ASKING DB

Mile - 200 (1) - supplementaion.
~~And no amendments to plan~~

← NEED THIS TO BE EXPLAINED.

5. Update on 4D memo -

Rolling back restrictions on private land based on Forest Plan

Dah dah
Dah dah
Dah dah
↓

Day Hall
NO AD
*ST fee for
Ocean +
Atmosphere

To do
On above 2 questions
Talk to DOT re Garamandi memo

To Do -
- update on Forest Service
- (153?) (2?)

Next Tues - 2:00

if 2001 orders sales endangering env,
how can 2001 be harmonized w/
implementation of FP which is directed
by same statute?

Agency Order mts 11/6

1. Germendi proposal -

agencies should get in Their Thoughts

2. Litigation update

a. Dwyer decision - stay motion to enforce injuries -

wait for Hogan decisions

did deny motion to transfer

If H. addresses enjoined sales

will still have to go to D.

to enforce what H. does.

b. Forest Plan? - see Rutzick transcript

c. Today - working issue and motion on enjoined sales ^{will be}
↑
don't know if addressed

d. Ky Heartwood -

no closure on std of review - exchanging memos.

agenda for next wk.

e. Thunderbolt -

f. Hogan on merits - like Nov 13

g. Sierra Defense letter - refers to Dwyer sales; also others

→ h. letter in response to Rutzick

i. letter to Forest Service re pre-1990.

3. 1990 Forest Service search

Region 6 - went back to 86 - ~~no~~ sales

153mbf sales - sales in pipeline when 318 enacted

286-P9

But not counted as sales by FS

- ~~don't~~ don't physically exist

- don't meet environmental stds (!!!)

Dinah - nervous about policy decisions being made - and Rene getting new info.

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-Nov-1995 05:03pm

TO: Dinah Bear

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: trees

I just gave Jennifer O'Connor a rundown on the continuing Forest Service/DOJ confusion on pre-1990 sales. (By the by, she pointed out to me that the Forest Service previously has said there are 153 mbf of unreported 1990 sales. Is this the same 153 mbf as was reported to us as 1986-89 sales?) She told me that she had asked Shelley for an update (for Leon and Harold) on all the numbers -- basically, an expanded and updated version of TJ's document. Would you make sure whoever's doing that memo is aware of the continuing uncertainty as to this category of sales? 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

07-Nov-1995 01:30pm

TO: Elena Kagan

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: CEQ talking points

this was Brian Johnson's draft last night (our communications person). I suggested [protect] instead of [determine] in whatever bullet that is and there might be a few other minor changes. I'm not exactly sure who this was sent to last night - Brian just said he was putting it up and through his usual clearance process. Sorry I didn't zap them over to you - I was still trying to figure out the disconnect between DOJ and us.

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

06-Nov-1995 07:06pm

TO: Dinah Bear

FROM: Brian J. Johnson
 Council on Environmental Quality

SUBJECT: talking points -- please call me

November 6, 1995

DRAFT TALKING POINTS FOR DOJ

- o The Clinton Administration takes great pride in having restored the balance between economic activity and environmental protection in the forests of the Pacific Northwest through the President's forest plan.
- o The President directed the Secretaries of Agriculture and Interior to implement the provisions of the recently passed rescission law in an environmentally sound manner to protect those gains.

WIN The judge's decision today means that we will, indeed, be able to use good science to [determine] [protect] the habitat of threatened or endangered bird species.

LOSE Obviously, we are disappointed, but we feel that our case is strong and the law is on our side. It is silent on the question of when birds are "known to be nesting." We believe, therefore, that the determination regarding nesting is properly made by agency scientists. Further, it is our belief that releasing the sales at issue would seriously jeopardize the continued existence of marbled murrelets, impede our ability to provide regulatory flexibility under the Endangered Species Act, and exacerbate the renewal of conflicts over the use of these ancient forests. We will appeal the Judge's decision.

- o We remain seriously concerned, however, about the impact of Judge Hogan's earlier decision interpreting this provision

to apply to many more sales than we had contemplated when discussing this matter with the Congress. We do not believe that this extreme expansion of ancient timber sales was authorized by the 1995 Rescission Act. Therefore, as the President has said, we will actively pursue a legislative remedy to correct this extreme result.

U.S. DEPARTMENT OF JUSTICE OFFICE OF PUBLIC AFFAIRS

IMPORTANT INFORMATION

ATTENTION: Dinah Baer / Tom Jensen / Brian Johnson DATE: 11/07/95

OF: _____ SUBJECT: _____

FAX NUMBER: 456-2710

NUMBER OF PAGES: COVER + 1

Draft points for Lois Schiffer: Call Peter Cappelman or me with any changes.

ORIGINATOR: Jim Sweeney

ORIGINATOR'S PHONE: _____

ORIGINATOR'S FAX: _____

NOTE: If you are not the intended receiver written above, please do not read the contents of this facsimile, for it may contain confidential information. Please call immediately and inform the sender. We are sorry for the inconvenience.

Please call 202-514-2008 and ask for _____ if there is a problem with the transmission.

Tennille 1) was focused on or ruling
2) Make it sound as if Pres signed budget & should have known it then, but "had to"
PUBLIC AFFAIRS 002

DRAFT TIMBER TALKING POINTS

PRIVILEGED AND CONFIDENTIAL

OVERALL MESSAGE:

- President Clinton inherited a problem badly in need of fixing. And he did just that -- fixed the problem. He broke the gridlock and established a solid balance between the economy and the environment.
- Now, the Congress has not only ignored the old adage "don't try to fix something that's not broken", but they have tried to break something that's already been fixed. They are threatening this balance and may take us back to the days of gridlock. *By doing what? RA itself?*
- The President forged a peace in the Northwest. This legislation and litigation jeopardize that peace and threaten civil war for the region's forests, as recent demonstrations show.
- Under the President's plan, timber has moved forward -- nearly 800 million board feet in less than a year -- enough to build 62,500 homes. And the environment has been protected. This balance has carried the day.

WHAT'S AT STAKE:

- Over 250 million board feet of prime old-growth forest, not salvage timber as some in Congress would have you believe.
- Ecosystem management -- these sales, if released, would seriously jeopardize the marbled murrelets.
- Quality of life -- this is not about jobs versus the environment, it's about quality of life in the Pacific Northwest. That quality of life depends on the quality of the environment.
- The timber industry threatens to bring back the gridlock, bring back the litigation. Since the President took office in January, 1993, timber jobs have actually increased, not decreased as the timber industry would have you believe. Also, the President's Economic Adjustment Initiative has delivered \$220 million in 1995 alone, up from \$126 million in 1994. This money has gone for worker retraining, business loan guarantees, infrastructure improvements and other important initiatives.

WHY WE'RE HERE:

- Congress made the President an offer he couldn't refuse. In the rescission bill -- legislation providing disaster assistance to victims of the Oklahoma City Bombing, assistance to fire-ravaged Californians and other important programs -- Congress added language that now threatens to return the Northwest to the days of gridlock and timber wars. *Fund to sign?*
- As the President said recently, this is an "extreme expansion of ancient timber sales" that will lead to "grave environmental injury."
- This is stealth legislation, inserted in much broader, unrelated legislation.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. report	Phone No. (Partial) (1 page)	10/30/1995	P6/b(6)

COLLECTION:

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

FOLDER TITLE:

Timber - memos, emails, etc. [6]

2009-1006-F
ke689

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]

11/02/95 10:33

202 514 0557

OAAG ENRD

002/005

Elena

- From Tom Jensen

URGENT REPORT

**CLOSE
HOLD**

TO: JANET RENO, ATTORNEY GENERAL
JAMIE S. GORELICK, DEPUTY ATTORNEY GENERAL

FROM: Kristine Olson
United States Attorney
District of Oregon
(503) 727-1001 (Office)

[Redacted] P6(b)(6)

[001]

DATE: October 30, 1995

CLASSIFICATION: Unclassified

CONTACT PERSON: John C. Ray
Supervisory Assistant U.S. Attorney
(503) 465-6741 (Office)

[Redacted] P6(b)(6)

MAIN JUSTICE CONTACT PERSON:

Lois Schiffer
Assistant Attorney General

Peter Coppelman
Deputy Assistant
Attorney General

SYNOPSIS: Recent federal court rulings have forced the government to release for logging a backlog of old growth Oregon timber sales that had been held up for environmental reasons. These rulings have prompted protest demonstrations at several different sites in Oregon, resulting in numerous state arrests and attracting extensive news media coverage. Oregon's Governor has sided with the protestors.

DISCUSSION: Recent rulings by Oregon U.S. District Court Judge Michael R. Hogan and the Ninth Circuit Court of Appeals have forced the U.S. Forest Service and U.S. Bureau of Land Management to release for logging by private timber companies a number of old growth forests in Oregon. (Exhibits 1-5) These rulings have caused protest demonstrations at several different sites thus far, each of which has attracted extensive news coverage from both newspapers and television stations. These demonstrations have occurred at five different sites:

1. Sugarloaf. The first site to receive widespread media coverage of protest demonstrations was the Forest Service timber sale known as Sugarloaf, located in an area of old growth forest in Josephine County, near Grants Pass, Oregon. These demonstrations began in early September, 1995, when logging commenced and have continued through the present. Numerous protesters have been arrested on state trespass charges, all of which are being prosecuted by the Josephine County District Attorney's Office. (Exhibits 6-13)

[REDACTED]

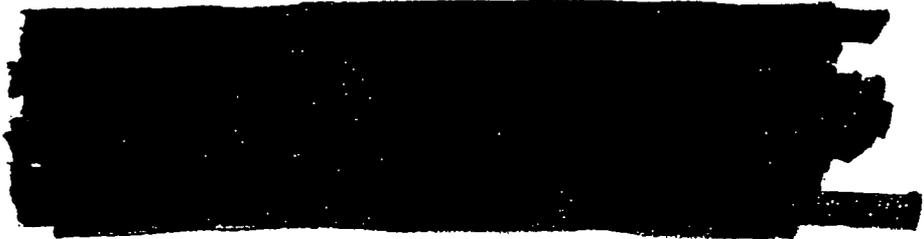
The continuing demonstrations at Sugarloaf have caused a massive drain on the already overburdened resources of the Josephine County Sheriff's and District Attorney's Offices. This could not have come at a worse time for Josephine County - they recently experienced the defeat of a law enforcement levy and had to lay off law enforcement officers. As recently as Monday, October 30, 75 more protesters were arrested, including former U.S. Representative Jim Jontz (D-Ind.) and National Audubon Society vice president Brock Evans. (Exhibit 13A)

2. Warner Creek. Protest demonstrations began at the Warner Creek site located in Lane County, near Oakridge, Oregon, about the same time as the Sugarloaf demonstrations. However, logging has not yet begun at Warner Creek so no confrontations have occurred at this site. There has been extensive damage to Forest Service roads in the form of deep, wide trenches cut, presumably by protestors, large boulders stacked up to block logging vehicles, and cement placed in gates to prevent their being opened. (Exhibits 14-16) The Warner Creek site has

been the subject of a great deal of controversy not only because it contains old growth timber but also because the salvage logging was made available by an alleged arson caused fire. Further, the purchaser of the Warner Creek sale was Thomas Creek Logging, which was successfully prosecuted by this office for timber theft in 1993. Extensive tactical planning by federal and state law enforcement agencies and this office has gone into preparing for what likely will be a confrontation at the Warner Creek site once logging commences (which could happen at any time). Throughout this planning, this office has emphasized in very strong terms its direction to all federal law enforcement officers to exercise the utmost restraint in the handling of the demonstrations so that the safety of all persons is assured.

3. Roman Dunn. The next old growth site in Oregon to receive media attention was "Roman Dunn," a BLM timber sale located in Lane and Douglas Counties near Eugene, Oregon. Logging began in late September 1995, and demonstrators have been present at this site much of the time since then. Despite several confrontations between protestors and loggers, no arrests have been made at this site, as a result principally of the outstanding work by BLM law enforcement officer Wes Seckler in calming tempers at the site and persuading protestors to allow the logging vehicles to pass. (Exhibits 17-25) More recently, however, tempers have flared at Roman Dunn when the Hull Oakes Lumber Co. sustained approximately \$40,000 damage to five pieces of its uninsured equipment. The damage was caused by an ash-like substance being poured into the engines' oil, radiator, gas tanks, and hydraulic systems. Also, warning shots have been fired on two separate occasions by the Hull Oakes watchperson when protestors were detected at night in camouflage clothing beating on trees and chanting in the vicinity of the logging equipment. No one has been injured to date. Jim Welsh, state representative to the Oregon Legislature, called the Eugene Office on October 17th complaining on behalf of local logging companies that the feds are not doing

enough to quell the protest.



4. Eugene U.S. Courthouse. The courtyard of the Eugene, Oregon courthouse has been the site for demonstrators against old growth logging for the last three weeks. It began as a hunger strike by two environmental activists and more recently, on Saturday, October 28, the federal courthouse was the site of a two hour rally by approximately 300 people gathered to protest the logging of old growth forests. (Exhibits 26-27) Thus far, no arrests have been made nor citations issued as a result of activity at the federal courthouse.
5. BLM Office Building, Eugene, Oregon. The BLM office building in Eugene, Oregon, has also been the site of recent protest demonstrations against old growth logging, principally because of the Roman Dunn BLM sale. Some of these demonstrations have been troublesome to BLM managers. Indeed, a grievance was recently received from the employees' union complaining that BLM employees felt harassed by the protestors and were fearful for their own safety. This office has been consulted about the demonstrations on several occasions and has urged managers and law enforcement officers to exercise as much restraint as possible. Thus far, this advice has been followed and no arrests have been made or citations issued.

Oregon Governor John Kitzhaber also entered the controversy in September 1995 lashing out at Congress for a host of anti-environmental bills, the passage of which he said posed a "grave threat" to Oregon's quality of life and economic well-being. He urged Oregonians to "raise a hue and cry" against these bills and praised the environmental protesters for raising the issue. (Exhibits 28-29)

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-Nov-1995 10:18am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: DOJ Talking Points

I will fax to your offices shortly a copy of Justice's proposed talking points prepared for Lois Schiffer to use in connection with the hearing today before Judge Hogan.

I'd be happy to relate your comments back to Justice, if you wish.

