

NLWJC- Kagan

Counsel - Box 010 - Folder 001

Timber- Legislative Materials [1]

THE WHITE HOUSE
WASHINGTON

Office of Legislative Affairs
Senate Liaison
Fax Cover Sheet

Date 5/22

To: Elena Kagan

Fax number: 6 - 7901

From: Barbara Chao at (202) 456-6493

Comments: This is the Democratic "Final" offer
on the Forest Health bill. There is still the
possibility of a mark-up in the Energy
Comm.

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problem with the transmission, please contact the sender as soon
as possible.

Number of pages including cover: _____

**Forest Health Legislation
An Outline
5/21/96**

I. Purposes and Definitions

A. Purposes

1. Protect and restore vitality of resources and ecosystems on Federal lands, approaching the range of historic ecological variability where feasible
2. Protect human life and property
3. Encourage similar purposes on intermingled and adjacent lands

B. Definitions

1. Federal lands = public lands under FLPMA and National Forest System lands under RPA
2. Secretary = Interior Sec. for public lands and Ag. Sec. for national forests
3. Land management plan = resource management plan or other multiple-use management plan under FLPMA and land and resource management plan under RPA
4. Forest health improvement activities include: precommercial thinning, prescribed burning and other fuel reduction, integrated pest management, and watershed and riparian area improvement
5. Forest health management activities include: salvage sales, commercial thinning sales, reforestation, site preparation for stand regeneration, and other forest stocking control or timber growth enhancement activities

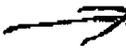
II. Land Management Planning

A. Direct the Secretaries to amend the planning regulations ASAP, so as to include considerations of the historic range of ecological variability and ecological sustainability in determining the suitability of lands for resource use and forest health management and in revising land management plans

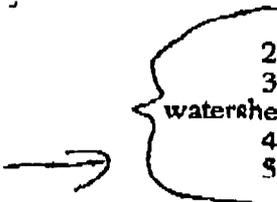
III. Forest Health Areas

A. Interim implementation, until land management planning regulations, and land management plans under those regulations, are revised

- B. Each Secretary to identify lands with forest health concerns where:
1. forest structure, function, or composition has been substantially altered, and
 2. such changes have significantly increased the risk of insect, disease, or wildfire damages, and
 3. forest health improvement activities can materially reduce that risk

 **C. Exclusions**

1. Congressionally designated wilderness and wilderness study areas, and lands contained in legislative proposals passed by either House of Congress since 1990

- 
- 2. inventoried roadless areas
 - 3. areas at risk from soil mass movement or with highly erosive soils and municipal watersheds
 - 4. old growth trees
 - 5. Native American religious or cultural sites and archaeological sites

D. Priorities for action on identified lands:

- 1. areas with the greatest threat to human life
- 2. areas with the greatest threat to private property or to resource sustainability on Federal lands

E. Notice of designations and priorities in the Federal Register

IV. Forest Health Improvement and Management Activities

A. Each Secretary shall, for each designated area, propose activities appropriate to achieve the purposes of the designation, using and rehabilitating temporary roads, wherever feasible. Activities not proposed under this act may proceed, if consistent with existing land management plans and applicable provisions of law

B. The Secretary shall issue a decision document and relevant NEPA documentation within 120 days of the notice of the proposal for forest health management activities, except in documented extraordinary circumstances

C. ESA consultation shall occur under a process, to be negotiated among the involved agencies, to complete the consultation by the publication of the decision document and NEPA documentation. The Secretaries are directed to review and evaluate the ESA consultation process to identify changes that could be made to further expedite that process and report to Congress on their findings within one year of enactment.

D. A monitoring program shall be established to determine the effectiveness of achieving the purposes of this act

E. Judicial review from the Murray bill, minus the initial clause that allows extensions beyond the 30-day filing deadline

V. Special Funds

A. The BLM fund established in PL 102-381 is made permanent, and receives the Federal share of salvage sale and commercial thinning revenues

B. The Forest Service fund is expanded to the full amount of salvage sale and commercial thinning revenues. The Secretaries shall report to Congress annually on the payments to counties made during the previous fiscal year and on any anticipated shortfalls in payments to counties expected in the future. [Report language discussing the potential impacts of this arrangement with respect to payments to counties.]

C. For deposits to these special funds:

1. Salvage sales are defined as timber sales for the primary purpose of removing trees that have been killed or damaged, in which at least 75% of the trees in each cutting unit are dead or are highly likely to be dead within 1 year

2. Commercial thinning sales are defined as improvement cuttings to achieve the desired mix of tree species and improve the quality of the remaining stand by generally leaving the dominant and codominant trees, except when their removal is necessary to achieve the desired species mix

3. The National Academy of Sciences shall be requested to convene a panel of six to eight forest ecologists and silviculturalists, representative of a broad range of viewpoints, to study these definitions and report to Congress within one year with recommendations for potential changes to these definitions and the reasons therefore, based on the objectives of providing sufficient flexibility to undertake an efficient salvage program, while minimizing the taking of living, healthy trees.

D. The Forest Service is directed to transfer \$60 million of salvage sale funds to a temporary special fund for compensating purchasers for the termination of Section 2001(k) timber sales

E. These special funds are to be used:

1. first, to recover only direct forest health management costs spent to maintain a salvage sale program
2. then, for other forest health improvement activities
3. collections in excess of direct forest health management costs are to be aggregated nationally, and allocated to areas with the greatest need, according to the priorities identified above

F. Forest health credits

1. Authorized for 4 years
2. Joint report by the Secretaries to identify and assess:
 - a. the amount of credits used
 - b. the impact on the Treasury
 - c. the forest health work accomplished, quantitatively
 - d. the estimated cost to have done the work through normal contracting

VI. Section 2001 of P.L. 104-19 is repealed

(Problem for Gordon/Hatfield)

A. Suspend existing subsection (k) contracts for 90 days.

1. Treatment of contract holders. The Secretary shall then:
 - a. Modify contracts within one year to conform to applicable provisions of environmental and natural resources laws,
 - b. Replace contracts within one year with alternative timber volume, consistent with applicable provisions of law and existing land management plans, or
 - c. Terminate contracts.
2. Claims under this provision may be paid with:

- a. deposits in the temporary special fund established above. In the event that all claims are paid and funds remain in the temporary special fund, the remaining funds shall be returned to the agencies for use on forest health improvement activities
- b. funds available under 31 U.S.C. 1304, without reimbursement under the Contract Disputes Act of 1978, section 13(c)
- c. certificates of bidding rights credits, which may be used to pay for current or future timber harvests
- d. funds appropriated for that purpose
- e. or, offset any portion of a buyout payment agreed to under the provisions of this paragraph with an amount necessary to retire fully a purchaser's obligation on a government guaranteed loan.

B. Sales under subsections (b) and (d)

1. Those sales for which the record of decision (ROD) is signed before enactment of this bill may proceed under P.L. 104-19
2. Those sales for which the record of decision has not been signed prior to enactment of this bill are subject to judicial review

VII. Severability

VIII. Effective date and authorization of appropriations

A. The provisions shall take effect upon enactment

B. No delay pending promulgation of regulations, except that activities must be proposed under current regulations until regulations to implement modifications enacted herein are proposed under standard rulemaking procedures. Such regulations shall be promulgated within one year

C. Provisions regarding area identification are terminated when all land management plans have been revised to implement the regulations developed pursuant to this Act

D. Such funds as may be necessary to carry out this Act are authorized

IX. Forest Health Studies, to provide factual information on the nature and extent of the problem

A. The Ag Secretary, through Forest Service Research, shall conduct a study of forest health on multiple-use federal lands

1. The nature of possible forest health problems shall be categorized to identify:
 - a. overstocked stands of unmerchantable trees
 - b. stands with excessive fuel loads
 - c. mixed conifer stands with an inappropriate mix of tree species
 - d. substantial sawtimber mortality
 - e. other forest health problems
 - f. combinations of these situations
2. The extent and severity of each type of forest health problem shall be identified, geographically as well as tabularly

3. A representative sampling may be used, provided that statistical evidence demonstrates the validity of the sample and that the results can be extrapolated in a statistically valid manner

4. The study shall be reviewed by the scientific community prior to its transmission to Congress within 1 year of enactment

B. The Ag Secretary, through a contract with the National Academy of Sciences, shall conduct a study of the ecological and forest health consequences, including the effects on risk of catastrophic wildfire and of other natural disasters, of forest health improvement and management activities

1. A sample, representative of the nature and severity of the problems in an appropriate variety of ecological regions, may be used, and should include historical as well as recent examples of the activities

2. A variety of activities should be compared within each representative sample, to compare the efficacy of the activities for improving forest health, including the reduction of risk

3. The study shall be transmitted to Congress within 2 years of enactment

C. The Comptroller General of the United States, through the General Accounting Office, shall conduct a study of the fiscal and other economic consequences, including any reduction in the risk of catastrophic events, of forest health improvement and management activities

1. The study should be coordinated with the Academy study to assure comparable and comprehensive assessment of the ecological and economic consequences of the activities

2. The study shall distinguish net effects on the U.S. Treasury, including all expenditures related to the implementation of the activities, from effects on the balances in the various special accounts and trust funds and from other national, regional, and local economic effects

3. The study shall be transmitted to Congress within 2 years of enactment

1. TED BOLLINGS DOJ | POLICY (P) 514-2715
(F) 616-8543
2. ROBERT DELAUNTY DOJ | OLC (P) 514-2054
514-0563
3. ROBERT BAUM INTERIOR (P) 208-4344
4. ELENA KAGAN WHC (P) 456-7901
(F) 456-1647

DRAFT

MEMORANDUM FOR THE SECRETARY OF THE INTERIOR

SUBJECT: Suspension of Subsection 119(a) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (HR 3019) -- Instruction to the Secretary of The Interior Regarding the Mojave National Preserve

By the authority vested in me by subsection 119(b) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (HR 3019) ("Act"), I hereby determine that the suspension of subsection 119(a) of the Act is appropriate based upon the public interest in sound environmental management, sustainable resource use, protection of national and locally-affected interests, and protection of cultural, biological or historic resources.