Distribution:

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

CC: Kathleen A. McGinty
CC: Dinah Bear

EXECUTIVE OFFICE OF THE PRESIDENT

07-Nov-1995 07:17am

TO: (See Below)

FROM: Thomas C. Jensen
Council on Environmental Quality

SUBJECT: MEETING REMINDER - TUESDAY AT 2:00

The EOP/Agency timber working group will meet as regularly scheduled today, Tuesday, November 7, 1995, at 2:00 p.m. in the CEQ conference room. We will aim for a one-hour meeting.

The agenda will include:

1. Recent event update - chair
2. Litigation update - Justice
3. Status of USFS pre-90 sale inventory - USDA
4. Planning for possible rulings by Judge Hogan on nesting - Chair
5. Other business

If there are matters you wish to see added to the agenda, 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

06-Nov-1995 04:43pm

TO: Jennifer M. O'Connor

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: Timber

Lois Schiffer says:

1. DOJ decided against a press release. Shelley and Dinah are in the midst of preparing some talking points for Lois to take with her to Oregon. I have left a msg for Dinah to fax these to me.
2. Lois is not calling Harold today because after reviewing the procedural posture, she does not think anything could happen tomorrow on the enjoined sales, and she thinks she will be able to report more fully in a day or so. (The thinking here, which seems right to me, is that even if Hogan rules against us, Dwyer still must lift his injunction -- and that won't happen for a little while.) At any rate, she does know that she must talk to Harold before releasing any sales -- and that she must give him a reasonable amount of time to make a decision.

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-Nov-1995 04:23pm

TO: Martha Foley

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: Option 9

I am sending you a copy of Rutzick's remarks on the Option 9 provision of the Rescissions Act (2001(d)). It is unclear to me exactly what Rutzick is saying in these remarks. He is, of course, making the same sort of argument as he did in the 318 context, pointing out that the language of the Act refers to the area described in the Forest Plan and not to the particular sales contemplated by that Plan. But he seems unsure how far to take this argument. He might be saying that 2001(d) ALLOWS the administration to make sales that do not comply with the Forest Plan when those sales are on lands described in the Forest Plan. Alternatively, he might be saying that 2001(d) MANDATES the administration to make sales that do not comply with the Forest Plan when those sales are on lands described in the Forest Plan. I THINK that in this transcript he's making the first (permissive) argument, rather than the second (mandatory) argument -- but even if so, I suspect we'll hear the second argument sooner or later.

His argument on this score seems to me weaker than it was in the 318 context. The language of 2001(d) suffers from similar problems as the ones we've seen before: the terms "covered by Option 9" and "described in" Option 9 follow the word "land," not "sales." But the legislative history is very good for us: both the Conference Report and the Senate report refer to "sales allowed under the Forest Plan" and most (though not all) of the floor statements are to the same effect. The intent was pretty clearly to ensure that the Administration would meet the commitment of the Forest Plan, rather than force the Administration to go beyond it. (And what exactly would 2001(d) require if Rutzick is right? That the government make all possible sales within this area? If not that, what? That is, if the standards of the Forest Plan do not continue to govern sales within this area, what standards do apply? What sales is the government to make?) I would bet that notwithstanding the language, most courts would rule against Rutzick on this point.

Let me know whether you disagree or want to discuss this matter further.

Meantime, Judge Dwyer retained jurisdiction over the six previously enjoined or withdrawn sales, but indicated pretty strongly that he was waiting to see whether Judge Hogan believes these sales to fall within the scope of his order. I would bet that in the next few days (1) Hogan will make clear that those sales fall within his order and (2) Dwyer will then lift his injunction. If that happens, these sales become essentially the same as all the other sales released, and the case for NOT releasing them becomes difficult.

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: 11/6/95
To: Elena Kayan
Fax: 456-1647
Re: timber
Sender: DINAH BEAR

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

Well, I think the communications chain managed to break down — here's our draft. Haven't heard or gotten revision from Dos yet — it's the revision that Shelley had planned to circulate.

November 6, 1995

DRAFT STATEMENT FOR DOJ

The Clinton Administration takes great pride in having restored the balance between economic activity and environmental protection in the forests of the Pacific Northwest.

The President directed the Secretaries of Agriculture and Interior to implement the provisions of the recently passed rescission law in an environmentally sound manner to protect those gains.

POCUS

WIN The judge's decision today means that we will, indeed, be able to use good science to be able to protect the habitat of threatened or endangered bird species.

LOSE Obviously, we are disappointed, but we feel that our case is strong and the law is on our side. It is silent on the question of when birds are "known to be nesting". We believe, therefore, that the determination regarding nesting is properly made by agency scientists. Further, it is our belief that releasing the sales at issue would seriously jeopardize the continued existence of marbled murrelets, impede our ability to provide regulatory flexibility under the Endangered Species Act, and exacerbate the renewal of conflicts over the use of these ancient forests. We will appeal the Judge's decision.

We remain concerned, however, that the impact of Judge Hogan's earlier decision interpreting this provision to apply to many more sales than we had contemplated when discussing this matter with the Congress will have unfortunate and continuing repercussions for our ability to continue the progress toward the balance between the economy and the environment that we have sought.

*-leg. would add legislation
(per POTUS statement of
Holt 10/28.)*

Telecon Dinali Bear 11/6/95 - Re Rutrick comments

0.9
MR - even sales - don't have to follow ^{cost} File Plan
Implicitly suggests

sales have to follow
Wildlife Act
if they do offer sales they must meet

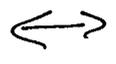
Altern 2

have to make sales that
don't meet stds.
Don't have auth to follow FP.
↓

What are sales now that
are, e.g.

↑
pursuing this option

Altern 1



could - can make sales
that don't meet stds
of FP (RFD)

2) (before - if we did make
sales, they needed to
meet stds of FP)
(tho we didn't have to make
sales at all)

- Garrardi
mid-at
new memo - Peter -

- Ag -
saying a letter -
never said that it was her word
"was" not to go back
1990

Can release other
rules (emissions)
Per this meeting
Stats -
but need not
what R is saying.

Telecom
Lois

Y+2 - other way diff?
inj.

There are 318 sales.
Our position - bec. violated
318 rule (too fragmented)

← But even if NOT - swept
into Hogan's order
Then - like all other releases

Katie - have to tell lches/

- collect any issues -
tell him all at once.

Can't reply + ?
+ her report missing page

Drach

Re optio

is Rudrich saying "we have to"
or just that we can

could - not
must
or just saying
sales don't
work by
emissions
w/ 9?

Leg history -
practical meaning
this wrong.

Is he saying
just must go
for - we?
Hull (14-14)
9/1/80
not

EXECUTIVE OFFICE OF THE PRESIDENT

06-Nov-1995 11:53am

TO: Elena Kagan
TO: Martha Foley
TO: Christine L. Nolin
TO: Ruth D. Saunders

FROM: Thomas C. Jensen
Council on Environmental Quality

SUBJECT: Dwyer opinion excerpts

EXECUTIVE OFFICE OF THE PRESIDENT

04-Nov-1995 03:51pm

TO: Kathleen A. McGinty

FROM: Dinah Bear
Council on Environmental Quality

CC: Thomas C. Jensen
Shelley N. Fidler

SUBJECT: Judge Dwyer

Judge Dwyer issued his order on Friday regarding the 4 sales under injunction and the 2 withdrawn sales. You will recall that plaintiffs (Seattle Audubon) asked that Dwyer rule that the sales did not come under the timber rider; intervenors (Washington Contract Loggers Assoc.) asked that he transfer the matter to Judge Hogan.

Dwyer did neither. Instead, in a short opinion which recounts the history of the spotted owl controversy, development of the Forest Plan, and passage of the timber rider, he stayed Audubon's motions until Judge Hogan finished with all related matters in the District Court and denied the loggers' motion to transfer. He also ruled that any party could renege the motion on one week's notice. In other words, he acknowledged the procedural complexities of the situation but RETAINED JURISDICTION over these cases.

Justice also sent over a portion of the transcript from the arguments in this case, which as soon as one of our copier machines is fixed, I will forward to you. There are a couple of interesting points:

o Rutzick makes it eminently clear that in his view, Section (d) of the timber rider (mandating expeditious release of the sales offered under option 9) "does not direct the implementation of Option 9." His interpretation is that Congress was extremely careful and precise in NOT directing or endorsing option 9; rather, Congress simply directed the land management agencies to expeditiously release timber sales in the area covered by the Record of Decision for Option 9, regardless of whether the sales comply with option 9 standards or not. Having made that point, Judge Dwyer then asks:

DWYER: "If they did not follow the plan that was approved, what standards would they use?"

RUTZICK: "Our judgment is that Congress did not prescribe them the standards."

DWYER: "So they could just order sales anywhere they wanted to, the National Forest Management Act notwithstanding?"

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

DWYER: "And in the process, all environmental laws and all wildlife protection laws could be ignored?"

RUTZICK: "Yes."

DWYER: "Would it not take a more explicit statement by Congress to do that?"

RUTZICK: "I don't think you can get more explicit than notwithstanding any other law."

SUMMARY: Section 318/Non-Section 318 Timber Sales

as of 11/1/95

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	sales	mmbf	sales	mmbf	sales
o SECTION 318 SALES	57	12	64	14	121	26
(Non Additive)						
FP LSR acres	n/a	n/a	n/a	10		10
Modified in Forest Plan	13	3	n/a	9		12
NMFS Fish Concern	24	5	n/a	0		5
o NON-SECTION 318 SALES (1990-95)	59	18	116	28	175	46
(Non Additive)						
FP LSR acres	0	0	n/a	8		8
Modified under Forest PI	0	0	n/a	11		11
Eastside Forests	59	18	n/a	0		18
Key Watershed	n/a	n/a	n/a	9		9
NMFS Fish Concern	17	8	n/a	5		13
Total, released under P.L. 104-19	116	30	180	42	296	72

REMAINING SALES SUSPENDED, UNAWARDED, OR PENDING:

o SECTION 318 SALES						
Not subject to release under						
known to be nesting	229	55	10	2	239	57
Enjoined/delayed by court cases	50	8	0	0	50	8
o NON-SECTION 318 SALES						
Pre- Oct. 1990 sales	12	1	16	3	28	4
Not subject to release under						
known to be nesting	0	0	10	4	0	0
Enjoined/delayed by court cases	15	3	0	0	15	3
Purchaser out of business	38	12	0	0	38	12
Total, suspended or pending	344	79	36	9	370	84

TOTAL 2001(k) volume:	460	109	216	51	676	160
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TIMBER PROGRAM OPTIONS**DECISION SETS****I. Section 318 Sales Already Released**

- o 121 m board feet (bd ft) in 26 sales released in August and September
- o effects?
- o administration options (see below)

II. Pre-FY 1991 Non-318 Sales

- o identify list of sales (4 sales, 28 m bd ft)
- o effects ?
- o release list to court 11/1
- o brief to be filed with court?
- o be prepared to appeal potential order to release these sales, based on language re. dates
- o other administrative and/or legislative options (see below)

III. "Known to be Nesting" Restrictions on All Sales

- o "318 sales" covered: 57 sales, 239 m bd ft
- o "non-318 sales" not protected, due to lack of field data on nesting (?)
- o brief to be filed with court
- o November 7 court arguments
- o prepare for appeal on merits
- o consider including these in other administrative and/or legislative options (see below)

IV. Non-318 Sales, 1990-1995 Already Released

- o 46 sales, 175 m bd ft
- o see administrative and legislative options (see below)

V. Other Sales Not Yet Released

- o Section 318 enjoined in other cases (8 sales, 50 m bd ft)
- o Non-318 sales enjoined in other cases (3 sales, 15 m bd ft)
- o Non-318 sales that "cannot be awarded" (i.e., due to purchaser out of business) (12 sales, 38 m bd ft)
- o other administrative and/or legislative options (see below)

LEGAL OPTIONS

Current Litigation related to §2001(k) (old growth sales)

- The government is under court order to submit a list to Judge Hogan Nov. 1st of all sales offered prior to FY 1991. These sales will not automatically be ordered to be released - they come under a declaratory judgment issued by Judge Hogan finding that such sales fall under the Act. Determine whether to ask for an extension of time, and determine whether remaining pre-FY'91 sales can be shielded from release and if so, determine whether that should be done. (NFRC v. Glickman)
- Defend or appeal decision regarding enjoined or withdrawn sales. Eleven sales falling under Judge Hogan's order are either currently the subject of an injunction, or in some instances, were withdrawn voluntarily because it was clear they would be enjoined. Judge Dwyer is hearing arguments this afternoon about 6 such sales. (Seattle Audubon Soc.'y v. Thomas) . We are arguing that the 4 enjoined sales at issue this afternoon should not be released because they were previously found to be in violation of §318. The Forest Service did agree to release the 2 withdrawn sales. Plaintiffs are arguing that none should be released and industry is arguing that all should be released. This will be the first of the Rescission Act cases to be heard before Judge Dwyer, who tried the long series of spotted owl cases and upheld the validity of the President's Forest Plan. If Judge Dwyer rules favorably for plaintiffs on all sales, we will have to decide whether to pursue an appeal regarding the withdrawn sales. If we lose, do we appeal?
- Should we continue to pursue appeal on "areas vs. sales" in NFRC v. Glickman? Argument is currently set in January before the 9th Circuit. There may be an issue of mootness, if all of the trees are already harvested, but they may not all be harvested.
- Vigorously pursue "known to be nesting" arguments (this issue arises in 3 suits, 2 of which are in front of Judge Hogan brought by NFRC and Scott Timber and in front of Judge Rothstein, brought by environmental plaintiffs.) Arguments are scheduled in front of Judge Hogan next Tuesday, Nov. 7th, on both the issues of whether he should transfer this issue to Judge Rothstein and on summary judgment motions. We should develop strategy to follow if we lose in district court and lose a motion to stay the sales, (which would put us in the same posture as we just experience on the "area vs. sales" issue).
- Pursue legal analysis of buy-out authorities and options. Section 2001(k) requires the agencies to offer alternative timber of like kind and volume if a particular sale cannot be offered. If the agencies do not have available alternative timber meeting the statutory criteria, there is no explicit remedy. A policy issue involved in this question is whether agencies should offer sales assumed to be sales under the Forest Plan as alternative timber. Questions have also arisen as to the extent of the agencies' legal authorities to buy-out sales and under what terms and conditions. Justice is doing an analysis of these issues..

Related Litigation

Salvage sales under Section 2001: The first suit challenges a sales on the Daniel Boone Forest in Kentucky. The significant legal issue arising here is the appropriate standard of review for a court under the timber rider.