The suspension shall take effect upon the date of signature of this memorandum and shall continue until September 30, 1996.

You are authorized to report the suspension to the Congress and to publish this memorandum in the Federal Register.

THE WHITE HOUSE,

MOJAVE WAIVER

Amendment to Section 119

Insert "(a)" before the text of Section 119, and at the end of Section 119, after "September 30, 1996.", insert the following new subsection:

"(b) The President is authorized, ~~in his sole and~~
~~unreviewable discretion,~~ to suspend the provisions of
subsection (a) of this section if he determines that such
suspension is (appropriate based upon the public interest in
sound environmental management, sustainable resource use,
protection of national or locally-affected interests; or
protection of any cultural, biological or historic
resources. Any suspension by the President shall take
effect on such date, and continue in effect for such period
(not to extend beyond the period in which subsection (a)
would otherwise be in effect), as the President may
determine, and shall be reported to the Congress."

455A

Sec. 119. Until the National Park Service has prepared a final conceptual management plan for the Mojave National Preserve that incorporates traditional multiple uses of the region, the Secretary of the Interior shall not take any action to change the management of the area which differs from the historical management practices of the Bureau of Land Management. Prior to using any funds in excess of \$1,100,000 for operation of the Preserve in fiscal year 1996, the Secretary must obtain the approval of the House and Senate Committees on Appropriations. This provision expires on September 30, 1996.

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DRAFT

MEMORANDUM FOR THE SECRETARY OF THE INTERIOR
THE SECRETARY OF COMMERCE

SUBJECT: Suspension of the proviso limiting implementation of subsections (a), (b), (c), (e), (g), or (i) of the Endangered Species Act of 1973 (16 U.S.C. 1533) contained in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (HR 3019) ("Act")

By the authority vested in me by the proviso authorizing the suspension of the proviso limiting implementation of subsections (a), (b), (c), (e), (g), or (i) of the Endangered Species Act of 1973 (16 U.S.C. 1533) ("limitation proviso") in the Act, I hereby determine that the suspension of the limitation proviso is appropriate based upon the public interest in sound environmental management, sustainable resource use, protection of national or locally-affected interests, and protection of cultural, biological or historic resources.

The suspension shall take effect upon the date of signature of this memorandum and shall continue until legislation reauthorizing the Act is enacted or until the end of fiscal year 1996, whichever is earlier.

You are authorized to report the suspension to the Congress and to publish this memorandum in the Federal Register.

THE WHITE HOUSE,

ESK

NEW LANGUAGE IN BOLD

Provided further, That no monies appropriated under this or any other Act shall be used by the Secretary of the Interior or by the Secretary of Commerce to implement subsections (a), (b), (c), (e), (g), or (i) of section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533), until such time as legislation reauthorizing the Act is enacted ^{or} until the end of fiscal year 1996, whichever is earlier, except that monies may be used to delist or reclassify species pursuant to sections 4(a)(2)(B), 4(c)(2)(B)(i), and 4(c)(2)(B)(ii) of the Endangered Species Act, and to issue emergency listings under section 4(b)(7) of the Endangered Species Act: *Provided further*, That the President is authorized to suspend the provisions of the preceding proviso if he determines that such suspension is appropriate based upon the public interest in sound environmental management, sustainable resource use, protection of national or locally-affected interests, or protection of any cultural, biological or historic resources. Any suspension by the President shall take effect on such date, and continue in effect for such period (not to extend beyond the period in which the preceding proviso would otherwise be in effect), as the President may determine, and shall be reported to the Congress.

DRAFT

4:45
4-25-96

MEMORANDUM FOR THE SECRETARY OF THE INTERIOR

SUBJECT: Suspension of Subsection 119(a) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (HR 3019) -- Instruction to the Secretary of The Interior Regarding the Mojave National Preserve

By the authority vested in me by subsection 119(b) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (HR 3019) ("Act"), I hereby suspend subsection 119(a) of the Act because I have determined that such suspension is appropriate based upon the public interest in sound environmental management, sustainable resource use, protection of national or locally-affected interests, and protection of cultural, biological or historic resources. In addition, I believe that this suspension is appropriate based on my conclusion that the requirement in subsection 119(a) that prior to using any funds in excess of \$1,100,000 for the operation of the preserve in FY 1996, the Secretary must obtain the approval of two congressional committees, would operate as an unconstitutional legislative veto, see Ins v. Chadha, 462 U.S. 919 (1983).

The suspension shall take effect upon the date of signature of this memorandum and shall continue until September 30, 1996.

You are authorized to report the suspension to the Congress and to publish this memorandum in the Federal Register.

THE WHITE HOUSE,

DRAFT

4,45

4-25-96

MEMORANDUM FOR THE SECRETARY OF THE INTERIOR
THE SECRETARY OF COMMERCE

SUBJECT: Suspension of the proviso limiting implementation of subsections (a), (b), (c), (e), (g), or (i) of the Endangered Species Act of 1973 (16 U.S.C. 1533) contained in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (HR 3019) ("Act")

By the authority vested in me by the proviso authorizing the suspension of the proviso limiting implementation of subsections (a), (b), (c), (e), (g), or (i) of the Endangered Species Act of 1973 (16 U.S.C. 1533) ("limitation proviso") in the Act, I hereby suspend that limitation proviso because I have determined that such suspension is appropriate based upon the public interest in sound environmental management, sustainable resource use, protection of national or locally-affected interests, and protection of cultural, biological or historic resources.

The suspension shall take effect upon the date of signature of this memorandum and shall continue until legislation reauthorizing the Act is enacted or until the limitation proviso expires, whichever is earlier.

You are authorized to report the suspension to the Congress and to publish this memorandum in the Federal Register.

THE WHITE HOUSE,

DRAFT

445

4-25-96

MEMORANDUM FOR THE SECRETARY OF AGRICULTURE

SUBJECT: Suspension of Subsection 325 (a) and (b) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (HR 3019) -- Instructions to the Secretary of Agriculture concerning the Tongass National Forest

By the authority vested in me by subsection 325(c) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (HR 3019) ("Act"), I hereby suspend subsections 325 (a) and (b) of the Act because I have determined that such suspension is appropriate based upon the public interest in sound environmental management and protection of cultural, biological, or historic resources.

The suspension shall take effect upon the date of this memorandum and shall continue in effect for such period, not to extend beyond the period in which section 325 of the Act would otherwise be in effect.

You are authorized to report the suspension to the Congress prior to public release by the President and then to publish this memorandum to the Federal Register.

THE WHITE HOUSE,

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: 4/22/96
 To: Elena Kayan
 Fax: 456-1647
 Re: Hatfield lang.
 Sender: DINAH BEAR

YOU SHOULD RECEIVE 4 PAGE(S), INCLUDING THIS COVER SHEET.

See lang. in bolded
 sentence §(4) re compliance
 w/env. laws.

Delete "Except for sale units"

If no agreement is reached within 90 days, the purchaser may operate the original sale under the terms of # 1.

If an agreement is reached, but the agreed-upon alternative timber becomes unavailable to the purchaser after Sept 30, 1994, the buyer concerned, shall provide timber, of like volume, value, or kind as the agreed-upon alternative timber or shall provide timber of volume, value, or kind satisfactory to the purchaser

complying

within 90 days of making a determination that ~~the agreed-upon alternative timber~~ of unavailability

March 29, 1996
From Interior Appros.

[bold is new language]

Sec. 325. Section 2001(k) of Public law 104-19 is amended by ~~striking "in fiscal years 1995 and 1996" in paragraph (1), and by striking amending paragraph (3) and inserting in lieu thereof~~ adding paragraphs (4) and (5) as follows:

(original paragraph (3) with proposed amendment): 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, or shall provide a volume, value and kind of timber satisfactory to the purchaser, which shall be subject to the terms of the original contract and shall not count against current allowable sale quantities.

"(4) TIMING AND CONDITIONS OF ALTERNATIVE VOLUME. - For any sale subject to paragraph (1) of this subsection, ~~the Secretary concerned shall, and for any other sale subject to this subsection,~~ the Secretary concerned may, within 7 days of enactment of this paragraph notify the affected purchaser of his desire to provide alternative volume, and within 90 days of the date of enactment of this paragraph, reach agreement with the purchaser to identify and provide, by a date agreed to by the purchaser, a volume, value and kind of timber satisfactory to the purchaser to substitute for all or a portion of the timber subject to the sale, which shall be subject to the original terms of the contract except as otherwise agreed, and shall be subject to paragraph (1). Upon notification by the Secretary, the affected purchaser shall suspend harvesting and related operations for 90 days, ~~except for sale units whose harvesting and related activities have commenced before March 28, 1996.~~
 → ~~Except for sale units subject to paragraph (2),~~ the purchaser may operate the original sale under the terms of paragraph (1) if no agreement is reached within 90 days, ~~or after the agreed date for providing alternative timber until the Secretary concerned designates and releases to the purchaser the alternative timber volume in the agreement.~~ If the agreed upon-alternative timber is not available to the purchaser ~~(after September 30, 1996,~~ the Secretary concerned shall, in accordance with all laws, including environmental and natural resources laws, provide timber of like volume, value and kind as the previously negotiated alternative timber or otherwise satisfactory to the purchaser within 90 days of a determination by the Secretary that the originally agreed-upon alternative timber is no longer available. The purchaser may not harvest a volume of timber from the alternative sale and from the portion of the original sale to be replaced which has greater contract value than the contract value of the alternative sale agreement. Any sale subject to this subsection shall be awarded, ~~released and completed pursuant to paragraph (1) for a period equal to the length of the original contract, and shall not count~~

← ?

provide timber

against current allowable sale quantities, ~~or timber sales to be offered under subsection (b) and (d). A purchaser may enforce the rights established in this paragraph to obtain substitute timber within the required or agreed upon time frame in federal district court.~~

"(5) BUY-OUT AUTHORIZATION - the Secretary concerned is authorized to permit a requesting purchaser of any sale subject to this subsection to return to the Government all or a specific volume of timber under the sale contract, and shall pay to such purchaser upon tender of such volume a buy-out payment for such volume from any funds available to the Secretary concerned except from any permanent appropriation or trust fund, ~~subject to the approval of the House and Senate Committees on Appropriations.~~ Such volume and such payment shall be mutually agreed by the Secretary and the purchaser. Any agreement between the purchaser and the Secretary shall be reached within 90 days from the date on which the negotiation was initiated by the purchaser. The total sum paid for all such buy-out payments shall not exceed ~~\$20,000,000 by each Secretary and \$40,000,000 in total.~~ ^{\$50,000,000} [No less than half of the funds used by the Secretary concerned must come from funds otherwise available to fund Oregon and Washington programs of the Forest Service and the Bureau of Land Management.] The Secretary is authorized to offset any portion of a buy-out payment agreed to under the provisions of this paragraph with an amount necessary to retire fully a purchaser's obligation on a government guaranteed loan."

WHAT THIS AMENDMENT, AS MODIFIED, WOULD DO FOR US:

- o Give us affirmative authority to suspend k(1) sales for 90 days
- o Give us authority to offer something other than "like kind and value" as alternative timber for murrelet sales (with mutual agreement)
- o Give us affirmative authority for bi-lateral buy-out
- o Authorize \$50 million for buy-out

WHAT WE DON'T GET, EVEN WITH OUR AMENDMENTS:

- o Repeal of the rider
- o Unilateral authority for replacement volume and buy-out
- o New money for buy-out or new money to prepare alternative timber sales

PRIORITY CHANGES:

1. Remove all sufficiency language (in exchange for "rolling commitment for alternative replacement timber)
2. Date of rider not extended - i.e., first paragraph that would delete operational dates of Section 2001(k)
3. New money for buy-out (need to identify off-set)
4. Maintain current provision for k(3) sales but add discretion to vary from "like kind and value" if purchaser agrees;
5. Drop March 28th date as beginning of applicability of new authority for k(1) sales
6. Drop additional right for purchaser to sue us for substitute timber.

TECHNICAL CHANGES:

1. Conforming ASQ language to k(3) language
2. Chada problem in buy-out provision (approval of House and Senate)
3. Geographical restriction on source of \$ for buy-out, depending on source of off-set money.

TO: Ted and Elena
FROM: Dinah
RE: Sunday evening draft #2 of offer re Hatfield/Gorton
timber language

Both of you had very good suggestions which I tried to do justice
(all puns intended to . . .)

Ted, in case we haven't talked, Elena came up with the very good
idea of adding some discretionary language to current k(3). I'm
concerned that if we don't have enough old growth that meets S &
G standards and then get slammed for refusing discretion - this
might do the trick!

Ted, Elena and I decided to go back to the Sept. 30th date in the
alternative remedy to try to avoid both remedies being available
at once. This still doesn't really do that, since technically,
the purchaser could go back to the original sale post Sept. 30th.
However, since k(1) expires on Sept. 30th, I tend to think it has
that effect.

Please give me any thoughts, comments you have asap Monday am. I
will fax this version to Katie with the attached draft priorities
list and what we do and don't get it out of it - obviously, my
choice of priorities can and will be amended, but gotta start
somewhere. Furthermore, we need to end quickly - Barbara wants
this Monday am and Martha warns that the Rs plan to file at
midnight Monday so the pressure will be on. With Earth day
festivities, KM and others will be hard to reach
try to get to me by 9:30 if possible; thanks.

WHAT THIS AMENDMENT, AS MODIFIED, WOULD DO FOR US:

- o Give us affirmative authority to suspend k(1) sales for 90 days + subst alt timber available to purchaser
Can we do this?
- o Give us authority to offer something other than "like kind and value" as alternative timber for murrelet sales (with mutual agreement).
- o Give us affirmative authority for bi-lateral buy-out
- o If we find an off-set, authorize \$50 million for buy-out

WHAT WE DON'T GET, EVEN WITH OUR AMENDMENTS:

- o Repeal of the rider
- o Unilateral authority for replacement volume and buy-out

PRIORITY CHANGES:

1. Remove all sufficiency language (in exchange for "rolling commitment for alternative replacement timber)
2. Date of rider not extended - i.e., first paragraph that would delete operational dates of Section 2001(k)
3. New money for buy-out (need to identify off-set)
4. Maintain current provision for k(3) sales but add discretion to vary from "like kind and value" if purchaser agrees;
5. Drop March 28th date as beginning of applicability of new authority for k(1) sales
6. Drop additional right for purchaser to sue us for substitute timber.

TECHNICAL CHANGES:

1. Conforming ASQ language to k(3) language
2. Chada problem in buy-out provision (approval of House and Senate)
3. Geographical restriction on source of \$ for buy-out, depending on source of off-set money.

Bean # 2
3/21 8 p.m.
"offer"

March 29, 1996
From Interior Appros.

[bold is new language]

Sec. 325. Section 2001(k) of Public law 104-19 is amended by ~~striking "in fiscal years 1995 and 1996" in paragraph (1), and by striking amending paragraph (3) and inserting in lieu thereof~~ ^{and} ^{timber} adding paragraphs (4) and (5) as follows:

(original paragraph (3) with proposed amendment): 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, ^{volume,} ~~or of a kind,~~ and value satisfactory to the purchaser, which shall be subject to the terms of the original contract and shall not count against current allowable sale quantities. ^{shall provide}

"(4) TIMING AND CONDITIONS OF ALTERNATIVE VOLUME. - For any sale subject to paragraph ^{of timber} (1) of this subsection, ~~the Secretary concerned shall, and for any other sale subject to this subsection,~~ the Secretary concerned may, within 7 days of enactment of this paragraph notify the affected purchaser of his desire to provide alternative volume, and within 90 days of the date of enactment of this paragraph, reach agreement with the purchaser to identify and provide, by a date agreed to by the purchaser, a volume, value and kind of timber satisfactory to the purchaser to substitute for all or a portion of the timber subject to the sale, which shall be subject to the original terms of the contract except as otherwise agreed, ^{and shall be subject to paragraph (1).} Upon notification by the Secretary, the affected purchaser shall suspend harvesting and related operations for 90 days, ~~except for sale units where harvesting and related activities have commenced before March 28, 1996. Except for sale units subject to paragraph (3)~~ [?] The purchaser may operate the original sale under the terms of paragraph (1) if no agreement is reached within 90 days, or after the agreed date for providing alternative timber until the Secretary concerned designates and releases to the purchaser the alternative timber volume in the agreement. Should the agreed upon-alternative timber not be available to the purchaser after September 30, 1996, the Secretary concerned shall provide timber of like volume, value and kind as the previously negotiated alternative timber or otherwise satisfactory to the purchaser within 90 days of a determination by the Secretary that the originally agreed-upon alternative timber is no longer available. The purchaser may not harvest a volume of timber from the alternative sale and from the portion of the original sale to be replaced which has greater contract value than the contract value of the alternative sale agreement. Any sale subject to this subsection shall be awarded, ~~released and completed pursuant to paragraph (1) for a period equal to the length of the original contract, and shall not count against current allowable sale quantities, or timber sales to be~~

~~offered under subsection (b) and (d). A purchaser may enforce the rights established in this paragraph to obtain substitute timber within the required or agreed upon time frame in federal district court.~~

"(5) BUY-OUT AUTHORIZATION - the Secretary concerned is authorized to permit a requesting purchaser of any sale subject to this subsection to return to the Government all or a specific volume of timber under the sale contract, and shall pay to such purchaser upon tender of such volume a buy-out payment for such volume from any funds available to the Secretary concerned except from any permanent appropriation or trust fund, ~~subject to the approval of the House and Senate Committees on Appropriations.~~ Such volume and such payment shall be mutually agreed by the Secretary and the purchaser. Any agreement between the purchaser and the Secretary shall be reached within 90 days from the date on which the negotiation was initiated by the purchaser. The total sum paid for all such buy-out payments shall not exceed ~~\$20,000,000 by each Secretary and \$40,000,000 in total.~~ ^{450,000,000} [No less than half of the funds used by the Secretary concerned must come from funds otherwise available to fund Oregon and Washington programs of the Forest Service and the Bureau of Land Management.] The Secretary is authorized to offset any portion of a buy-out payment agreed to under the provisions of this paragraph with an amount necessary to retire fully a purchaser's obligation on a government guaranteed loan."