Two lawsuits have been filed against the Forest Service for the Thunderbolt sale in Idaho, alleging violations of public trust as well as the arbitrary and capricious standard in the timber rider.

An issues has arisen in a case on appeal as to when the provisions of the salvage section of the act are actually triggered.

In another suit dealing with salvage, plaintiffs are raising 1st Amendment/Native American issues.

NRDC and other environmental groups have filed a suit challenging wildlife protection standards for timber sales on the East Side, based on their assessments of likely impacts under both the timber rider of the Rescissions Act and the Columbia Basin Ecosystem provision of the Interior appropriations bill.

Possible Litigation

We anticipate that environmental groups will challenge the validity of the Forest Plan in front of Judge Dwyer at the earliest opportunity.

ADMINISTRATIVE OPTIONS

- Implement and interpret law so as to minimize adverse environmental impacts of 2001(k) and salvage sales.
- Litigate aggressively on behalf of our interpretation and implementation.
- Reiterate to USFS and BLM the importance of using their available discretion to achieve high environmental standards. Avoid problematic salvage sales.
- Negotiate, if possible, consensual modifications to problematic old growth sales.
- Pursue land trades between federal, private, and state forest lands with the aim of protecting sensitive areas on federal land. Pursue land trade ideas raised by former Gov. Goldschmidt with K. McGinty
- Negotiate, if possible, financial "buy-outs" of problematic old growth sales.

- Maintain operation of the Office of Forestry and Economic Development or its functional equivalent
- Ensure that Forest Plan-related economic assistance funding is available and disbursed
- Instruct agencies (working with and devoting resources to the Regional Ecosystem Office) to analyze ecological impacts of section 2001(k), mitigation opportunities, and other measures to protect integrity of Forest Plan.

LEGISLATIVE OPTIONS

- Amend provisions of the rescissions act in order to:
 1. confine geographic and temporal scope to "pure 318" sales (may raise question of legislative "taking")
 2. eliminate industry interpretation of "known to be nesting"
 3. repeal subsection 2001(k) [old growth section]
 4. explicitly provide for land transfers and buy-outs where rights may have vested
 5. repeal section 2001 [entire timber rider]
- Resist legislative efforts to undermine or eliminate ecosystem planning and management efforts (Columbia Basin, Sierra Nevada, Tongass riders); highlight the crisis-avoidance role of these plans.

COMMUNICATIONS OPTIONS

- Communicate to public that injunctions and related problems result from unanticipated/inappropriate interpretation of Act.
- ✓ Highlight our effort to persuade timber sale holders to avoid or mitigate for environmental harm.
- Organize White House meetings with stakeholders
- Organize frequent VIP message events in the region highlighting:
 1. Achievements of the Forest Plan
 - balanced approach
 - achievement of timber sale targets
 - Jobs in the Woods program
 - economic assistance
 - watershed restoration projects
 - fishery protection measures
 2. Other parties' efforts to return region to gridlock

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

03-Nov-1995 11:32am

TO: Thomas C. Jensen

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

CC: Ruth D. Saunders

SUBJECT: draft memo

I've heard the Garamendi proposal explained slightly differently, ie. that 318 sales would be cut and Forest Plan sales withheld to compensate.

I assume you've framed the question as Forest plan replacement timber because of 2001(1) and because withholding FP timber to compensate wouldn't really compensate.

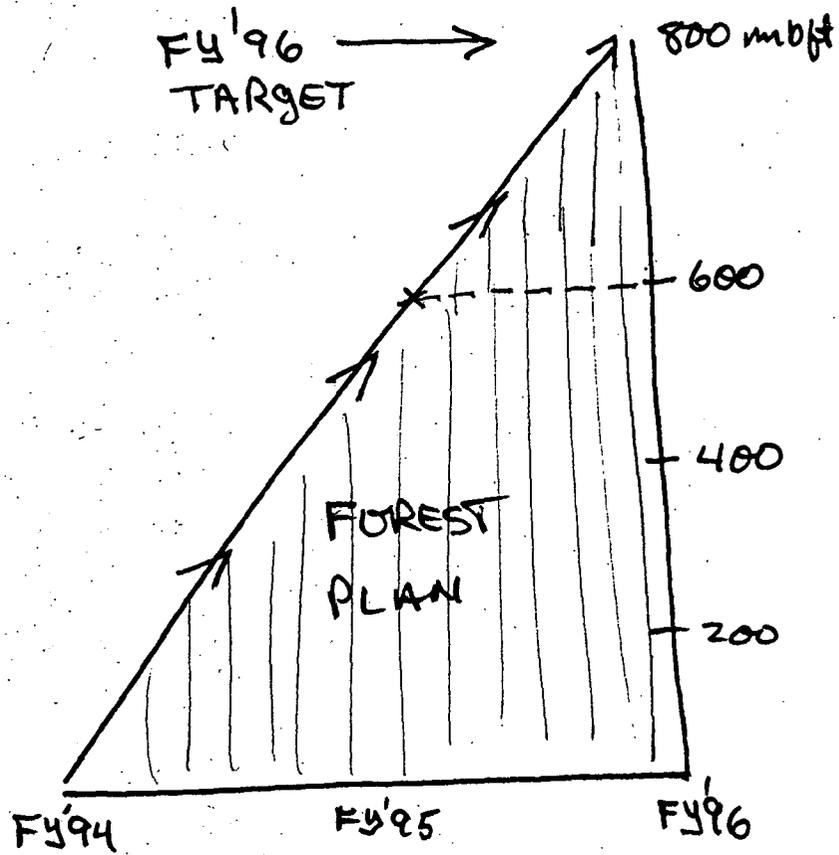
True? Or is what I've heard of the proposal wrong?



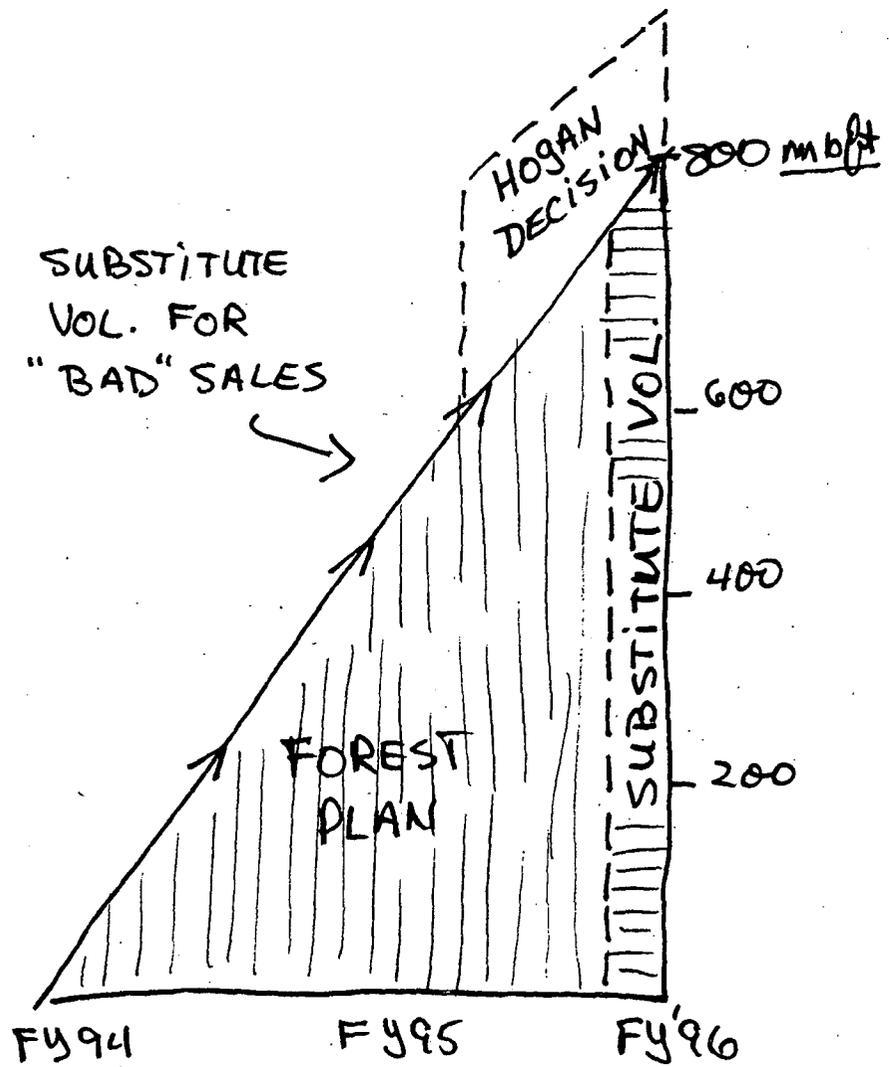
What are diff proposals -

If you make us give you this,
you'll get less of that.

(Not substitution -
just downward compensation)



(current)



GARAMENDI
PROPOSAL

Notes for Tech briefing

Timber rules to Resource Act

3 parts: salvage; option 9; section 318

All of this week's crisis relates to S. 318 sales

(Though people say we may encounter crisis relating to salvage + option 9 down the road.)

Two big legal issues relating to S. 318 provision

One has caused this past week's crisis - Areas v. Sales

One will be the subject of next wk's crisis - Known to be nesting

Areas v. Sales issue - re stat language

Our interp: that forces us to release only the particular sales called for by section 318, but w/held for one reason or another

Their interp: that forces us to release all sales offered or awarded prior to enactment w/in the area ~~area~~ ^{covered under} [referred to in] 318 -- which is the national forests of OR + WA

Last week - The initial controversy

District Ct (Hofen) ruled for ITs - ~~ordered~~ ^{said} govt ~~to~~ ^{must} release all sales w/in area ~~offered or awarded~~ ^{offered or awarded} after 1991

~~DOJ understood this judgment as non-final - did nothing.~~

~~ITs brought a contempt on~~

Asked for list of all sales offered or awarded prior to that time.

Basis of holding - lang; list; post-enactment letter (some confusion re this)

DOJ asked Dis Ct for a stay pending appeal; it refused

DOJ then took appeal to 9th Cir + asked 9th Cir for a stay pending appeal - 9th Cir refused, oral arg stated for Jan.
 Harsh opinion / argument

DOJ decided not to seek rehearing or 8th review; ordered release of all sales.
 2) no poss of success

Around here, people went nuts. Anger aft ¹⁾ DOJ + ²⁾ CEQ (note - fair bit of uplines) Failure of communication etc.

Ab + 1 came in here.

This horse out of the barn; will only make us look stupid;
Don't call SG, ask him to reverse decision.

So-appeal in Jan - by which time many trees will be cut.

Still leaves pre-1991 sales. Judge will make part of order?

we have slightly better case in these - language is same, but leg.
history indicates some difference.

Schmidt has basically said: will go to max (tho SG action
not be unclear)

But real problem now is: we don't know how many sales, how
big. (I said: Harold should see)

Relate - supposed to file w/ ct yesterday.

But forest fence really hasn't begun.

May be 0; may be billions.

Don't know whether there's a real cashing out
there.

Next week - known to be nesting issue

Question is: what does this phrase mean?

They say: need actual physical evidence of nesting

We say: this practically never exists. Use criteria in Pacific

Suband Protocol to determine whether there are birds there.

Native Hojan; but also Rosstein

Transfer motion to Hojan

But likely Hojan will decide, not transfer.

Schmidt has also indicated - will go all the way (but SG?)

NB - one scenario - all this will bring down FP itself. (Dwyer said -
admin had gone to max. If one more stick were cut, he'd have to
rethink)

What's been happening here is that Harold has become the timber czar.
Hold big ref mtgs - Asst. Minister / Justice / WH

A few smaller gprs set up to look at ---

1. Legislative - various options

- a. Reverse area v sales decision
- b. Above and get better definition of known to be nesting.
- c. Repeal whole 31F section
- d. Repeal entire timber rider.
- e. Try to get leg making land transfers / buyouts easier

2. Communications

3. Administrative Action

- a. Look into poss of buyouts / land transfers -
including from option 9 timber (Gerevendi proposal)
- b. Freeze ~~options~~ ^{new sales} altogether? (essentially suspend FP)
- c. Timber co. jawboning option. → or reduce by curbing
amt?

Memo - end of Tuesday.

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

02-Nov-1995 06:25pm

TO: Martha Foley

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: Today's revelations on timber

1. The Forest Service mess is still not resolved. At one point in the afternoon, the Forest Service swore it knew what was as yet unreported: 150 million bd. ft of 1990 sales. Then it turned out at the 2:00 meeting that the Forest Service was unaware of an obligation to list sales that occurred prior to 1990. So the Forest Service now has to start a search for these earlier sales. There may be none; there may be a lot. It's impossible right now to know. It also seems highly uncertain whether there are really 150 million bd ft of unreported 1990 sales. I have suggested to Jennifer that Harold call over to the Forest Service to tell it to get its act together. It's obviously very difficult to figure out what we want to do on any front -- litigation, legislation, or administrative action -- until we know the full scope of the problem.
2. There's no word yet from Judge Hogan. Lois is convinced that Mark Rutzick, attorney for the plaintiffs, will respond to DOJ's pleading of last night by filing a motion for contempt and/or sanctions today. He hasn't filed anything yet, but Lois thinks the shoe will probably drop at any moment.
3. At the 2:00 meeting, which is attended by lots of agency and DOJ people, there was much sentiment for greater guidance from the White House. (A bit ironic in light of our experience with Justice, but...) Some participants at the meeting argued: they are, as a matter of course, making decisions every day about how to interpret and enforce this statute; they have received conflicting signals from the White House; they have no principles to guide their decisions' what they really need is a clear guiding principle -- e.g., interpret the statute as narrowly as possible.
4. I haven't had a chance to look at the Option 9 language/legislative history, but will try to do so tonight or tomorrow. You're right, of course, as to its importance.

MEMORANDUM

TO: Tom Jensen
FROM: Nancy Hayes, BLM
DATE: November 2, 1995
RE: Replacement Timber

In an effort to resolve certain issues related to replacement timber so that BLM may begin the process of planning sales involving alternative timber, we propose to take the following approach unless anyone objects (we have consulted with the Forest Service and they have no objection):

1. Re timing: We are going to take the position that under the Act we should make every effort to **award** replacement timber by the end of FY 1996 (accordingly we are not reading the Act to require that the purchaser have time to complete harvest by the end of 1996, or for that matter that the Act imposes a hard and fast requirement that it be awarded by then).