2/27/96

Sec. ___ Amend subsection 2001(k) of Public Law 104-19 by striking "in fiscal years 1995 and 1996" in paragraph (1) and amending paragraph (3) to read:

"(3) TIMING AND CONDITIONS OF ALTERNATIVE VOLUME-- For any sale subject to paragraph (2) of this subsection, the Secretary concerned shall, and for any other sale subject to this subsection, the Secretary concerned may, within 45 days of the date of enactment of this paragraph, reach agreement with the purchaser to identify and provide, by a date agreed to by the purchaser, a volume, value and kind of alternative timber satisfactory to the purchaser to substitute for all or a portion of the timber subject to the sale, which shall be subject to the original terms of the contract, except as otherwise agreed, and shall be subject to paragraph (1). ~~After the agreed date for providing alternative timber, the purchaser may operate the original sale under the terms of paragraph (1) until the Secretary concerned designates and the purchaser accepts alternative timber under this paragraph.~~ Any sale subject to this subsection shall be awarded, released and completed pursuant to paragraph (1) for a period equal to the length of the original contract, and shall not count against the current allowable sales quantity, or timber sales to be offered under subsections (b) and (d)."

on date
agreed to?
45 days

SECTION 2001(k) BUYOUT PROVISION

1. Add after the proposed new "alternative volume" paragraph in section 2001(k) of Public Law 104-19 the following:

"(5) BUY-OUT AUTHORIZATION - The Secretary concerned is authorized to permit a requesting purchaser of any sale subject to this subsection to return to the government all or a specific volume of timber under the sale contract, and shall pay to such purchaser upon tender of such volume a buy-out payment for such volume from funds available under section ___ (b)(1)(B) [section 327, the "Timber Sales Pipeline Restoration Funds" provision, of FY 1996 Interior Appropriations bill conference report]. Such volume and such payment shall be mutually agreed to by the Secretary and the purchaser. The authority provided by this paragraph shall expire two years after the enactment of this paragraph."

2. In the Timber Sales Pipeline Restoration Funds provision of the Fiscal Year 1996 Interior Appropriations Act [section 327 of the conference report] amend subsection (b)(1)(B) by striking "respectively." and inserting a lieu thereof "respectively, or the buy-out of timber sales under section 2001(k)(5) of Public Law 104-19."

an = volume of timber of like kind & value

By Monday, Barbara wants proposed language and our list of priority "above the line" items. For our own purposes, I also think we need to be clear about what we think we're getting out of this that we don't already have. Here's my rough cut at both:

PRIORITIES:

1. Sufficiency language out
2. Date of rider not extended; i.e., §2001(k) ends 9/30/96.
3. New \$ for buy-out
4. [dropping k(2) sales]

WHAT WE GET OUT OF THIS (assuming we got our priority changes):

1. Affirmative authority to suspend k(1) sales for 90 days.
2. Eliminate litigation over whether sufficiency language extends past 9/30/96 for (k)(1) sales.
3. Affirmative authority for bi-lateral buy-out.
4. Money for buy-out.

*And to engage
in substitution?
or can
do new
anyway?*

WHAT WE DON'T GET:

1. Repeal of 2001(k)
2. Unilateral authority for replacement for k(1) and buy-out.

We acknowledge the efforts the Committee has made to make changes that make the timber language more acceptable to the Administration.

Providing for a 90-day suspension of harvesting on certain sale units will allow negotiations for replacement timber to commence without the immediate threat of environmental damage from harvesting of these sales. However, this does not suspend the harvesting of all environmentally damaging sales and thereby fails to address some of the most serious environmental consequences of the timber rider. We support increasing the time in which the agreement must be reached to 90 days and we support any change that extends the time in which the Secretaries have authority for buy-outs. We would, however, continue to support a longer extension of this authority.

These changes, while positive, do not adequately address the Administration's serious concerns with this section. Our concerns also include:

- While timber contracts issued under authority of the rider will run their full term, by deleting the references to FY 1995 and 1996 in Section 2001(k), the rider's extraordinary terms would be extended indefinitely.
- The provision of replacement timber identified under this section would be exempt from environmental laws. The Administration continues to believe that replacement timber must be prepared within the framework of environmental law.
- The language continues to require the purchaser's agreement for all replacement timber.
- We continue to be concerned that the language regarding the purchaser's enforcement of rights under the replacement timber paragraph will lead to lawsuits to enforce the requirement that the Secretaries "reach agreement" with purchasers under purchaser's terms.
- The language continues to require the purchaser's agreement on the level of compensation to be provided under a buy-out.
- The language continues to provide no new source of funding for buy-outs or for the cost of finding and preparing replacement timber.

Bear

3/20 - 1:40 draft

Explanation of changes:

1. While not specifically identified in yesterday afternoon's discussion, the termination of §2001(k) provision on September 30th has been articulated previously as a high priority item. Thus, I struck the deletion of the years fy 95 and 96 in the first paragraph.
2. Scope of new language: The current language covers both k(1) and k(2) sales. Elena suggested yesterday that the current language for k(2) actually gives us more than the proposed substitute for those sales, in that we are going to argue that there is no deadline for offering the timber under k(3), as opposed to the 90 day deadline under the new language. Worst case scenario under the new language is that a judge orders us to give mutually agreed upon timber for all the murrelet sales within 90 days. That, of course, must be balanced with risk that a court would find current language required us to do so in 45 days, along with the fact that the current language has objective statutory criteria that the Forest Service may not be able to meet (and that in some part implicates old growth - although not all of the murrelet sales are old growth) versus the new standard which could hold us completely hostage to the purchasers (what if they demanded all old growth?!). As you can see, I'm still a bit undecided about what is the worst here - any further thoughts, Elena, or reactions, Ted? This mark-up assumes throughout that the language covers only k(1) sales.
3. The deletion and substitution in the last paragraph of what would now be Sect. 315(4) is based on Katie's proposal of trading sufficiency language for a commitment by the government of a "rolling offer" - i.e., if a purchaser was enjoined from harvest after 10/1/96, we'd come up with another offer - and another offer. This language needs further work. I think Katie's proposal is indeed "if for any reason", although for obvious reasons, I choked a bit over putting that in (and what about fraud, bad faith, etc., on the part of the purchaser). The real issue people have in mind, of course, is litigation under the environmental laws. Also, I don't quite have the rolling concept in here - i.e., what if the 2nd batch is enjoined.
4. Buy-out authority. Elena, have you given any further thought to the Chada problem? We brought it up with Doug a couple of weeks ago, and unfortunately, I can't remember what his response was and I seem to have given my copy of the language with notes from the meeting away at yesterday's meeting.
5. Also, I changed the authorization to \$50 based on OMB estimates and bracketed the Oreg. and Wash. requirement. Barbara Chow's view is that if we're serious about this, we should and probably could find off-sets somewhere - and presumably, it might not be from those funds. Probably should be struck anyway.

Should the agreed upon altern. timber
not be available to the purchaser
the key concerned shall provide timber
of like vol. value + kind as the
~~the~~ previously negotiated altern timber
w/in 90 days of a determ by the
Secy that the originally agreed
upon altern timber is no longer
available.

BEAR #1
3/20/1:40

Why not

after September 30, 1996, the Secretary concerned shall provide timber of like volume, value and kind as the previously negotiated timber within 90 days of a determination by the Secretary that the originally scanned alternative timber is no longer available.

March 29, 1996
From Interior Appros.

keep? Why not change so there's an opt. - ?

as follows:

Sec. 325. Section 2001(k) of Public law 104-19 is amended by striking "in fiscal years 1995 and 1996" in paragraph (1), and by striking paragraph (3) and inserting in lieu thereof:

"(1) TIMING AND CONDITIONS OF ALTERNATIVE VOLUME. - For any sale subject to paragraph (1) of this subsection, the Secretary concerned shall, and for any other sale subject to this subsection, the Secretary concerned may, within 7 days of enactment of this paragraph notify the affected purchaser of his desire to provide alternative volume, and within 90 days of the date of enactment of this paragraph, reach agreement with the purchaser to identify and provide, by a date agreed to by the purchaser, a volume, value and kind of timber satisfactory to the purchaser to substitute for all or a portion of the timber subject to the sale, which shall be subject to the original terms of the contract except as otherwise agreed, [and shall be subject to paragraph (1).] Upon notification by the Secretary, the affected purchaser shall suspend harvesting and related operations for 90 days, [except for sale units where harvesting and related activities have commenced before March 28, 1996.] Except for sale units subject to paragraph (2) [The purchaser may operate the original sale under the terms of paragraph (1) if no agreement is reached within 90 days, or after the agreed date for providing alternative timber until the Secretary concerned designates and releases to the purchaser the alternative timber volume in the agreement.] The purchaser may not harvest a volume of timber from the alternative sale and from the portion of the original sale to be replaced which has greater contract value than the contract value of the alternative sale agreement. Any sale subject to this subsection shall be awarded, released and completed pursuant to paragraph (1) for a period equal to the length of the original contract, and shall not count against current allowable sale quantities [or timber sales to be offered under subsection (b) and (d)]. A purchaser may enforce the rights established in this paragraph to obtain substitute timber within the required or agreed upon time frame in federal district court.

"(2) BUY-OUT AUTHORIZATION - the Secretary concerned is authorized to permit a requesting purchaser of any sale subject to this subsection to return to the Government all or a specific volume of timber under the sale contract, and shall pay to such purchaser upon tender of such volume a buy-out payment for such volume from any funds available to the Secretary concerned except from any permanent appropriation or trust fund, [subject to the approval of the House and Senate Committees on Appropriations.] Such volume and such payment shall be mutually agreed by the Secretary and the purchaser. Any agreement between the purchaser and the Secretary shall be reached within 90 days from the date on which the negotiation was initiated by the purchaser. The total sum paid for all such buy-out payments shall not exceed

~~\$20,000,000~~ by each Secretary and \$⁵10,000,000 in total. [No less than half of the funds used by the Secretary concerned must come from funds otherwise available to fund Oregon and Washington programs of the Forest Service and the Bureau of Land Management.] The Secretary is authorized to offset any portion of a buy-out payment agreed to under the provisions of this paragraph with an amount necessary to retire fully a purchaser's obligation on a government guaranteed loan."

Timber
Bill
Language

Sec. 325. Section 2001(k) of Public Law 104-19 is amended by striking "in fiscal years 1995 and 1996" in paragraph (1), and by striking paragraph (3) and inserting in lieu thereof:

"(3) **TIMING AND CONDITIONS OF ALTERNATIVE VOLUME.** -- For any sale subject to paragraph (2) of this subsection, the Secretary concerned shall, and for any other sale subject to this subsection, the Secretary concerned may, within 7 days of enactment of this paragraph notify the affected purchaser of his desire to provide alternative volume, and within 90 days of the date of enactment of this paragraph, reach agreement with the purchaser to identify and provide, by a date agreed to by the purchaser, a volume, value and kind of timber satisfactory to the purchaser to substitute for all or a portion of the timber subject to the sale, which shall be subject to the original terms of the contract except as otherwise agreed, and shall be subject to paragraph (1). Upon notification by the Secretary, the affected purchaser shall suspend harvesting and related operations for 90 days, except for sale units where harvesting activities have commenced before March 28, 1996. Except for sale units subject to paragraph (2), the purchaser may operate the original sale under the terms of paragraph (1) if no agreement is reached within 90 days, or after the agreed date for providing alternative timber until the Secretary concerned designates and releases to the purchaser the alternative timber volume in the agreement. The purchaser may not harvest a volume of timber from the alternative sale and from the portion of the original sale to be replaced which has greater contract value than the contract value of the alternative sale agreement. Any sale subject to this subsection shall be awarded, released and completed pursuant to paragraph (1) for a period equal to the length of the original contract, and shall not count against current allowable sale quantities or timber sales to be offered under subsections (b) and (d). A purchaser may enforce the rights established in this paragraph to obtain substitute timber within the required or agreed upon time frame in federal district court.

"(4) **BUY-OUT AUTHORIZATION.** -- The Secretary concerned is authorized to permit a requesting purchaser of any sale subject to this subsection to return to the Government all or a specific volume of timber under the sale contract, and shall pay to such purchaser upon tender of such volume a buy-out payment for such volume from any funds available to the Secretary concerned except from any permanent appropriation or trust fund, subject to the approval of the House and Senate Committees on Appropriations. Such volume and such payment shall be mutually agreed by the Secretary and the purchaser. Any agreement between the purchaser and the Secretary shall be reached within 90 days from the date on which the negotiation was initiated by the purchaser. The total sum paid for all such buy-out payments shall not exceed \$20,000,000 million by each Secretary and \$40 million in total. No less than half of the funds used by the Secretary concerned must come from funds otherwise available to fund Oregon and Washington programs of the Forest Service and the Bureau of Land Management. The Secretary is authorized to offset any portion of a buy-out payment agreed to under the provisions of this paragraph with an amount necessary to fully retire a purchaser's obligation on a government guaranteed loan."

①

~~The basic purposes of section 314 are to: 1) release all existing scientific information; 2) assure that the assessment and accompanying EISs are not used to produce one-size-fits-all solutions to land and water resource issues in the Columbia basin; 3) protect this effort from broad scale legal challenges that could enjoin land management activities regionwide, producing gridlock; and 4) direct the Forest Service and the Bureau of Land Management to follow proper National Forest Management Act procedures in revising individual land and resource management plans. The managers are especially concerned that local considerations be properly evaluated in any land management plan changes emanating from the project.~~

~~The language included in section 314 does not impede completion of the project nor does it exclude any information from the project documents. It protects the land management agencies from the sort of litigation-induced gridlock that has plagued resource managers in the Columbia basin region for the past several years.~~

Timber →
Report
Language

Section 325. Deletes language regarding the redefinition of the marbled murrelet nesting area and inserts a new provision that amends subsection 2001(k) of Public Law 104-19 to provide alternative timber options or buy-out payments to timber purchasers for both Forest Service and Bureau of Land Management sales offered or sold originally in units of the National Forest System or districts of the Bureau of Land Management subject to section 318 of Public Law 101-121. The new language neither expands nor reduces the sales to be released under subsection 2001(k). The managers do not intend to interdict or affect prior or pending judicial decisions with this language.

The provision increases the Administration's flexibility by allowing the Secretary concerned to notify a purchaser within 7 days, and agree with a purchaser within 90 days of the date of enactment, to provide alternative volume for part or all of any sale subject to subsection 2001(k) in a volume, value, and kind satisfactory to the purchaser, by a date agreed by the purchaser. The precise designation of alternative timber need not occur within the initial 90-day period. Upon notification by the Secretary, the purchaser shall suspend harvesting and related operations for 90 days, except for sale units where harvesting and related activities have commenced before March 28, 1996. For any sale that cannot be released due to threatened or endangered bird nesting within the sale unit, the amendment requires the agreement for alternative volume, in quantity, value, and kind satisfactory to the purchaser, and by a date agreed by the purchaser, to be reached within 90 days of the date of enactment of this section.

The Administration has delayed implementing subsection 2001(k) well beyond the original 45-day time limit set by Congress, and still has not released all the sales required under the statute. Therefore, except for sale units affected by paragraph (2) of subsection 2001(k), the purchaser may operate the original sale under subsection 2001(k) if: 1) the Secretary has not designated and released timber by the date agreed or 2) if no agreement has been reached 90 days after notification. Also, a purchaser may enforce the rights established in this paragraph to obtain substitute timber within the required or agreed time

frame in Federal district court. The managers continue to endorse the statement of the managers language accompanying the conference report on the 1995 Rescissions Act (House Report 104-124; Public Law 104-19) relating to section 2001(k).

A purchaser may not be compelled to accept alternative volume over the purchaser's objection, as he cannot be under present law. The purchaser may not operate on both the portion of the original sale to be replaced, and the alternative timber such that the combined contract value harvested exceeds the contract value of the alternative timber in the agreement. Sales with alternative volume under the amendment are subject to the original terms of the contract unless the parties agree otherwise and are subject to paragraph (1) of subsection (k). Any alternative volume under paragraph (3) shall not count against current allowable sales quantities or timber sales to be offered under subsections (b) and (d) of section 2001 of Public Law 104-19. Alternative volume may, at the Secretary's discretion, come from areas not otherwise contemplated for harvesting.

To avoid forcing purchasers to operate sales hastily before environmental considerations can be taken into account, the limitation in paragraph (1) to fiscal years 1995 and 1996 is deleted, and all sales awarded or released under subsection 2001(k) are now subject to the legal protections in paragraph (1) for a period equal to the length of the original contract (including any term adjustment or extensions permitted under the original contract or agreed by the Secretary and the purchaser). The period of legal protection for each sale begins when the sale is awarded or released under subsection 2001(k), or when alternative volume is provided under this statute.

The provision also gives the Secretary of the Interior and the Secretary of Agriculture, upon request of a sale owner, the authority to purchase all or a specific volume of timber under the sale contract covered under this subsection. Payment may be made directly to the purchaser, or to agents or creditors to retire fully the purchaser's obligation on a government guaranteed loan. The volume and payment must be mutually agreed by the Secretary and the purchaser. The payments would come from any funds available to the Secretary concerned, except for any permanent appropriation or trust funds, such as the timber salvage sale funds and the Knudsen-Vandenburg fund. In order to relieve partially the burden on programs in the rest of the nation, no less than half of the funds used for the payments must come from accounts which otherwise would be available to the Secretaries for Oregon and Washington programs of the Forest Service and the Bureau of Land Management. The Secretaries shall follow established reprogramming procedures when seeking the approval of the House and Senate appropriations committees to designate funds for the buy-out payments. Each Secretary may use up to \$20 million for such payments. Any agreement between a purchaser and the Secretary concerned shall be reached within 90 days of the date on which a negotiation was initiated by the purchaser.

~~Travel. The managers have not agreed to place a statutory limit on the use of travel funds as proposed by the House. The managers expect each agency under the~~

Text of Section 2001 of Public Law 104-19

EMERGENCY SALVAGE TIMBER SALE PROGRAM

SEC. 2001.

(a) DEFINITIONS.--For purposes of this section:

(1) The term "appropriate committees of Congress" means the Committee on Resources, the Committee on Agriculture, and the Committee on Appropriations of the House of Representatives and the Committee on Energy and Natural Resources, the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Appropriations of the Senate.

(2) The term "emergency period" means the period beginning on the date of the enactment of this section and ending on September 30, 1997.

(3) The term "salvage timber sale" means a timber sale for which an important reason for entry includes the removal of disease- or insect-infested trees, dead, damaged, or down trees, or trees affected by fire or imminently susceptible to fire or insect attack. Such term also includes the removal of associated trees or trees lacking the characteristics of a healthy and viable ecosystem for the purpose of ecosystem improvement or rehabilitation, except that any such sale must include an identifiable salvage component of trees described in the first sentence.

(4) The term "Secretary concerned" means--

(A) the Secretary of Agriculture, with respect to lands within the National Forest System; and

(B) the Secretary of the Interior, with respect to Federal lands under the jurisdiction of the Bureau of Land Management.