2. The Act requires "equal volume of timber, of like kind and value, which shall be subject to the terms of the original contract." We interpret this to mean:

--replacement volume must be comparable (the same or nearly the same) in terms of volume quantity by species, percentages of grades by species, and average diameter.

--Other harvest parameters, such as average volume per acre, yarding distance, required harvest system, transportation distance, etc., can be made comparable by an appropriate value adjustment in the contract. Certain purchasers with multiple processing facilities may have the flexibility to accept significantly different timber. They would still expect to benefit from value adjustment to achieve "like value." Other purchasers, e.g., Hull-Oakes Lumber Co. (Roman Dunn -- Old Growth timber) have little flexibility and would expect the characteristics of the timber to be very comparable.

3. Replacement volume awarded in accordance with Section 2001(k)(3) does not have "sufficiency language" by virtue of "Notwithstanding any other law" in Section 2001(k)(1). We will comply with the standards and guidelines in the President's Forest Plan in awarding alternative timber.

4. We will execute a mutual rescission of the China Creek timber sale, thus bringing it within the Act and allowing us to provide replacement timber as necessary. Purchaser has agreed.

WHITE HOUSE FOREST PLAN PRESS CONFERENCE, JULY 1 1993

"...We are doing the best we can with the facts as they now exist in the Pacific Northwest....We believe in this case it is clear that the Pacific Northwest requires both a healthy economy and a healthy environment and that one cannot exist without the other....The plan meets the standards that I set as the conference concluded....It protects the long-term health of the forests, our wildlife and our waterways. It is clearly scientifically sound, ecologically credible, and legally defensible."

PRESIDENT BILL CLINTON

"A healthy forest economy demands a healthy forest."

VICE PRESIDENT AL GORE

"....I think it's worth remembering that what the scientific team has told us is that under the unified forest reserve [the Forest Plan], there should be a flow of about 12 billion board feet in a 10-year period, and that leaves a certain amount of flexibility with respect to how that's allocated....The Unified Forest Plan is now in place, but that doesn't mean that we can't modify and perfect it as we go along."

SECRETARY BRUCE BABBITT

The Administration has made a general policy commitment to "ramp up" Forest Plan timber sales as rapidly as possible so as to hit 800 mbft. by the end of this fiscal year. For a previously moribund Federal timber program, this would represent a significant achievement in providing an expanding, predictable and sustainable supply of timber for Northwest timber communities. In order to achieve the policy target of 800 mbft this fiscal year, all BLM and Forest Service "green sales" in the planning pipeline have been allocated to date to the Forest Plan side of the ledger book.

Unfortunately, recent court rulings have upheld a sweeping and extreme interpretation of the so-called "section 318" provisions of the Rescission Act, resulting in the ordered release of past repudiated timber sales which are inconsistent with the environmental standards of the Forest Plan. Contrary to the President's Forest Planning criteria, these repudiated sales are neither scientifically sound nor ecologically credible, thereby raising new uncertainty about the long-term viability of the Forest Plan itself.

One option for minimizing adverse effects to the Forest Plan would be to offer substitute green timber (which could be harvested consistent with the Plan) for the environmentally unacceptable sales ordered released by the courts. While BLM has indicated that it would be able to provide substitute green timber of this sort, the Forest Service has concluded that all of its prospective green sales are already allocated and in the planning pipeline for achieving this year's 800 mbft target for the Forest Plan. Thus, any reallocation of Forest Service green sales as substitute timber would reduce the end-of-the-year Forest Plan target by a comparable amount.

Deputy Secretary John Garamendi has suggested that the Forest Plan's 800 mbft target for this Fiscal Year is not legally mandated. Rather, it is a policy goal or commitment for providing a defined and predictable amount of timber for the region's forest economy. From that perspective and in light of recent court developments, Deputy Secretary Garamendi has suggested that consideration be given to diverting such Forest Service green sales from the Forest Plan pipeline as may be necessary to offer as substitute timber of like kind and value for environmentally unacceptable court ordered sales.

This would result in no net diminishment of the overall volume of timber provided to the region during FY 1996. Rather, it would involve an accounting change as to how we characterize the volume that we ultimately produce: instead of stating that we made available 800 mbft of timber exclusively under the Forest Plan, we would state that we provided the same 800 mbft, but divided XXX mbft under the Forest Plan and YYY mbft as necessary substitute timber in lieu of repudiated court ordered sales. Such an approach would add the substitution of timber along side other administrative options like sale renegotiation or repurchase.

A legal review would need to be undertaken of section 2001 of the Rescission Act to assess whether there are any legal impediments which could bar the Administration from implementing this option.

Information Item: Standard of Judicial Review for Salvage Timber Sales Under the Rescissions Act

I. **Where we stand:** The Kentucky Heartwood case involves a challenge to several salvage sales' potential effects on the endangered Indiana bat. We filed our opening motion on Monday 10/30. In our brief, we recognized that:

A. There is no review of the scope and content of the required environmental documents (the EA and BE), because they are left to the Secretary's sole discretion. Section 2001(c)(1)(C).

B. There is no review of the extent to which a decision document considers environmental effects or is consistent with environmental standards and guidelines. Section 2001(c)(1)(A) states:

A document embodying decisions relating to salvage timber sales proposed under the authority of this section, shall, at the sole discretion of the Secretary concerned and to the extent the Secretary concerned considers appropriate and feasible, consider the environmental effects of the salvage timber sale and the effect if any on threatened or endangered species, and to the extent the Secretary concerned, at his sole discretion, considers appropriate and feasible, be consistent with any standards and guidelines from the management plans applicable to the National Forest or Bureau of Land Management District on which the salvage timber sale occurs.

C. There is review of whether the decision to proceed with the sales was arbitrary and capricious, section 2001(f)(4), but not of whether the decision complies with any environmental or natural resources law. Section 2001(i).

II. **What remains to be worked out:** How should the government respond to the question: "Does the Rescissions Act prohibit in all circumstances judicial review of the environmental conclusions of the decision to proceed with a salvage timber sale?"

DOJ, DOI Solicitor's Office, and USDA OGC have agreed in concept to the following general approach:

The Rescissions Act grants the Secretary extraordinary discretion in considering the environmental effects of timber salvage sales. We need not describe the limits on that discretion, because the decision on these sales (e.g., the sales in Kentucky Heartwood) clearly meets this standard.

The agencies still need to work out how we would respond to specific questions from a judge at oral argument.

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

01-Nov-1995 09:29am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: MEETING NOTICE

The EOP/Agency timber working group will meet tomorrow, Thursday, November 2, 1995, at 2:00 p.m. in the CEQ Conference Room (722 Jackson Place). Please be prepared for a long meeting, probably in excess of two hours.

The agenda will include:

1. Pursuit of NFRC v. Glickman appeal - Chair
2. Standard of review applicable to salvage sales - Agencies
3. Temporal scope of salvage provisions (aka "Anne Peterson's issue") - Justice
4. 318/Hogan sale buy-out standard and valuation - Justice
5. Other business - Chair

Please call me or Dinah if you'd like to add other items or wish to distribute materials to the group ahead of time.

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

Shelley 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)

Legal Questions:

1. What can Plaintiffs do to force release of the list prior to November 15th? In other words, are they likely to file a motion to force disclosure and perhaps another try at contempt, arguing that there had already had one extension - that we failed to comply and that we have to produce a list immediately? If so, what are our options?

2. Assuming that immediately upon filing a list of sales with Judge Hogan, plaintiffs are likely to move to amend Judge Hogan's injunction to include those sales, what are the government's options? Procedurally, can we assert any new legal arguments at that time? If so, can we argue any new theory in regards to sales that were offered prior to the passage of Section 318? How strong is that argument? What are the appeal possibilities?

3. If some of these newly found sales are the result of the 1984 "buy-back", are they still truly live sales? In other words, is there any chance they were cancelled when we bought them back?

5. Is there any other legal way to slow down or prevent transfer of title to purchasers?

6. How strong are our legal arguments regarding the situation in which the high bidder has gone out of business? Apparently, the Forest Service custom is to go to the second bidder; BLM does not customarily go to the second bidder. Does that affect each agency's legal position? What if the second highest bidder has also gone out of business? What about the sentence in §2001(1)(k) stating that the return of the bid bond doesn't relieve the Secretary of his obligation to implement Section 2001(k). . . .?

7. If we have to release any further contracts, can we use the original terms of the contracts (as specified in §2001(k)) to modify or cancel the contracts, either under the "if for any other reason" provision or just through the "original terms of the contract" provision?

8. Are there any legal impediments to directing the land management agencies to immediately cease offering any new timber sales in the affected states?

Questions for Lois et al

A. Clean-up

1. Make sure we have Garimondi letter/memo
2. Make sure we have buyer memo
3. Inventory of Seattle Audubon sales

B. Legal tactics

1. On the Forest Service - pre-1991. WHAT TO DO?
2. Where are we on minerals? mammals?
- ~~3. Inventory of Seattle Audubon sales~~
3. ANYTHING RE JUDGE HOGAN TODAY?

C. Substantive

1. What is all this about The Garimondi proposal? ie swapping
2. What is all this about buying out (Boyling memo)
3. What is all this about Option 9 / no env. protections?
- when + where will this come up?

Can Years' meeting 11/2/95

Rudnick - prob will make motion for contempt today?

Panetta to Giliberto - get your act together?

BLM - 1986 compliance
What act before?

Finnest notice - where was
this left?

Years supposed to be in charge.

Piece of paper?

Can they freeze new sales? - No opening / executing new sales.

Violate the FP to not release? Does FP itself compel cutting?

Is this enforceable?

(ASQ)

Allowable sale quantity - a ceiling

PSQ - probable sale quant - just started to
have a production -

Not an entitlement - good law.

Can't enforce under NEPA or FP itself.

What act under new statute?

2001d. 1st sentence

Just notly said under Pres.

2001f3 - decision to prepare -

prob. not decision not to prepare

But, if Pres were to do? de Franklin - not reviewable.

(But, Pres - had to be done by President)

Wage + Price controls?
Ch. 6 lecture on Pairs.

A - Banyuwardi proposal
Get it.

Timber Mtg - Agency 11/2/95

~~No additional volumes of FS sales~~

1. Foreit service - continued search.
2. Replacement - BLM - ask what, if anything I'm supposed to do here.
3. NFRC v Stickman - will appeal.
4. Std of review applicable to salvage sales.
Pretty much set for this case
Still some questions left that not into in other cases.
Decision by The 1996.
5. Temporal scope of salvage
6. Buy-out std + valuation - J. is working.

Regional meeting on
salvage plan -
Should go ahead?

NEXT WEEKS MTG

On principle - what narrows
The scope of The bill?

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

02-Nov-1995 08:44am

TO: Elena Kagan

FROM: Martha Foley
 Office of the Chief of Staff

SUBJECT: RE: fyi on timber

Yes, I did pick up word of this. Can you keep me posted on anything you pick up on his reaction and/or any decision he makes?

Did you catch the mention at yesterday's meeting that the timber industry is arguing the same construct on the Option 9 language in the rescission bill as they did (successfully) on 318? I will take a look at the legislative history on this, but if you also have a chance and have any thoughts it would be worth talking.

SUMMARY: Section 318/Non-Section 318 Timber Sales

as of 11/1/95

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	sales	mmbf	sales	mmbf	sales
o SECTION 318 SALES	57	12	64	14	121	26
(Non Additive) FP LSR acres	n/a	n/a	n/a	10	↓	10
Modified in Forest Plan	13	3	n/a	9	(all in forest plan)	12
NMFS Fish Concern	24	5	n/a	0		5
<i>Hogan</i> o NON-SECTION 318 SALES (1990-95)	59	18	116	28	175	46
(Non Additive) FP LSR acres - in	0	0	n/a	8		8
Modified under Forest Plan - in	0	0	n/a	11		11
Eastside Forests - out	59	18	n/a	0		18
Key Watershed - in <i>could be either</i>	n/a	n/a	n/a	9		9
NMFS Fish Concern - either	17	8	n/a	5		13
Total, released under P.L. 104-19	116	30	180	42	296	72

White the merits rest of season 48 days.

REMAINING SALES SUSPENDED, UNAWARDED, OR PENDING:

All in FP

o SECTION 318 SALES						
<i>Tuesday (Hogan)</i> ← Not subject to release under known to be nesting	229	55	10	2	239	57
Enjoined/delayed by court cases	50	8	0	0	50	(8) 9?
o NON-SECTION 318 SALES						
Pre- Oct. 1990 sales - in	14 12	2 1	25 18	4 3	41 28	6 4
Not subject to release under known to be nesting - in	0	0	10	4	10 0	4 0
Enjoined/delayed by court cases - out	15	3	0	0	15	3
Purchaser out of business - 8 out <i>4 in</i>	38	12	0	0	38	12
Total, suspended or pending	344	79	36	9	370	84

TOTAL 2001(k) volume:

460 109 216 51 676 160

all subj to serious litigation

TIMBER PROGRAM OPTIONSDECISION SETS**I. Section 318 Sales Already Released***- All in forest plan.*

- o 121 m board feet (bd ft) in 26 sales released in August and September
- o effects?
- o administration options (see below)

*Dwyer - wants to know effects on FP.***II. Pre-FY 1991 Non-318 Sales**

- o identify list of sales (4 sales, 28 m bd ft)
- o effects?
- o release list to court 11/1
- o brief to be filed with court?
- o be prepared to appeal potential order to release these sales, based on language re. dates
- o other administrative and/or legislative options (see below)

III. "Known to be Nesting" Restrictions on All Sales

- o "318 sales" covered: 57 sales, 239 m bd ft
- o "non-318 sales" not protected, due to lack of field data on nesting (?)
- o brief ~~was~~ filed with court
- o November 7 court arguments
- o prepare for appeal on merits
- o consider including these in other administrative and/or legislative options (see below)

IV. Non-318 Sales, 1990-1995 Already Released

- o 46 sales, 175 m bd ft
- o see administrative and legislative options (see below)

V. Other Sales Not Yet Released

- o Section 318 enjoined in other cases (8 sales, 50 m bd ft)
- o Non-318 sales enjoined in other cases (3 sales, 15 m bd ft)
- o Non-318 sales that "cannot be awarded" (i.e., due to purchaser out of business) (12 sales, 38 m bd ft)
- o other administrative and/or legislative options (see below)

LEGAL OPTIONS

Current Litigation related to §2001(k) (old growth sales)