(b) COMPLETION OF SALVAGE TIMBER SALES.--

(1) SALVAGE TIMBER SALES.--Using the expedited procedures provided in subsection (c), the Secretary concerned shall prepare, advertise, offer, and award contracts during the emergency period for salvage timber sales from Federal lands described in subsection (a) (4). During the emergency period, the Secretary concerned is to achieve, to the maximum extent feasible, a salvage timber sale volume level above the programmed level to reduce the backlogged volume of salvage timber. The preparation, advertisement, offering, and awarding of such contracts shall be performed utilizing subsection (c) and notwithstanding any other provision of law, including a law under the authority of which any judicial order may be outstanding on or after the date of the enactment of this Act.

(2) USE OF SALVAGE SALE FUNDS.--To conduct salvage timber sales under this subsection, the Secretary concerned may use salvage sale funds otherwise available to the Secretary concerned.

(3) SALES IN PREPARATION.--Any salvage timber sale in preparation on the date of the enactment of this Act shall be subject to the provisions of this section.

(c) EXPEDITED PROCEDURES FOR EMERGENCY SALVAGE TIMBER SALES.--

(1) SALE DOCUMENTATION.--

(A) PREPARATION.--For each salvage timber sale conducted under subsection (b), the Secretary concerned shall prepare a document that combines an environmental assessment under section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) (including regulations implementing such section) and a biological evaluation under section 7(a)(2) of the Endangered Species Act of 1973.

*Asume they
are consistent.
Then, no discretion?*

(16 U.S.C. 1536(a) (2)) and other applicable Federal law and implementing regulations. A document embodying decisions relating to salvage timber sales proposed under authority of this section shall be at the sole discretion of the Secretary concerned and to the extent the Secretary concerned considers appropriate and feasible, considering 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.

(B) USE OF EXISTING MATERIALS.--In lieu of preparing a new document under this paragraph, the Secretary concerned may use a document prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) before the date of the enactment of this Act, a biological evaluation written before such date, or information collected for such a document or evaluation if the document, evaluation, or information applies to the Federal lands covered by the proposed sale.

(C) SCOPE AND CONTENT.--The scope and content of the documentation and information prepared, considered, and relied on under this paragraph is at the sole discretion of the Secretary concerned.

(2) REPORTING REQUIREMENTS.--Not later than August 30, 1995, the Secretary concerned shall submit a report to the appropriate committees of Congress on the implementation of this section. The report shall be updated and resubmitted to the appropriate committees of Congress every 12 months thereafter until the completion of all salvage timber sales conducted under subsection (b). Each report shall contain the following:

(A) The volume of salvage timber sales sold and harvested, as of the date of the report, for each National Forest and each district of the Bureau of Land Management.

(B) The available salvage volume contained in each National Forest and each district of the Bureau of Land Management.

(C) A plan and schedule for an enhanced salvage timber sale program for fiscal years 1995, 1996, and 1997 using the authority provided by this section for salvage timber sales.

(D) A description of any needed resources and personnel, including personnel reassignments, required to conduct an enhanced salvage timber sale program through fiscal year 1997.

(E) A statement of the intentions of the Secretary concerned with respect to the salvage timber sale volume levels specified in the joint explanatory statement of managers accompanying the conference report on H.R. 1158, House Report 104-124.

(3) ADVANCEMENT OF SALES AUTHORIZED.--The Secretary concerned may begin salvage timber sales under subsection (b) intended for a subsequent fiscal year before the start of such fiscal year if the Secretary concerned determines that performance of such salvage timber sales will not interfere with salvage timber sales intended for a preceding fiscal year.

(4) DECISIONS.--The Secretary concerned shall design and select the specific salvage timber sales to be offered under subsection (b) on the basis of the analysis contained in the document or documents prepared pursuant to paragraph (1) to achieve, to the maximum extent feasible, a salvage timber sale volume level above the program level.

(5) SALE PREPARATION.--

(A) USE OF AVAILABLE AUTHORITIES.--The Secretary concerned shall make use of all available authority, including the employment of private contractors and the use of expedited fire contracting procedures, to prepare and advertise salvage timber sales under subsection (b).

(B) EXEMPTIONS.--The preparation, solicitation, and award of salvage timber sales under subsection (b) shall be exempt from--

(i) the requirements of the Competition in Contracting Act (41 U.S.C. 253 et seq.) and the implementing regulations in the Federal Acquisition Regulation issued pursuant to section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)) and any departmental acquisition regulations; and

(ii) the notice and publication requirements in section 18 of such Act (41 U.S.C. 416) and 8(e) of the Small Business Act (15 U.S.C. 637(e)) and the implementing regulations in the Federal Acquisition Regulations and any departmental acquisition regulations.

(C) INCENTIVE PAYMENT RECIPIENTS; REPORT.--The provisions of section 3(d)(1) of the Federal Workforce Restructuring Act of 1994 (Public Law 103-226; 5 U.S.C. 5597 note) shall not apply to any former employee of the Secretary concerned who received a voluntary separation incentive payment authorized by such Act and accepts employment pursuant to this paragraph. The Director of the Office of Personnel Management and the Secretary concerned shall provide a summary report to the appropriate committees of Congress, the Committee on Government Reform and Oversight of the House of Representatives, and the Committee on Governmental Affairs of the Senate regarding the number of incentive payment recipients who were rehired, their terms of reemployment, their job classifications, and an explanation, in the judgment of the agencies involved of how such reemployment without repayment of the incentive payments received is consistent with the original waiver provisions of such Act. This report shall not be conducted in a manner that would delay the rehiring of any former employees under this paragraph, or affect the normal confidentiality of Federal employees.

(6) COST CONSIDERATIONS.--Salvage timber sales undertaken pursuant to this section shall not be precluded because the costs of such activities are likely to exceed the revenues derived from such activities

(7) EFFECT OF SALVAGE SALES.--The Secretary concerned shall not substitute salvage timber sales conducted under subsection (b) for planned non-salvage timber sales.

(8) REFORESTATION OF SALVAGE TIMBER SALE PARCELS.--The Secretary concerned shall plan and implement reforestation of each parcel of land harvested under a salvage timber sale conducted under subsection (b) as expeditiously as possible after completion of the harvest on the parcel, but in no case later than any applicable restocking period required by law or regulation.

(9) EFFECT ON JUDICIAL DECISIONS.--The Secretary concerned may conduct salvage timber sales under subsection (b) notwithstanding any decision, restraining order, or injunction issued by a United States court before the date of the enactment of this section.

OPTION 9

allowed under, and consistent w/ standards & guidelines specified in

(d) DIRECTION TO COMPLETE TIMBER SALES ON LANDS COVERED BY OPTION 9 -- Notwithstanding any other law (including a law under the authority of which 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 Amendments to Forest Service and Bureau of Land Management Planning Document 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 under this subsection notwithstanding any decision, restraining order, or injunction issued by a United States court before the date of the enactment of this section. The issuance of any regulation pursuant to section 4(d) of the Endangered Species Act of 1973 (16 U.S.C. 1533(d)) to ease or reduce restrictions on non-Federal lands within the range of the northern spotted owl shall be deemed to satisfy the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), given the analysis included in the Final Supplemental Impact Statement on the Management of the Habitat for Late Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl prepared by the Secretary of Agriculture and the Secretary of the Interior on April 13, 1994, which is, or may be, incorporated by reference in the administrative record of any such regulation. The issuance of any such regulation pursuant to section 4(d) of the Endangered Species Act of 1973 (16 U.S.C. 1533(d)) shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

short would this mean it it were lands? what would they do? on or it may be amended

(e) ADMINISTRATIVE REVIEW.--Salvage timber sales conducted under subsection (b), timber sales conducted under subsection (d), and any decision of the Secretary concerned in connection with such sales, shall not be subject to administrative review.

(f) JUDICIAL REVIEW.--

(1) PLACE AND TIME OF FILING.--A salvage timber sale to be conducted under subsection (b), and a timber sale to be conducted under subsection (d), shall be subject to judicial review only in the United States district court for the district in which the affected Federal lands are located. Any challenge to such sale must be filed in such district court within 15 days after the date of initial advertisement of the challenged sale. The Secretary concerned may not agree to, and a court shall not grant, a waiver of the requirements of this paragraph.

(2) EFFECT OF FILING ON AGENCY ACTION.--For 45 days after the date of the filing of a challenge to a salvage timber sale to be conducted under subsection (b) or a timber sale to be conducted under subsection (d), the Secretary concerned shall take no action to award the challenged sale.

(3) PROHIBITION ON RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS, AND RELIEF PENDING REVIEW.--No restraining order, preliminary injunction, or injunction pending appeal shall be issued by any court of the United States with respect to any decision to prepare, advertise, offer, award, or operate a salvage timber sale pursuant to subsection (b) or any decision to prepare, advertise, offer, award, or operate a timber sale pursuant to subsection (d). Section 705 of title 5, United States Code, shall not apply to any challenge to such a sale.

(4) STANDARD OF REVIEW.--The courts shall have authority to enjoin permanently, order modification of, or void an individual salvage timber sale if it is determined by a review of the record that the decision to prepare, advertise, offer, award, or operate such sale was arbitrary and

capricious or otherwise not in accordance with applicable law (other than those laws specified in subsection (i)).

(5) TIME FOR DECISION.--Civil actions filed under this subsection shall be assigned for hearing at the earliest possible date. The court shall render its final decision relative to any challenge within 45 days from the date such challenge is brought, unless the court determines that a longer period of time is required to satisfy the requirement of the United States Constitution. In order to reach a decision within 45 days, the district court may assign all or part of any such case or cases to one or more Special Masters, for prompt review and recommendations to the court.

(6) PROCEDURES.--Notwithstanding any other provision of law, the court may set rules governing the procedures of any proceeding brought under this subsection which set page limits on briefs and time limits on filing briefs and motions and other actions which are shorter than the limits specified in the Federal rules of civil or appellate procedure.

(7) APPEAL.--Any appeal from the final decision of a district court in an action brought pursuant to this subsection shall be filed not later than 30 days after the date of decision.

(g) EXCLUSION OF CERTAIN FEDERAL LANDS.--

(1) EXCLUSION.--The Secretary concerned may not select, authorize, or undertake any salvage timber sale under subsection (b) with respect to lands described in paragraph (2).

(2) DESCRIPTION OF EXCLUDED LANDS.--The lands referred to in paragraph (1) are as follows:

(A) Any area on Federal lands included in the National Wilderness Preservation System.

(B) Any roadless area on Federal lands designated by Congress for a wilderness study in Colorado or Montana.

(C) Any roadless area on Federal lands recommended by the Forest Service or Bureau of Land Management for wilderness designation in its most recent land management plan in effect as of the date of the enactment of this Act.

(D) Any area on Federal lands on which timber harvesting for any purpose is prohibited by statute.

(h) RULEMAKING.--The Secretary concerned is not required to issue formal rules under section 553 of title 5, United States Code, to implement this section or carry out the authorities provided by this section.

(i) EFFECT ON OTHER LAWS.--The documents and procedures required by this section for the preparation, advertisement, offering, awarding, and operation of any salvage timber sale subject to subsection (b) and any timber sale under subsection (d) shall be deemed to satisfy the requirements of the following applicable Federal laws (and regulations implementing such laws):

(1) The Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.).

(2) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(3) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(5) The National Forest Management Act of 1976 (16 U.S.C. 472a et seq.).

(6) The Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.).

(7) Any compact, executive agreement, convention, treaty, and international agreement, and implementing legislation related ther

(8) All other applicable Federal environmental and natural resource laws.

(j) EXPIRATION DATE.--The authority provided by subsections (b) and (d) shall expire on December 31, 1996. The terms and conditions of this section shall continue in effect with respect to salvage timber sale contracts offered under subsection (b) and timber sale contracts offered under subsection (d) until the completion of performance of the contracts.

(k) AWARD AND RELEASE OF PREVIOUSLY OFFERED AND UNAWARDED TIMBER SALE CONTRACTS.--

(1) AWARD AND RELEASE REQUIRED.--Notwithstanding any other provision of law, within 45 days after the date of the enactment of this Act, the Secretary concerned shall act to award, release, and permit to be completed in fiscal years 1995 and 1996, with no change in originally advertised terms, volumes, and bid prices, [all timber sale contracts offered (or awarded) before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318 of Public Law 101-121 (103 Stat. 745).] The return of the bid bond of the high bidder shall not alter the responsibility of the Secretary concerned to comply with this paragraph.

(2) THREATENED OR ENDANGERED BIRD SPECIES.--No sale unit shall be released or completed under this subsection if any threatened or endangered bird species is known to (be nesting) within the acreage that is the subject of the sale unit.

(3) ALTERNATIVE OFFER IN CASE OF DELAY.--(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.

(l) EFFECT ON PLANS, POLICIES, AND ACTIVITIES.--Compliance with this section shall not require or permit any administrative action, including revisions, amendment, consultation, supplementation, or other action, in or any land management plan, standard, guideline, policy, regional guide, or multiforest plan because of implementation or impacts, site-specific or cumulative, of activities authorized or required by this section, except the any such administrative action with respect to salvage timber sales is permitted to the extent necessary, at the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b) of this section or to reflect the effects of the salvage program. The Secretary concerned shall not rely on salvage timber sales as the basis for administrative action limiting other multiple use activities nor be required to offer a particular salvage timber sale. No project decision shall be required to be halted or delayed by such documents or guidance, implementation or impacts.

*in FYs 1989 + 1990
under the authority of
+ in compliance w/
Section 318...
National
Subsection (7)*

*occupy the within
breeding
regions
The State
that contains*

+ consistent w/

within

Enclosure 2

THE WHITE HOUSE
Washington

August 1, 1995

MEMORANDUM FOR THE SECRETARY OF THE INTERIOR

THE SECRETARY OF AGRICULTURE

THE SECRETARY OF COMMERCE

THE ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: Implementing Timber-Related Provisions to
Public Law 104-19

On July 27th, I signed the rescission bill (Public Law 104-19), which provides much-needed supplemental funds for disaster relief and other programs. It makes necessary cuts in spending, important to the overall balanced budget while protecting key investments in education and training, the environment and other priorities.

While I am pleased that we were able to work with the Congress to produce this piece of legislation, I do not support every provision, most particularly the provision concerning timber salvage. In fact, I am concerned that the timber salvage provisions may even lead to litigation that could slow down our forest management program. Nonetheless, changes made prior to enactment of Public Law 104-19 (preserve our ability to implement the current forest plans' standards, guidelines, and provides sufficient discretion for the Administration to protect other resources such as clean water and fisheries.)

With these changes, I intend to carry out the objectives of the relevant timber-related activities authorized by Public Law 104-19. I am also firmly committed to doing so in ways that, to the maximum extent allowed, follow our current environmental laws and programs. (Public Law 104-19 gives us the discretion to apply current environmental standards to the timber salvage program, and we will do so.) With this in mind, I am directing each of you, the heads of other appropriate agencies, to move forward expeditiously to (implement these timber-related provisions in an environmentally sound manner in accordance with my Pacific Northwest Forest Plan, other existing forest and management policies and plans, and existing environmental laws, except those procedural actions expressly prohibited by Public Law 104-19.)

I am optimistic that our actions will be effective, in large part, due to the progress the agencies have already made to accelerate dramatically the process for complying with our existing legal responsibilities to protect the environment. To ensure this effective coordination, I am directing that you enter into a Memorandum of Agreement by August 7, 1995, to make explicit the streamlining procedures, coordination, and consultation actions that I have previously directed you to develop and that you have implemented under existing environmental laws. I expect that you will continue to adhere to these procedures and actions as we fulfill the objectives of Public Law 104-19.

/s/ William J. Clinton

Sec. 325. Amend section 2001(k) of Public Law 104-19 by striking "in fiscal years 1995 and 1996" in paragraph (1), striking paragraph (3), and adding new paragraph (3) and (4) to read:

"(3) TIMING AND CONDITIONS OF ALTERNATIVE VOLUME. For any sale subject to paragraph (2) of this subsection, the Secretary concerned shall, and for any other sale subject to this subsection, the Secretary concerned may, within 7 days of enactment of this paragraph notify the affected purchaser of his desire to provide alternative volume, and within ~~60~~⁹⁰ days of the date of enactment of this paragraph, reach agreement with the purchaser to identify and provide, by a date agreed to by the purchaser, a volume, value and kind of timber satisfactory to the purchaser to substitute for all or a portion of the timber subject to the sale, which shall be subject to the original terms of the contract except as otherwise agreed, and shall be subject to paragraph (1). Upon notification by the Secretary, the affected purchaser shall suspend harvesting and related operations for ~~60~~⁹⁰ days, except for sale units where harvesting activities have commenced before March 28, 1996. Except for sale units subject to paragraph (2), the purchaser may operate the original sale under the terms of paragraph (1) if no agreement is reached within ~~60~~⁹⁰ days or after the agreed date for providing alternative timber until the Secretary concerned designates and releases to the purchaser the alternative timber volume in the agreement. ~~Provided that~~ The purchaser may not harvest a volume of timber from the alternative sale and from the portion of the original sale to be replaced which has greater contract value than the contract value of the alternative sale agreement. Any sale subject to this subsection shall be awarded, released, and completed pursuant to paragraph (1) for a period equal to the length of the original contract, and shall not count against current allowable sale quantities or timber sales to be offered under subsection (b) and (d). A purchaser may enforce the rights established in this paragraph to obtain substitute timber within the required or agreed upon timeframe in federal district court.

"(4) BUY-OUT AUTHORIZATION. - The Secretary concerned is authorized to permit a requesting purchaser of any sale subject to this subsection to return to the Government all or a specific volume of timber under the sale contract, and shall pay to such purchaser upon tender of such volume a buy-out payment for such volume from any funds available to the Secretary concerned except from any permanent appropriation or trust funds, subject to the approval of the House and Senate Committees on Appropriations. Such volume and such payment shall be mutually agreed to by the Secretary and the purchaser. Any agreement between the purchaser and the Secretary shall be reached within ~~60~~⁹⁰ days from the date on which the negotiation was initiated by the purchaser. The total sum paid for all such buy-out payments shall not exceed \$20 million by each Secretary and \$40 million in total. No less than half of the funds used by the Secretary concerned must come from funds otherwise available to fund Oregon and Washington programs of the Forest Service and the Bureau of Land Management. The secretary is authorized to offset any portion of a buy-out payment agreed to under the provisions of this paragraph with an amount necessary to fully retire a purchaser's obligation on a government guaranteed loan."