- The government is under court order to submit a list to Judge Hogan Nov. 1st of all sales offered prior to FY 1991. These sales will not automatically be ordered to be released - they come under a declaratory judgment issued by Judge Hogan finding that such sales fall under the Act. Determine whether to ask for an extension of time, and determine whether remaining pre-FY'91 sales can be shielded from release and if so, determine whether that should be done. (NFRC v. Glickman)
- Defend or appeal decision regarding enjoined or withdrawn sales. Eleven sales falling under Judge Hogan's order are either currently the subject of an injunction, or in some instances, were withdrawn voluntarily because it was clear they would be enjoined. Judge Dwyer is hearing arguments this afternoon about 6 such sales. (Seattle Audubon Soc.'y v. Thomas) . We are arguing that the 4 enjoined sales at issue this afternoon should not be released because they were previously found to be in violation of §318. The Forest Service did agree to release the 2 withdrawn sales. Plaintiffs are arguing that none should be released and industry is arguing that all should be released. This will be the first of the Rescission Act cases to be heard before Judge Dwyer, who tried the long series of spotted owl cases and upheld the validity of the President's Forest Plan. If Judge Dwyer rules favorably for plaintiffs on all sales, we will have to decide whether to pursue an appeal regarding the withdrawn sales. If we lose, do we appeal?
- Should we continue to pursue appeal on "areas vs. sales" in NFRC v. Glickman? Argument is currently set in January before the 9th Circuit. There may be an issue of mootness, if all of the trees are already harvested, but they may not all be harvested.
- Vigorously pursue "known to be nesting" arguments (this issue arises in 3 suits, 2 of which are in front of Judge Hogan brought by NFRC and Scott Timber and in front of Judge Rothstein, brought by environmental plaintiffs.) Arguments are scheduled in front of Judge Hogan next Tuesday, Nov. 7th, on both the issues of whether he should transfer this issue to Judge Rothstein and on summary judgment motions. We should develop strategy to follow if we lose in district court and lose a motion to stay the sales, (which would put us in the same posture as we just experience on the "area vs. sales" issue).
- Pursue legal analysis of buy-out authorities and options. Section 2001(k) requires the agencies to offer alternative timber of like kind and volume if a particular sale cannot be offered. If the agencies do not have available alternative timber meeting the statutory criteria, there is no explicit remedy. A policy issue involved in this question is whether agencies should offer sales assumed to be sales under the Forest Plan as alternative timber. Questions have also arisen as to the extent of the agencies' legal authorities to buy-out sales and under what terms and conditions. Justice is doing an analysis of these issues..

Related Litigation

Salvage sales under Section 2001: The first suit challenges a sales on the Daniel Boone Forest in Kentucky. The significant legal issue arising here is the appropriate standard of review for a court under the timber rider.

Two lawsuits have been filed against the Forest Service for the Thunderbolt sale in Idaho, alleging violations of public trust as well as the arbitrary and capricious standard in the timber rider.

An issues has arisen in a case on appeal as to when the provisions of the salvage section of the act are actually triggered.

In another suit dealing with salvage, plaintiffs are raising 1st Amendment/Native American issues.

NRDC and other environmental groups have filed a suit challenging wildlife protection standards for timber sales on the East Side, based on their assessments of likely impacts under both the timber rider of the Rescissions Act and the Columbia Basin Ecosystem provision of the Interior appropriations bill.

Possible Litigation

We anticipate that environmental groups will challenge the validity of the Forest Plan in front of Judge Dwyer at the earliest opportunity.

ADMINISTRATIVE OPTIONS

- Implement and interpret law so as to minimize adverse environmental impacts of 2001(k) and salvage sales.
- Litigate aggressively on behalf of our interpretation and implementation.
- Reiterate to USFS and BLM the importance of using their available discretion to achieve high environmental standards. Avoid problematic salvage sales.
- Negotiate, if possible, consensual modifications to problematic old growth sales.
- Pursue land trades between federal, private, and state forest lands with the aim of protecting sensitive areas on federal land. Pursue land trade ideas raised by former Gov. Goldschmidt with K. McGinty - swap btw fed + state lands?
- Negotiate, if possible, financial "buy-outs" of problematic old growth sales.

need interp of statute -

allows this? - or forces us to give alternative issue?

*good idea
call 2
yes*

- Maintain operation of the Office of Forestry and Economic Development or its functional equivalent
- Ensure that Forest Plan-related economic assistance funding is available and disbursed
- Instruct agencies (working with and devoting resources to the Regional Ecosystem Office) to analyze ecological impacts of section 2001(k), mitigation opportunities, and other measures to protect integrity of Forest Plan.

LEGISLATIVE OPTIONS

- Amend provisions of the rescissions act in order to:
 1. confine geographic and temporal scope to "pure 318" sales (may raise question of legislative "taking")
 2. eliminate industry interpretation of "known to be nesting"
 3. repeal subsection 2001(k) [old growth section]
 4. explicitly provide for land transfers and buy-outs where rights may have vested
 5. repeal section 2001 [entire timber rider] *(need got of A - > hope fund?)*
- Resist legislative efforts to undermine or eliminate ecosystem planning and management efforts (Columbia Basin, Sierra Nevada, Tongass riders); highlight the crisis-avoidance role of these plans.

COMMUNICATIONS OPTIONS

- Communicate to public that injunctions and related problems result from unanticipated/inappropriate interpretation of Act.
- ✓ Highlight our effort to persuade timber sale holders to avoid or mitigate for environmental harm.
- Organize White House meetings with stakeholders - *not timber cos that hold Ks.*
- Organize frequent VIP message events in the region highlighting: *for whom we've made deals - count on a certain environmental baseline*
 1. Achievements of the Forest Plan
 - balanced approach
 - achievement of timber sale targets
 - Jobs in the Woods program
 - economic assistance
 - watershed restoration projects
 - fishery protection measures
 2. Other parties' efforts to return region to gridlock

Dinakar Bar - Telecom 11/1/95

~~From regional staff i had 318 sales.~~

should have been on earlier list / file explain for why
NOT earlier.
should have been released.

N. Hoya thinks not 318 sales. So internal dispute in DCM.

Forest Service - hasn't finished after all.

not started looking prior to 1999.

What are they waiting for?!

Here's what we have now - get rest by date certain.

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

01-Nov-1995 08:50pm

TO: Martha Foley
FROM: Elena Kagan
 Office of the Counsel

SUBJECT: fyi on timber

The latest news, in case you haven't heard, is:

1. The Forest Service has not completed its search. In fact, there may be as much as 500 million bd ft -- yes, 500 million -- of pre-1991 Hogan sales that the Forest Service hasn't quite found yet. Of course, there may not be nearly so much. We don't know. The judge is being told we will file a supplemental pleading by November 15.

2. The four BLM sales are being reported to the Court as something other than 318 sales, though some will say they look suspiciously like 318 sales. BLM is arguing that they are not 318 sales because the original purchasers walked away from the contracts.

I suspect the district court judge is going to be one upset man tomorrow. And, of course, we may have a huge problem coming down the road with respect to the as yet undiscovered Forest Service sales.

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

01-Nov-1995 06:20pm

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

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: fyi on timber

I haven't gotten the complete story on this yet, but it appears that:

1. The four BLM sales on today's list (of 5 1/2) may not be pre-1990 Hogan sales after all; they may be real 318 sales. If so, of course, we should have reported them to the court before now.
2. The Forest Service may not have completed searching its records for pre-1990 Hogan sales. If so, we'll have to tell the court that the search is not done and file a supplemental pleading when it is.

Hard to believe...

I'll let you both know when I learn more.

East side - NOT in
FP.

Nov 1 Iches meeting

1. 5 1/2 sales

If Ct includes in an injunctive

We would argue this - credible legal argument - sound basis to litigate

Give to Ct!

generally -
West - birds.

East - fish.

never surveyed ^{really} - don't know mur. etc.

All w/in forest plan ~~area~~ area

Forest Service sales - (2)

Both w/in/mur'd plan

Both w/in forest plan

2. 6 sales - enjoined / w/drawn (Dwyer) (318 sales)

↳ 36 w.

↳ not transferred ~~(13)~~

(3 others sales - total 13)

6 sales

BLM - in FY 1950

FS - prior to FY 1950

leg history not so good as then
leg history b/c in there.

2 FNs (may not be
terribly sharp legal case)

↓

(may not be so good if an arg.)

Also - where delayed, but not
enjoined - diff legal posture.

Dwyer - said we had pushed to max in terms of timber to be cut.
One more tree - puts forest plan in danger.

Released 318 sales -

If reconfigured → within parameters of FP / how many SF?

If not " → outside " " " / " " " ?

Suffic to overturn plan? Hard to say.

Try to convince buyers to agree to take trees outside.

Key is nature of sales - not just volume. (no impact on FP)

Dwyer - today:

Option 9 section - Rudzick argument
reverts to geog. area of Option 9
court/over - all env. protections
overridden.

Possibility That 2000(i) will protect The FP?

Related litigation -

- Salvage provisions
- Suit on E. side of Cascades (twin of W. side of Cascades)

Need clear direction - get timber cut or protect environment.
Iches - fair point.

[Vulnerability to FP, HCPs, Yd Rule]
↳ WHAT ARE THESE THINGS??

Impact on MOA?
on salvage?

Why don't we reduce planned cutting of other trees?

Pressure to meet goal is our own pressure.

2 (from) 1.1. - over 3 yrs.

BT - legislative ~~implication~~ suggests we can't do this - can't reduce Option 9.

Do we have a legal leg to stand on?

Operative section - "alternative volume can't be ..."

MF - who cares what Congress thinks?

Katie - he said gave a commitment - FP - 1.1 mbf.

How will this play?

Ang - John Gemenary

We have volume we didn't contemplate - bec. of other decisions.

also - bad placement

So - cut back on other timber.

Legal ramifications - provision on opti - 9. (2000(1))

↳ Look at this quickly!

Use Rudzick transcript -
ran down their throats.

Forest Serv / BLM - both pursuing admin opti cs

- modify to sales

- substitute volume

- buy-out

later - focus on most
environmentally managing
sales.

Being done.

Legislative optics -

Smaller meeting in this.

Short memo re w/it mtg w/ stakeholders.

1. List of S's
2. Ags when appropriate w/ 2 proposals
3. Catalogue of most env harmful
4. Legal/leg pr doc. on Berremedy proposal
5. Timber co visit

Small gp on legislative strategy.

Small gp on communications. (agency/WH)

More specifics on buy-out question

This gp needs to meet on regular basis.

For morning on
Berremedy proposal -
legal memo - ability to
sew up timber.

Tell Justice

Talk to Miller -
press label
Thurs

Buyouts -
Lois + Tom
kick them along.

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

01-Nov-1995 06:20pm

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

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: fyi on timber

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Hard to believe...
I'll let you both know when I learn more.

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

01-Nov-1995 02:08pm

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

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: FYI on timber

Lois Schiffer called to say that a district court in Washington yesterday ordered oral argument for this afternoon in a case involving six more timber sales. As I understand it, four of these sales are under a prior injunction issued by the Washington district court; the other two, although not themselves under the injunction, were withdrawn as a direct consequence of its issuance. Schiffer thinks we might have a ruling on whether the government must also release these six sales (as early as today.) I asked her to start compiling, along with the rest of the things she's supposed to be putting together, an inventory of these sales, ~~as well.~~

Q - other options re appeal?

Q - How much of a better case on Thore? (pre-1990)

NB - new motion in Seattle Audubon (the 6 enjoined/withdrawn sales) move to consolidate w/ Blichman So 6 more sales coming down pipe, likely to be consolidated under Hoyer's order.

for merit - eval aug 1:80 - 
6 sales (4+2)
injunction stay in place?
timber - trying to decide on merits.
we take position - not real 31st sales -

2 withdrawn bec of injunction
What's our position?
What to do? (appeal etc)

Re: marbled murrelets -
where are we on Thore?
What are our legal remedies?
Do we have altern timber?
What if we don't?
Can we compensate monetarily?
Where does madams come into this?

JOEL KLEIN — (Lef) ^{we jaw boning}
please support

blind is easy — perfectly lawful — not a problem

No AT problem ←

problem under
anti-lobbying act?
OK w/ SN

1st — Suit cut timber

Can't fashion an understanding or of among them?

Can remind them of env. issues.

Can't condition on behavior of others.

Don't rule — talk to p. individually

But it all in a room — talking pts — make clear —

in your indep jud, you should take env into acct —

Not dev, This as you ord. would!

no sense of conditioning what anyone is doing
on what anyone else is doing.

Press on Moneys —
madams
etc.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

INTERNATIONAL AFFAIRS DIVISION

ECONOMIC AFFAIRS BRANCH

TO: *Elena Kagan*PAGES: 2 (EXCLUDING THIS PAGE)FAX: *61647*DATE: *11/1/95*

FROM: JANET SYME FILLER

PHONE: (202) 395-4605

FAX: (202) 395-5770

COMMENTS:*Congressional Record language.*

EXECUTIVE OFFICE OF THE PRESIDENT

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ECONOMIC AFFAIRS BRANCH

TO: *Elena Kagan*PAGES: 2 (EXCLUDING THIS PAGE)FAX: *61647*DATE: *11/1/95*

FROM: JANET SYME PILLER

PHONE: (202) 395-4605

FAX: (202) 395-5770

COMMENTS:*Congressional Record language.*

Tell Justice

— On the 4 1/2

- Sale
- # of bid ft
- why sensitive - East/West

BLM vs FS

either

FP bond high

Not filed in Ct -

Until Harold sees it

For Harold

before it goes to Ct

Ct order On the pre-1990 (4 1/2)

what we can do.

Options (2)



don't do just
1 option

post +
cons.

Strategy -

Either do it self

or as Justice

Memo

CEO

legal
leg
pub wls
Admin

shots

- 3/8 - passed
- 3/8 - not passed
- Hofar - post-1990 passed
- Hofar - " " not passed
- Hofar - pre-1990

get self in loop
in legal piece

3:30

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

01-Nov-1995 10:49am

TO: (See Below)

FROM: John O. Sutton
 Office of the Chief of Staff

SUBJECT: Timber meeting

Harold Ickes will be having another timber meeting TODAY at 3pm in room 476. Please plan on attending

If you have any questions, please call Jennifer O'Connor at 6-6350.

Distribution:

TO: Jennifer M. O'Connor
TO: Sheila D. Turner ?
TO: Kris Balderston (*Hissins*)
TO: R. Lawton Jordan III (*Hale*)
TO: Alice E. Shuffield (*Glauchier*)
TO: Robert C. Vandermark (*CEQ*)
TO: Ray Martinez
TO: Elena Kagan
TO: Thomas C. Jensen
TO: Martha Foley

lches meeting

~~Pre-1990~~ lches presentation - highly optimistic to DOT

Pre-1990. Request for rehearing / cert - still possible?
 ↑
 ??

Schmidt - how decision was made re rehearing / cert stay

Schiffen - 1991+ has now been released (except murder / injure)

pre-1991: 4 1/2 sales - unclear how many bid fees
 must report that list by tomorrow.

if he turns DT into injunction on pre-1991 sales -

we can go thru whole process - to 9C - to 8C etc.

sufficiently diff legal issue - pre-1991?? (MF says Yes)

Katie: Are those 4 1/2 sales a problem?

How big? 1 sale is 10m bid fee

↳ maybe 20-40-80 m.

240 m

15 enjoined (FS)
 38 in bidding of
 business (FS)
~~10 m market (BLM)~~

Now-318

1990+

318 sales ——— 240 || + 10 m (BLM)
 real impact → Neshing-30 m (FS)
 Rehared 240 m (BLM)
 ↓
 east side - 120 FS

same impact on ← 120 BLM
 forest plan west side

70 m. still around - in loan
 title has not passed.

Now 318 pre-1990 -

on which
 All 318 sales - title has passed
 57 m FS / 64 m BLM = 121 m.

442 sales with a huge legal fuss?

Coppelman - just clean up.

Foley - no legal basis - see some leg history

Glickman - This is nitpicking. NOT worth wasting our time.

Frampton -

On stuff where title has passed -
compensation!

Katie: Need to do legal stuff

Legislative stuff

Administrative stuff - work w/ purchasers - how to mitigate

~~the matter~~

Review policy of achieving billion bd ft?

Hogan's decision - new game.

Frampton - rules prevents us from compensating by cutting other sales.

Can't change forest plan under law.

But plan has flexibility we can modify the way we manage.

All known/missing sales - w/in Forest Plan

~~Also 75m~~

(75m - NOT in FP -
don't impact)

Also ^{NUM} 318 sales released - w/in FP (about 120)

318 that's passed - most w/in FP

Critical aspect is timber w/in FP.

ck opinion
on cut report

MF - having read leg history,

we can't say we were misled.

We should have picked this up.

We signed off on this - cut report made clear that

This was area / not sales.

This was not an outrageous decision - This was right.

We have no argument now

2 or just a flip-flop argument.

Prognosis on likelihood of success - minimal.

Need paper for team -

All #s - all divided in above ways.

Recommendations -

3 or 4 poss courses of action.

That to which the has passed / has not passed.

admin / leg decisions

2 days.

Agency timber mtg 10/31/95

NFRC v. Glickman

Tmw - submit list 700-1750

two sales? - must know.

Forest Service -

others - true 318 sales.

Tuesday - 1) Transfer wishing to handle

2) substance of meeting

Also - Rudzick motion re enjoined sales

Ky v. Heathwood

9th - oppos. to SJ motions due

Challenge to salvage timber

TIS - concern abt Indiana bat.

Need to get critical position re reply brief.

Glickman again

13th - 9th Cir

opening briefs - on issue we lost stay on.
go forward?

ch this

2 lists - Forest Service / BLM

BLM - ~~the~~ sales pre-1990
12 1/2?

Not absolutely certain this is all?

Need labor intensive search.

(What was this based on?)

Schittu: Need affidavit re. extent, quality
of searches.

Any sales threaten forest plan?
4d rule?

Options for appeal -
hard to think

Thursday mtg - 2:00

on litigation issues

- scope of review

- compensation/buyers' stock
(see TJ E-mail)

Talk to Jack -
Bad dynamic.

Timber mtg 10/31

leg commitment

- how broad

- how hard to fight.

SP

Narrowest fix - not perceived as substantial?

Need to consult w/ people on Hill

Dix very upset over this - going to Hatfield

(Use salvage fund to compensate?)

← Check.

Broader fix - ^{but} 318 only

More than just areas v sales

Take this provision (200k) -

and deal w/ it. - also munlet

how?

MF - The more issues, the more difficult

do the narrow-wt win on that.

Pre-1950
List + options
for filing for delay.

3:30 meeting

Gorelik

Bablit

Blichman

Ides

Dinali Bear

18 318,

2 new ones

Why have extension?

THE WHITE HOUSE
WASHINGTON

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

31-Oct-1995 12:37pm

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: Compensation/buy out for timber contracts

Lois and Peter,

I would like to ask the Department of Justice to take the lead in developing a legal analysis of the basis under which the United States might "buy out" or otherwise through compensation extinguish the timber harvest rights held by beneficiaries of section 2001 (k) of the rescissions act.

In our meetings, we have heard a range of informal theories articulated by various agencies as to the source, nature, and extent of the rights held by beneficiaries of 2001(k). We need to reconcile the theories and identify the resulting range of valuation.

We should discuss this immediately.

Tom

Distribution:

TO: Remote Addressee
TO: Remote Addressee

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

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

31-Oct-1995 07:29am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: MEETING REMINDER AND AGENDA

The EOP/Agency timber working group will meet as regularly scheduled today, Tuesday, October 31st, at 2:00 p.m. in the CEQ conference room (722 Jackson Place).

The draft agenda is as follows:

1. Approval of Agenda - Chair
2. Update on Recent Events - Chair
3. Update on Litigation - Justice
4. Compilation of 318, Hogan, and related sale information -
 USDA and Interior
5. Proposal for special meeting on implementation of salvage
 MOA - Chair
6. Other business

If you would like to include other items on the agenda, or distribute materials in advance, please contact me at 395-7415 or Dinah Bear at 395-7421.

Happy Halloween.

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)

② — as far as we know
now —
pre-1990 sales
— could be more

won't be a lot
more

How BIG?

THE WHITE HOUSE

WASHINGTON

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

31-Oct-1995 11:49am

TO: Jack M. Quinn

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: meeting

Jack: Can you come to this? It would be great if you could -- and if we could talk about the timber situation a bit beforehand. The precise issue here concerns a list of pre-1990 timber sales that DOJ is supposed to submit to the district court tomorrow. (The court hasn't yet decided whether to force the government to release those sales.) Some around the White House (most notably, Martha Foley) want DOJ to ask for further time before submitting the list; DOJ (assuming it has the info it needs from the agencies) doesn't want to delay any further. More generally, there seems to be a battle royal shaping up over DOJ litigation strategy. As you know, many people were pissed off on Friday; that anger doesn't seem to be going away. Let me know if you can come. Thanks.

Elena

THE WHITE HOUSE

WASHINGTON

EXECUTIVE OFFICE OF THE PRESIDENT

31-Oct-1995 11:28am

TO: (See Below)

FROM: John O. Sutton
Office of the Chief of Staff

SUBJECT: Timber meeting Today

Harold Ickes will be having a timber meeting TODAY (Tuesday) at 3:30 pm in Room 180. Attendance is MANDATORY. Please clear your schedules to be there.

Attendees:

Ickes
Gorelick
Babbitt
Glickman
T.J. Glauthier
Martha Foley
Kitty
Tom Jensen
Katie McGinty + staff
Kagan
Marcia Hale
Ray Martinez

Distribution:

TO: R. Lawton Jordan III
TO: Alice E. Shuffield
TO: Kris Balderston
TO: Sheila D. Turner
TO: Robert C. Vandermark
TO: Ray Martinez
TO: Elena Kagan
TO: Thomas C. Jensen
TO: Martha Foley

Nanny 55178

Timber meeting 10/30/95

62 sales - 230 bf. - both agencies
post - 1990

(category - by Wednesday - pre 1990
don't know how much)

BLM -

released 27 of our sales 125 m. bf

1 not - murrelets (~~3000 bf~~)

parts of other sales not awarded

100 or so awarded / withholding 10 for murrelets

3 sales to be harvested in 1st few who. ↓

4th has also been executed.

replacement to be given

45 days left in season this year

Forest Service

Numbers unclear.

Total 110??

25 awarded??

85 not so??

If Ct to decide in Jan that dis ct was wrong -
then govt may have ability to buy back.

but vts have invested in purchasing cos.

so they would have tks claim.

at time of award.

MF - need lots of Wt involvement

SF - Why not SCT?

NB - same panel is complete gatekeeper
for en banc or 9C or stay.

→ SC - SG felt going to SCT was
dicer. And given opinion - w/out
merit.
Disposed w/
Agencies; Dinah
no one else in Wt.

Nesting issue

Salvage - lots of issues / decisions to be made

↳ Nov 7 argument

Hogan again - if not transferred.

↳ not appealable

may seek mandamus.

ground for th -

if other case was there 1st.

If win, need 200 m bf of alter timber -

Forest Service says can't find.

Ky Heartwood - scope of review on salvage

agency disag

judged the language

need more definitive position

whatever - little for etc to do - "sole Discretion
of Secy"

MF - Don't have to have any salvage sales!

For Env is saying opposite story
MF - If problems coming up, we don't have to have sales.

Impact on forest plan?

FS - no impact

B2M sales - ? may be impact - some sales don't mean state.

Forest Plan assumed there would be timber in some of these parts

↳ This puts FP in doubt.

Dwyer's opinion - rested on certain # of standing trees - which are no longer there!
Plan can be challenged now.

Or can it??

Need info -

What sales released? how much? where located?

What is scope of leg fix?

will depend on answers to above -

on cons. of losing these sales.

MF - may fight hard even if
no further consequences.

Lois - poss of violence - attempt to block sales.

Been some arrests - local officials.

US Atty declined to prosecute for conspiracy.

Finess Plan

40 Rules

HCPs



Pres initiatives

What Threatened?

Leg. tky (remedy - take back all this timber)

34m - GAO report

May be 100s of ms.

Different kinds of leg rules -

re rider - up to + inch repealing rider.

"reverse this decision" - only one response.

Less - mtg w/ timber cos.

antitrust problem?

If agree individually, it's not a problem

collectively, it's a problem.

Mean has to have sep mtgs?? Not clear.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 28, 1995

STATEMENT BY THE PRESIDENT
ON THE NINTH CIRCUIT COURT OF APPEALS DECISION TO FORCE ADDITIONAL
SALES OF OLD GROWTH TIMBER

I am deeply disappointed in the court's decision to force the Forest Service and the Bureau of Land Management to release these sales of healthy ancient timber.

My Administration's agreement with the Congress on this issue was significantly different from the interpretation upheld this week by the courts. We agreed that the Administration would not have to violate our standards and guidelines for our Forest Plan and for forest management in general, but only speed up sales that met those standards. We do not believe that this extreme expansion of ancient timber sales was authorized by the 1995 Rescission Act.

My Administration will actively pursue a legislative remedy to correct this extreme result.

At this time, however, there is no choice but to comply with the court's decision. The decision forces the release of timber that may lead to grave environmental injury to chinook salmon and other wildlife, and damage our rivers and streams. This could jeopardize the livelihoods of thousands of people who depend on the Pacific Northwest's vibrant commercial and sport fisheries.

I have directed the Secretaries of Agriculture and the Interior to work with the companies awarded contracts to seek changes to mitigate any harm to salmon and other species and water quality.

In signing the rescission legislation and in subsequent directives to my cabinet, I pledged to uphold existing environmental laws and standards. I will continue to fight for those laws and standards.

October 30, 1995

FOREST SERVICE 2001(K) SALES

■ ENVIRONMENTAL MITIGATION NEGOTIATIONS:

The National Marine Fisheries Service has raised concerns about 5 sales on the Umpqua National Forest (Oregon) because of their potential effect on the sea run cutthroat trout. All of the purchasers have responded favorably to Forest Service inquiries about modifying the sales to mitigate those effects.

Once contract documents have been executed on other problematic sales, the FS intends to conduct similar negotiations.

■ 2001(K) VOLUME:

The FS estimates its total 2001(k) volume at 507 mmbf.

Slightly less than 40%, 141 mmbf, has been released pursuant to orders stemming from NFRC v. Glickman.

An equivalent amount, 137 mmbf, is not under threat of imminent release. 99 mmbf is encumbered by other litigation and 38 mmbf cannot be awarded, primarily because the winning bidder in each case is no longer in business.

Release of the remaining volume, 229 mmbf, is subject to the resolution of "known to be nesting."

An attorney-client privilege attaches to several appended documents; please handle them accordingly.

Attachments.

October 27, 1995

**Section 2001 (k) Timber Sales
Purchaser Contacts Regarding Mutual Modification of Released Sales**

For those sales which were previously awarded and have now been released, early contacts with purchasers indicate that they are willing to mutually modify contracts to substantially mitigate environmental concerns. Specifically, on the Umpqua National Forest, 5 contracts have been released that were the subject of National Marine Fisheries Service concerns for the sea run cutthroat trout. All of the purchasers have been contacted recently regarding further modifications (substantial modifications have been negotiated while the sales were suspended over the past 2-3 years).

The Umpqua sale purchasers are willing to work with the Forest Service to implement most changes regarding unit boundaries and logging systems (short of going to helicopter logging). Unit boundaries are adjusted to provide for additional stream buffers and some tractor logging is being changed to cable logging. The purchasers generally only have 3 (reasonable) requests--that we adjust the cost appropriately, replace volume as needed (on the sale area), and complete the changes in a timely manner. The Forest Service has generally been able to meet these needs.

With respect to the unawarded sales, we have not had discussions with most of the high bidders on the sales to be awarded. After the contract documents are finalized with the original terms and conditions, the bonding/payments are made, and the contracts are signed, the Contracting Officers will diligently pursue mutual modifications with the Purchaser for those portions of the sales that could be improved to lessen adverse environmental effects. The time to award these sales varies based on when they were originally prepared and the amount of field work needed to remark trees, etc.

FOREST SERVICE

SECTION 2001 (k) SALES	Volume Released during summer 1995: 59 mmbf -- 53 mmbf in OR 6 mmbf in WA
	Volume Released During NFRC case: 82 mmbf -- 69 mmbf in OR 13 mmbf in WA
	Volume outstanding: 366 mmbf WA: 45 mmbf OR: 321 mmbf
	Status of outstanding volume: 99 mmbf enjoined/delayed by court cases 229 mmbf not subject to release under known to be nesting 38 mmbf that cannot be awarded

As of 10/27/95

Sales Subject to Section 2001 (k) as of 10/27/95 per District Court Ruling
CONFIDENTIAL – ATTORNEY/CLIENT PRIVILEGE – Prepared in Anticipation of Litigation

318.wb1

Category/Forest	Number of Sales	MMBF Original Volume	MMBF Previously Susp/Not Awarded	Comments:
Section 2001 (k) Sales w/ Nesting T&E Birds				
Mt Baker/Snoq. NF	7	41.13	18.73	all sales awarded - 23 units delayed
Olympic NF	7	62.52	11.07	all sales awarded - 15 units delayed
Siskiyou NF	7	35.04	11.89	all sales awarded - 17 units delayed
Siuslaw NF	32	255.39	179.29	all but 2 sales awarded - 85 units delayed
Willamette NF	1	3.40	1.30	sale awarded - 1 unit delayed
Umpqua NF	1	6.58	6.20	sale awarded - 4 units delayed
T&E Subtotal	55	404.05	228.47	145 units delayed
Section 2001 (k) Sales - Release or Partial Release				
Fremont NF	1	6.50	6.50	release per 10/27 notice
Wallowa-Whitman NF	8	16.72	16.72	release per 10/27 notice
Okanogan NF	1	0.89	0.89	release per 10/27 notice
Malheur NF	1	1.00	1.00	release per 10/27 notice
Umpqua NF	5	53.33	23.50	release per 9/27/95 Chief's Letter
Willamette NF	2	13.00	11.96	release/partial release per 9/27/95 Chief's Letter
Rogue River NF	1	3.96	3.96	sale awarded & released 9/8/95
Olympic NF	2	6.60	6.60	release per 9/27/95 Chief's Letter
Gifford Pinchot NF	1	6.00	6.00	release per 9/27/95 Chief's Letter
Mt. Hood NF	1	4.80	4.80	sale awarded & released 9/8/95
Release Subtotal	23	112.80	81.93	
Section 2001 (k) Sales - Enjoined/Delayed by Court				
Colville NF	1	13.70	11.86	DOJ motion pending
Wenatchee NF	2	2.95	2.95	DOJ motion pending
Winema NF	7	34.00	34.00	intent to award notice given--award 10/30
Umpqua NF	5	36.80	36.80	motion to drop 3 sales filed--award pending on 2
Siskiyou NF	3	13.42	13.42	motion to drop 1 sale filed--award pending on 2
Court Subtotal	18	100.87	99.03	
Section 2001 (k) Sales That Cannot be Awarded				
Umatilla NF	3	3.27	3.27	2 sales no longer exist--1, purchaser insolvent
Wallowa-Whitman NF	6	15.96	15.96	2 sales no longer exist--4, purchaser problems
Malheur NF	1	5.00	5.00	Purchaser out of business
Ochoco NF	1	12.30	12.30	Purchaser out of business
Siuslaw NF	1	1.60	1.60	Purchaser unwilling to accept award
Non-318 Subtotal	12	38.13	38.13	
Region 6 Totals	108	655.85	447.56	

***Includes Updates Based on 9/27/95 Chief's Memo,
9/13/95 & 10/17/95 Rulings in NFRC v. Glickman,
and 10/27/95 Report from Region***

Section 2001 (k) Sales - Release or Partial Release as of 10/27/95
CONFIDENTIAL -- ATTORNEY/CLIENT PRIVILEGE -- Prepared in Anticipation of Litigation

318.wb1

Forest/Sale Name	High Bidder/ Purchaser	Bid Date	Previous Awarded?	MMBF Original Volume	MMBF Released	Comments:
<u>Fremont NF /3</u>						
Blue Ford	/2 Boise Casc	09/25/91	no	6.50	6.50	Notice of Intent to Award being sent by COB 10/27
<u>Wallowa-Whitman NF</u>						
Banty Salvage	/2 Ellingson	08/04/92	no	0.61	0.61	Notice of Intent to Award being sent by COB 10/27
Sweet Pea	/2 Ellingson	05/26/92	no	1.28	1.28	" " " "
Johnson Salvage	/2 Rosboro	08/27/92	no	3.60	3.60	" " " "
Hilton	/2 Malheur	09/26/91	no	5.30	5.30	" " " "
Tanya	/2 Boise Casc	09/24/91	no	0.59	0.59	" " " "
Tanhorse	/2 Boise Casc	09/24/91	no	1.34	1.34	" " " "
RD Salvage	/2 Dodge	10/29/92	no	3.30	3.30	" " " "
Park HFR	/2 Boise Casc	11/03/92	no	0.70	0.70	" " " "
Forest Totals				16.72	16.72	
<u>Malheur NF</u>						
Locust	/2 Smerski	04/14/93	no	1.00	1.00	Notice of Intent to Award being sent by COB 10/27
<u>Okanogan NF</u>						
Nicholuson Slvg I	/2 Vaagan Bro	02/08/93	no	0.89	0.89	Notice of Intent to Award being sent by COB 10/27
<u>Umpqua NF</u>						
Zanita	Lone Rock	FY 1990	yes	11.90	3.00	Released 9/29/95
Jack	C&D Lumb	FY 1990	yes	9.03	6.50	" "
Redlick	Superior	FY 1990	yes	6.60	4.00	" "
Gage	Scott	FY 1990	yes	16.50	6.20	" "
Honeytree	Scott	FY 1990	yes	9.30	3.80	" "
Forest Totals				53.33	23.50	
<u>Willamette NF</u>						
Red 90	Freres Lumb	FY 1990	no	7.30	6.26	Notice of Intent to Award sent 9/29
Horse Byars	Freres Lumb	FY 1990	no	5.70	5.70	" " "
Forest Totals				13.00	11.96	
<u>Rogue River NF</u>						
Head	Boise Casc	FY 1990	no	3.96	3.96	Awarded 9/8/95
<u>Olympic NF</u>						
Caraco Cat	/1 Mesa Res.	FY 1990	no	3.70	3.70	Notice of Intent to Award sent 9/29
Rocky	/1 Buse Timb.	FY 1990	no	2.90	2.90	" " "
Forest Totals				6.60	6.60	
<u>Gifford Pinchot NF</u>						
Holdaway	/1 Pacific	FY 1990	no	6.00	6.00	Notice of Intent to Award sent 9/29
<u>Mt. Hood NF</u>						
Enola	Hanel Lumb	FY 1990		4.80	4.80	Awarded 9/8/95
REGION 6 TOTALS	All		both	112.80	81.93	23 sales released or being released

/1 These sales were not assumed to be harvest when the ROD for the President's Forest Plan was signed

/2 These sales are located on areas outside the President's Forest Plan

/3 The Auger Sale (Fremont NF) was dropped from the list because it was bid in FY 1989 and is not covered by the 10/17 court order

Section 2001 (k) Sales - Enjoined/Delayed by Court Action as of 10/27/95
CONFIDENTIAL -- ATTORNEY/CLIENT PRIVILEGE -- Prepared in Anticipation of Litigation

318.wb1

Forest/Sale Name	High Bidder/ Purchaser	Bid Date	Awarded?	MMBF Original Volume	MMBF Suspended/ Not Awarded	Comments:
<u>Colville NF</u>						
Gatorson	/2 Vaagan Bro	03/25/91	yes	13.70	11.86	Enjoined under Smith v. USFS--DOJ motion pending
<u>Wenatchee NF</u>						
Tip	/2 Longview	03/08/94	yes	0.75	0.75	Enjoined under Leaf v. Ferraro--DOJ motion pending
Tiptop	/2 St. Joe Lum	11/15/93	yes	2.20	2.20	" " " "
Forest Totals				2.95	2.95	
<u>Winema NF</u>						
John	/2 Huffman	08/14/91	no	1.80	1.80	Notice to parties in ONRC v. Lowe of intent to award sales sent 10/19 -- initiate award on 10/30
John Lodgepole	/2 DAW	08/22/91	no	2.20	2.20	
Yoss	/2 Boise Casc	09/19/91	no	7.10	7.10	" " " "
Willy	/2 Boise Casc	09/26/91	no	4.40	4.40	" " " "
Nelson	/2 DAW	01/06/92	no	7.40	7.40	" " " "
Bill	/2 Huffman	09/28/95	no	5.80	5.80	" " " "
Cinder	/2 Scott	09/28/95	no	5.30	5.30	" " " "
Forest Totals				34.00	34.00	
<u>Umpqua NF</u>						
Cowboy	/1 Scott	FY 1990	no	9.40	9.40	Motion to drop sales from 318 list filed w/ Dwyer
Nita	/1 Scott	FY 1990	no	9.30	9.30	
South Nita	/1 Scott	FY 1990	no	6.30	6.30	" " " "
Last	/1 Scott	FY 1990	no	6.70	6.70	10/24, DOJ advised release of sales
First	/1 Scott	FY 1990	no	5.10	5.10	" " " "
Forest Totals				36.80	36.80	
<u>Siskiyou NF</u>						
Boulder Krab	/1 Scott	FY 1990	no	6.07	6.07	10/16, notified court of intent to award on 10/31
Elk Fork	/1 CLR Timber	FY 1990	no	2.76	2.76	" " " "
Garden	/1 Medford	FY 1990	no	4.59	4.59	Motion to drop sales from 318 list filed w/ Dwyer
Forest Totals				13.42	13.42	
REGION 6 TOTALS		All		100.87	99.03	18 sales delayed by court action

/1 These sales were not assumed to be harvest when the ROD for the President's Forest Plan was signed

/2 These sales are located on areas outside the President's Forest Plan

Section 2001 (k) Sales That Can No Longer Be Awarded (as of 10/27/95)

CONFIDENTIAL – ATTORNEY/CLIENT PRIVILEGE – Prepared in Anticipation of Litigation

318.wb1

Forest/Sale Name	High Bidder/ Purchaser	Bid Date	Awarded?	MMBF Original Volume	MMBF Suspended/ Not Awarded	Comments:
<u>Umatilla NF</u>						
Eagle Rdge Houselog	/2 Rogge	09/30/91	no	0.17	0.17	Rogge insolvent—can't meet contract terms
Bald	/2 Boise Casc	09/30/91	no	2.90	2.90	Sale no longer exists as offered
Stagecoach	/2 Boise Casc	09/29/91	no	0.20	0.20	" " "
Forest Totals				3.27	3.27	
<u>Wallowa-Whitman NF</u>						
Tower Salvage	/2 Boise Casc	08/04/92	no	1.01	1.01	Sale no longer exists as offered
Bugout Salvage	/2 Dodge	10/29/92	no	5.40	5.40	" " "
Allen	/2 Rogge	10/08/92	no	3.80	3.80	Rogge insolvent—can't meet contract terms
Cantrel Springs	/2 Kinzua	11/03/92	no	0.61	0.61	Kinzua out of business—can't meet contract terms
Horn Salvage	/2 Kinzua	11/17/92	no	1.34	1.34	" " "
Prong Salvage	/2 Rogge	10/15/92	no	3.80	3.80	Rogge insolvent—can't meet contract terms
Forest Totals				15.96	15.96	
<u>Malheur NF</u>						
Forks	/2 Snow Mtn	04/28/93	no	5.00	5.00	Snow Mtn out of business—can't meet contract terms
<u>Ochoco NF</u>						
Off Broadway	/2 Kinzua	03/29/93	no	12.30	12.30	Kinzua out of business—can't meet contract terms
<u>Siuslaw NF</u>						
Hiack Thin	Hampton	12/30/93	no	1.60	1.60	Hampton unwilling to accept award
REGION 6 TOTALS	All	All		38.13	38.13	12 sales that can no longer be awarded

/1 These sales were not assumed to be harvest when the ROD for the President's Forest Plan was signed

/2 These sales are located on areas outside the President's Forest Plan

Section 2001 (k) Sales Occupied by Nesting T&E Birds as of 10/27/95
CONFIDENTIAL -- ATTORNEY/CLIENT PRIVILEGE -- Prepared in Anticipation of Litigation

318.wb1

Forest/Sale Name	High Bidder/ Purchaser	Issue	Awarded?	MMBF Original Volume	MMBF Suspended/ Not Awarded	Units Delayed	Comments:	
<u>Mt. Baker/Snoqualmie NF</u>								
Fish Story	LB&R Log.	MaMu	yes	6.70	0.70	3	Note: Occupied MaMu units cannot be modified and released without jeopardizing the continued existence of the marbled murrelet. MaMu = Marbled Murrelet NSO = Northern Spotted Owl	
Old Grade	Summit	MaMu	yes	9.90	2.20	3		
Median Buyback	LB&R Log.	MaMu	yes	7.19	5.81	5		
Stalwart	Miller Shing.	MaMu	yes	2.60	2.50	3		
Scraps	Miller Shing.	MaMu	yes	7.55	3.76	5		
Boyd Creek	Hurn Shing.	MaMu	yes	3.75	0.78	3		
Clear Creek	Buse Timb.	MaMu	yes	3.44	2.97	1		
Forest Totals				41.13	18.73	23		
<u>Olympic NF</u>								
Camel	Mayr Bros.	MaMu	yes	6.05	2.11	2		
Not Bad	Hoh River	MaMu	yes	7.29	1.60	2		
Deodar	Hoh River	MaMu	yes	9.90	0.80	1		
You Who	MCMC Res.	MaMu	yes	12.40	1.75	1		
West Boundary	Mayr Bros.	MaMu	yes	4.30	2.53	3		
Wynochee Res.	Mayr Bros.	MaMu	yes	16.98	2.20	5		
Stevens	Mayr Bros.	MaMu	yes	5.60	0.08	1		
Forest Totals				62.52	11.07	15		
<u>Siskiyou NF</u>								
Sugar Cube	CLR Timb.	MaMu	yes	4.83	1.30	2		
Winriver	CLR Timb.	MaMu	yes	3.14	0.69	1		
Spur Trigger	CLR Timb.	MaMu	yes	5.42	3.14	3		
Lobster	CLR Timb.	MaMu	yes	6.56	0.85	1		
Father Oak	Scott	MaMu	yes	5.73	2.36	5		
Taylor Ranch	CLR Timb.	MaMu	yes	5.35	1.77	2		
Toastberry	Scott	MaMu	yes	4.01	1.78	3		
Forest Totals				35.04	11.89	17		
<u>Siustlaw NF</u>								
Mr. Rogers	Seneca Saw	MaMu	no	10.00	10.00	4	All units on unawarded sales occupied	
Prong	Lone Rock	MaMu	no	4.80	4.80	1		
Foland Ridge	Hampton	MaMu	yes	4.40	0.89	1		
Gordy Bluff	Hampton	MaMu	yes	7.59	2.69	1		
North Ball	Hampton	MaMu	yes	6.70	1.04	2		
Square Clare	Willamette	MaMu	yes	10.70	1.38	1		
Berry Bushel	Scott	MaMu	yes	5.50	1.42	5		
Condon Carr.	Willamette	MaMu	yes	6.80	3.79	1		
Fivemile Flume	Scott	MaMu	yes	7.50	7.08	3		
Franklin Ridge	Willamette	MaMu	yes	9.00	6.64	3		
Indian Hook	Scott	MaMu	yes	15.20	15.14	5		
Lower Bailey	Lone Rock	MaMu	yes	3.20	0.91	1		
Maria Skyline	Scott	MaMu	yes	12.70	9.00	3		
Skywalker	Scott	MaMu	yes	7.70	5.16	3		
South Paxton	Willamette	MaMu	yes	9.20	9.07	6		
Sugar Maple	Willamette	MaMu	yes	6.40	1.54	1		
Sulphur	Scott	MaMu	yes	6.40	5.50	3		
Uncle Condon	Willamette	MaMu	yes	12.60	8.48	4		
Upper McLeod	Seneca Saw	MaMu	yes	5.10	2.38	1		
Benner Bunch	Bugaboo	MaMu	yes	10.30	5.79	3		
Grass Hula	Bugaboo	MaMu	yes	8.70	8.55	5		
Green Apple	Boise Casc	MaMu	yes	10.10	9.87	4		
Green Horn	Willamette	MaMu	yes	5.80	2.51	2		
Randalisalado	Boise Casc	MaMu	yes	6.50	1.39	1		
Ryan Wapiti	Freres Lumb	MaMu	yes	10.70	6.40	2		
Beamer 712	Scott	MaMu	yes	8.90	8.67	2		
Canal 606	Hampton	MaMu	yes	9.40	6.24	2		
Formader 103	Scott	MaMu	yes	8.30	8.17	4		
Formader 717	Scott	MaMu	yes	2.40	2.35	1		
Upperten 002	Boise Casc	MaMu	yes	14.49	14.41	4		
Wapiti 305	Scott	MaMu	yes	2.30	2.29	2		
Wheelock 403	Hampton	MaMu	yes	6.01	5.74	4		
Forest Totals				255.39	179.29	85		
<u>Willamette NF</u>								
Anchovy	Thomas Ck	NSO	yes	3.40	1.30	1		Based on Owl Protocol
<u>Umpqua NF</u>								
Abes Wren	DR Johnson	NSO	yes	6.58	6.20	4		Based on Owl Protocol
REGION 6 TOTALS	All	All	both	404.05	228.47	145		55 Sales with T&E Birds (2 unawarded)

NFRC v. GLICKMAN
95-6244HO
95-6267HO
DISTRICT OF OREGON

R6 REPORT TO THE COURT RE: ACTIONS TAKEN TO AWARD OR RELEASE SALES OFFERED OR AWARDED BETWEEN OCTOBER 1, 1990 AND JULY 27, 1995

I. NOTICE OF INTENT TO AWARD SALE IN ONRC v. LOWE, 92-1121AS (D.Or)

<u>SALE</u>	<u>NF</u>	<u>VOLUME</u>	<u>HIGH BIDDER</u>	<u>ACTION</u>
1. JOHN	WIN	1,800 MBF	HUFFMAN/WRIGHT	NOTICE TO PARTIES IN <u>ONRC v. LOWE</u> , 92-1121AS, DISTRICT OF OR. 10/19/95 OF INTENT TO AWARD ON OR AFTER OCTOBER 30, 1995. LETTER TO BE SENT TO HIGH BIDDER 10/30/95.
2. JOHN LODGEPOLE	WIN	2,200 MBF	DAW	NOTICE TO PARTIES IN <u>ONRC v. LOWE</u> , 92-1121AS, DISTRICT OF OR. 10/19/95 OF INTENT TO AWARD ON OR AFTER OCTOBER 30, 1995 LETTER TO BE SENT TO HIGH BIDDER 10/30/95.
3. YOSS	WIN	7,100 MBF	BOISE CASCADE	NOTICE TO PARTIES IN <u>ONRC v. LOWE</u> , 92-1121AS, DISTRICT OF OR. 10/19/95 OF INTENT TO AWARD ON OR AFTER OCTOBER 30, 1995; REGIONAL FORESTER DISMISSED ADMINISTRATIVE APPEALS 10/25/95. LETTER TO BE SENT TO HIGH BIDDER 10/30/95.
4. WILLY	WIN	4,400 MBF	BOISE CASCADE	NOTICE TO PARTIES IN <u>ONRC v. LOWE</u> , 92-1121AS, DISTRICT OF OR. 10/19/95 OF INTENT TO AWARD ON OR AFTER OCTOBER 30, 1995; REGIONAL FORESTER DISMISSED ADMINISTRATIVE APPEALS 10/25/95. LETTER TO BE SENT TO HIGH BIDDER 10/30/95.

5. NELSON WIN 7,400 MBF DAW NOTICE TO PARTIES IN ONRC v. LOWE, 92-1121AS, DISTRICT OF OR. 10/19/95 OF INTENT TO AWARD ON OR AFTER OCTOBER 30, 1995; REGIONAL FORESTER DISMISSED ADMINISTRATIVE APPEALS 10/25/95. LETTER TO BE SENT TO HIGH BIDDER 10/30/95.
6. BILL WIN 5,800 MBF HUFFMAN/WRIGHT NOTICE TO PARTIES IN ONRC v. LOWE, 92-1121AS, DISTRICT OF OR. 10/19/95 OF INTENT TO AWARD ON OR AFTER OCTOBER 30, 1995. LETTER TO BE SENT TO HIGH BIDDER 10/30/95.
7. CINDER WIN 5,300 SCOTT NOTICE TO PARTIES IN ONRC v. LOWE, 92-1121AS, DISTRICT OF OR. 10/19/95 OF INTENT TO AWARD ON OR AFTER OCTOBER 30, 1995; REGIONAL FORESTER DISMISSED ADMINISTRATIVE APPEALS 10/25/95. LETTER TO BE SENT TO HIGH BIDDER 10/30/95.

II. AWARDED SALES ENJOINED OR SUSPENDED AS A RESULT OF COURT ACTION

<u>SALE</u>	<u>NF</u>	<u>VOLUME</u>	<u>HIGH BIDDER</u>	<u>ACTION</u>
8. GATORSON	COL	11,860 MBF	VAAGEN BRO	SALE AWARDED 5/6/93; SALE SUSPENDED 5/20/93; USFS AWAITING DETERMINATIO OF LEGAL COURSE OF ACTION UNDER <u>SMITH v. USFS</u> , 93-0178-JLQ (E.D.Wa)
9. TIP	WEN	751 MBF	LONGVIEW FIBER	SALE AWARDED 9/9/94; ENJOINED 3/3/95. USFS AWAITING DETERMINATION OF LEGAL COURSE OF ACTION UNDER <u>LEAF et al v. FERRARO</u> , 94-1025 (W.D. WA)
10. TIPTOP	WEN	2,200 MBF	ST. JOE LUMBER	SALE AWARDED 2/16/94; ENJOINED 3/3/95. USFS AWAITING DETERMINATION OF LEGAL COURSE OF ACTION UNDER <u>LEAF et al v. FERRARO</u> , 94-1025 (W.D. WA)

III. SALE NO LONGER EXISTS AS OFFERED

<u>SALE</u>	<u>NF</u>	<u>VOLUME</u>	<u>HIGH BIDDER</u>	<u>ACTION</u>
11. STAGE-COACH	UMA	200 MBF	BOISE CASCADE	BIDS REJECTED 12/11/91; NO INTENT TO AWARD AS OFFERED, SALE AREA REDESIGNED INTO FY96 TIMBER SALE
12. BALD	UMA	2,900 MBF	BOISE CASCADE	BIDS REJECTED 12/11/91; NO INTENT TO AWARD AS OFFERED, SALE AREA REDESIGNED INTO FY96 TIMBER SALE
13. BUGOUT SLV WAW		5,400 MBF	DODGE LOGGING	BIDS REJECTED 2/23/95; NO INTENT TO AWARD AS OFFERED, SALE AREA REDESIGNED INTO FY95 TIMBER SALE
14. TOWER SLV WAW		1,010 MBF	BOISE CASCADE	BIDS REJECTED 2/23/95; NO INTENT TO AWARD AS OFFERED, PORTION OF SALE AREA BURNED IN FY 94 AND PLANNED AS FY96 TIMBER SALE

IV. NOTICE OF INTENT TO AWARD BEING SENT TO HIGH BIDDER

<u>SALE</u>	<u>NF</u>	<u>VOLUME</u>	<u>HIGH BIDDER</u>	<u>ACTION</u>
15. BLUE FORD	FRE	6,500 MBF	BOISE-CASCADE	NOTICE OF INTENT TO AWARD WILL BE SENT TO HIGH BIDDER VIA CERTIFIED MAIL BY COB 10/27/95.
16. BANTY SLV WAW		610 MBF	ELLINGSON LUM.	NOTICE OF INTENT TO AWARD WILL BE SENT TO HIGH BIDDER VIA CERTIFIED MAIL BY COB 10/27/95.
17. JOHNSON SLV	WAW	3,600 MBF	ROSBORO LUMBER	NOTICE OF INTENT TO AWARD WILL BE SENT TO HIGH BIDDER VIA CERTIFIED MAIL BY COB 10/27/95.
18. PARK HFR	WAW	700 MBF	BOISE CASCADE	NOTICE OF INTENT TO AWARD WILL BE SENT TO HIGH BIDDER VIA CERTIFIED MAIL BY COB 10/27/95.

19.	RD SLV	WAW	3,300 MBF	DODGE LOGGING	NOTICE OF INTENT TO AWARD WILL BE SENT TO HIGH BIDDER VIA CERTIFIED MAIL BY COB 10/27/95.
20.	HILTON	WAW	5,300 MBF	MALHEUR LUMBER	NOTICE OF INTENT TO AWARD WILL BE SENT TO HIGH BIDDER VIA CERTIFIED MAIL BY COB 10/27/95.
21.	SWEET PEA	WAW	1,280 MBF	ELLINGSON LUM	NOTICE OF INTENT TO AWARD WILL BE SENT TO HIGH BIDDER VIA CERTIFIED MAIL BY COB 10/27/95.
22.	TANHORSE	WAW	1,340 MBF	BOISE CASCADE	NOTICE OF INTENT TO AWARD WILL BE SENT TO HIGH BIDDER VIA CERTIFIED MAIL BY COB 10/27/95.
23.	TANYA	WAW	585 MBF	BOISE CASCADE	NOTICE OF INTENT TO AWARD WILL BE SENT TO HIGH BIDDER VIA CERTIFIED MAIL BY COB 10/27/95.
24.	LOCUST	MAL	1,000 MBF	SMERSKI LOG.	NOTICE OF INTENT TO AWARD WILL BE SENT TO HIGH BIDDER VIA CERTIFIED MAIL BY COB 10/27/95.
25.	NICHOLSON SLVG I	OKA	890 MBF	VAAGAN BRO.	NOTICE OF INTENT TO AWARD WILL BE SENT TO HIGH BIDDER VIA CERTIFIED MAIL BY COB 10/27/95.

V. SALES CAN NOT BE AWARDED TO HIGH BIDDER

	<u>SALE</u>	<u>NF</u>	<u>VOLUME</u>	<u>HIGH BIDDER</u>	<u>ACTION</u>
26.	FORKS	MAL	5,000 MBF	SNOW MTN. PINE	SNOW MTN PINE NO LONGER IN BUSINESS AS OF 12/13/94 AND CANNOT MEET THE ORIGINAL TERMS. CONDITIONS, AND REQUIREMENTS OF A RESPONSIBLE BIDDER. 36 CFR 223.101

27.	OFF BROADWAY	OCH	12,300 MBF	KINZUA CORP.	KINZUA CORP NO LONGER IN BUSINESS AS OF 8/5/94 AND CANNOT MEET THE ORIGINAL TERMS. CONDITIONS, AND REQUIREMENTS OF A RESPONSIBLE BIDDER. 36 CFR 223.101.
28.	HIACK THIN	SIU	1,600 MBF	HAMPTON	HAMPTON NOTIFIED USFS ON 10/28/94 OF UNWILLINGNESS TO ACCEPT AWARD
29.	EAGLE RIDGE HOUSELOG	UMA	170 MBF	ROGGE WOOD	ROGGE WOOD NOTICE TO USFS ON 10/11/95 OF FINANCIAL INSOLVENCY AND CANNOT MEET THE ORIGINAL TERMS. CONDITIONS, AND REQUIREMENTS OF A RESPONSIBLE BIDDER. 36 CFR 223.101.
30.	ALLEN	WAW	3,800 MBF	ROGGE WOOD	ROGGE WOOD NOTICE TO USFS ON 10/11/95 OF FINANCIAL INSOLVENCY AND CANNOT MEET THE ORIGINAL TERMS. CONDITIONS, AND REQUIREMENTS OF A RESPONSIBLE BIDDER. 36 CFR 223.101.
31.	CANTREL SPRG	WAW	610 MBF	ROGGE WOOD	ROGGE WOOD NOTICE TO USFS ON 10/11/95 OF FINANCIAL INSOLVENCY AND CANNOT MEET THE ORIGINAL TERMS. CONDITIONS, AND REQUIREMENTS OF A RESPONSIBLE BIDDER. 36 CFR 223.101.
32.	HORN SLV	WAW	1,340 MBF	KINZUA CORP	KINZUA CORP NO LONGER IN BUSINESS AS OF 8/5/94 AND CANNOT MEET THE ORIGINAL TERMS. CONDITIONS, AND REQUIREMENTS OF A RESPONSIBLE BIDDER. 36 CFR 223.101.
33.	PRONG SLV	WAW	3,800 MBF	ROGGE WOOD	ROGGE WOOD NOTICE TO USFS ON 10/11/95 OF FINANCIAL INSOLVENCY AND CANNOT MEET THE ORIGINAL TERMS. CONDITIONS, AND REQUIREMENTS OF A RESPONSIBLE BIDDER. 36 CFR 223.101.