11:30 3/20

Section 325. Deletes language regarding the redefinition of the marbled murrelet nesting area and inserts a new provision that amends subsection 2001(k) of Public Law 104-19 to provide alternative timber options or buy-out payments to timber purchasers for both Forest Service and Bureau of Land Management sales ~~originally offered or awarded~~ subject to section 318 of Public Law 101-121 (103 Stat. 745). The new language neither expands nor reduces the sales to be released under this provision. The managers do not intend to interdict or affect prior or pending judicial decisions with this language.

notify the purchaser within 7 days and date of notification

The provision increases the Administration's flexibility by allowing the Secretary concerned to agree with a purchaser within ~~45~~ ⁹⁰ days of the date of enactment to provide alternative volume for part or all of any sale subject to subsection 2001(k) in a volume, value, and kind satisfactory to the purchaser, by a date agreed to by the purchaser. The precise designation of alternative timber need not occur within the initial ~~45~~ ⁹⁰ day period. For any sale that cannot be released due to threatened or endangered bird nesting within the sale unit, the amendment requires the agreement for alternative volume, in quantity, value, and kind satisfactory to the purchaser, and by a date agreed to by the purchaser, to be reached within ~~45~~ ⁹⁰ days of the date of enactment of this section.

Upon notification by the Secretary, the purchaser shall suspend harvesting and related operations for 90 days, except for sale units where harvesting activities have

⁹⁰ The Administration has delayed implementing subsection 2001(k) well beyond the original ~~45~~ day time limit set by Congress, and still has not released all the sales required under the statute. Therefore, except for sale units affected by paragraph 2 of subsection 2001(k), ~~after the date for designation of alternative timber agreed to between the purchaser and the Secretary,~~ the purchaser is entitled to operate the original sale under subsection (k) if the Secretary has not designated and released timber as agreed to by the purchaser. Also, a purchaser may enforce the rights established in this paragraph in ~~the~~ ^{date} federal district court. The managers continue to endorse the statement of the managers language accompanying the conference report on the 1995 Rescissions Act (House Report 104-124; Public Law 104-19) relating to section 2001 (k).

not to be after agreement is reached.

Substitute timber within the required or agreed upon time frame

A purchaser may not be compelled to accept alternative volume over the purchaser's objection, as he cannot be under present law. The purchaser may not operate on both the portion of the original sale to be replaced, and the alternative timber such that the combined contract value harvested exceeds the contract value of the alternative timber in the agreement. Sales with alternative volume under the amendment are subject to the original terms of the contract unless the parties agree otherwise and are subject to paragraph (1) of subsection (k). Any alternative volume under paragraph (3) shall not count against current allowable sales quantities or timber sales to be offered under subsections (b) and (d) of section 2001 of Public Law 104-19. Alternative volume may, at the Secretary's discretion, come from areas not otherwise contemplated for harvesting.

To avoid forcing purchasers to operate sales hastily before environmental considerations can be taken into account, the limitation in paragraph (1) to fiscal years 1995 and 1996 is deleted, and all sales awarded or released under subsection (k) are now subject to the legal protections in paragraph (1) for a period equal to the length of the ~~original~~ ^{original} contract (including any term adjustment or extensions permitted under the original contract or agreed to by the Secretary and the purchaser.)

The period of legal protection for each sale begins when the sale is awarded or released under subsection (k) or when alternative volume is awarded.

The provision also gives the Secretary of the Interior and the Secretary of Agriculture, upon request of a sale owner, the authority to purchase all or a specific volume of timber under the sale contract covered under this subsection. Payment may be made directly to the purchaser, or to agents or creditors to fully retire the purchaser's obligation on a government guaranteed loan. The volume and payment must be mutually agreed by the Secretary and the purchaser. The payments would come from any funds available to the Secretary concerned, except for any permanent appropriation or trust funds, such as the timber salvage sale funds and the Knudsen-Vandenburg fund. In order to relieve partially the burden on programs in the rest of the nation, no less than half of the funds used for the payments must come from accounts which otherwise would be available to the Secretaries for Oregon and Washington programs of the Forest Service and the Bureau of Land Management. The Secretaries shall follow established reprogramming procedures when seeking the approval of the House and Senate Appropriations Committees to designate funds for the buy-out payments. Each Secretary may use up to \$20 million for such payments. The authority provided under paragraph 4 expires 45 days after the date of enactment.



Any agreement between the purchaser and the Secretary will be reached within 90 days from the date on which the negotiation was initiated by the purchaser.

Travel. The managers have not agreed to place a statutory limit on the use of travel funds as proposed by the House. The managers expect each agency under the jurisdiction of the Interior and Related Agencies bill to monitor carefully travel expenses and to avoid non-essential travel.

Section 336. Inserts new language placing a moratorium on the issuance of a final rulemaking on jurisdiction, management and control over navigable waters in the State of Alaska with respect to subsistence fishing. The moratorium is for fiscal year 1996 rather than through May 15, 1997, as proposed by the Senate. The managers are concerned that recent court decisions place requirements on the Departments of the Interior and Agriculture to assume management authority in navigable waters and that such management could cost each agency several millions of dollars annually. In an era of declining budgets, this added burden would have an adverse impact on other important programs. The managers urge the State of Alaska and all parties involved to work toward developing a viable, long term solution to the subsistence problem. The solution should provide for State management of fish and wildlife in Alaska while protecting those who depend on subsistence resources.

Employee Details. The managers have not agreed to place a statutory limitation on the temporary detail of employees within the Department of the Interior as proposed by the House. The Department should continue to report quarterly on the use of employee details and should not use such personnel details to offset programmatic or administrative reductions.

Section 337. Inserts new language placing a moratorium on the use of funds by the Secretary of the Interior to take into trust any lands under the Auburn Indian Restoration Act.

Sec. 325. Amend section 2001(k) of Public Law 104-19 by striking “in fiscal years 1995 and 1996” in paragraph (1), striking paragraph (3), and adding new paragraph (3) and (4) to read:

“(3) TIMING AND CONDITIONS OF ALTERNATIVE VOLUME. For any sale subject to paragraph (2) of this subsection, the Secretary concerned shall, and for any other sale subject to this subsection, the Secretary concerned may, within 45 days of the date of enactment of this paragraph, reach agreement with the purchaser to identify and provide, by a date agreed to by the purchaser, a volume, value and kind of timber satisfactory to the purchaser to substitute for all or a portion of the timber subject to the sale, which shall be subject to the original terms of the contract except as otherwise agreed, and shall be subject to paragraph (1). Except for sale units subject to paragraph (2), after the agreed date for providing alternative timber the purchaser may operate the original sale under the terms of paragraph (1) until the Secretary concerned designates and releases to the purchaser the alternative timber volume in the agreement; Provided that the purchaser may not harvest a volume of timber from the alternative sale and from the portion of the original sale to be replaced which has greater contract value than the contract value of the alternative sale agreement. Any sale subject to this subsection shall be awarded, released, and completed pursuant to paragraph (1) for a period equal to the length of the original contract, and shall not count against current allowable sale quantities or timber sales to be offered under subsection (b) and (d). A purchaser may enforce the rights established in this paragraph in federal district court.

“(4) BUY-OUT AUTHORIZATION. - The Secretary concerned is authorized to permit a requesting purchaser of any sale subject to this subsection to return to the Government all or a specific volume of timber under the sale contract, and shall pay to such purchaser upon tender of such volume a buy-out payment for such volume from any funds available to the Secretary concerned except from any permanent appropriation or trust funds, subject to the approval of the House and Senate Committees on Appropriations, based on mutual agreement of the Secretary and the purchaser. Provided, that the total sum paid for all such buy-out payments does not exceed \$20 million by each Secretary and \$40 million in total; Provided further, that no less than half of the funds used by the Secretary concerned must come from funds otherwise available to fund Oregon and Washington programs of the Forest Service and the Bureau of Land Management. Such volume and such payment shall be mutually agreed to by the Secretary and the purchaser. The authority provided by this paragraph to reach such agreement shall expire 45 days after the enactment of this paragraph.”

Sec. 325. Amend section 2001(k) of Public Law 104-19 by striking "in fiscal years 1995 and 1996" in paragraph (1), *striking paragraph (3)*, and adding *new paragraph (3) (4) and (4) (5)* to read:

"(3)(4) TIMING AND CONDITIONS OF ALTERNATIVE VOLUME. For any sale subject to paragraph (2) of this subsection, the Secretary concerned shall, and for any other sale subject to this subsection, the Secretary concerned may, within 45 days of the date of enactment of this paragraph, reach agreement with the purchaser to identify and provide, by a date agreed to by the purchaser, a volume, value and kind of timber satisfactory to the purchaser to substitute for all or a portion of the timber subject to the sale, which shall be subject to the original terms of the contract except as otherwise agreed, and shall be subject to paragraph (1). *Except for sale units subject to paragraph (2)*, after the agreed date for providing alternative timber the purchaser may operate the original sale under the terms of paragraph (1) until the Secretary concerned designates and *releases to the purchaser the alternative timber volume in the agreement*; *Provided that the purchaser may not harvest a volume of timber from the alternative sale and from the portion of the original sale to be replaced which has greater contract value than the contract value of the alternative sale agreement.* ~~the purchaser accepts alternative timber volume in the agreement~~ Any sale subject to this subsection shall be awarded, released, and completed pursuant to paragraph (1) for a period equal to the length of the original contract, and shall not count against current allowable sale quantities or timber sales to be offered under subsection (b) and (d). *A purchaser may enforce the rights established in this paragraph in federal district court.*

"(4)(5) BUY-OUT AUTHORIZATION. - The Secretary concerned is authorized to permit a requesting purchaser of any sale subject to this subsection to return to the Government all or a specific volume of timber under the sale contract, and shall pay to such purchaser upon tender of such volume a buy-out payment for such volume from any funds available to the Secretary concerned except from ~~accounts governing or related to forest land management, fire-fighting, timber sale preparation, harvest administration, road construction, timber sale program support, any accounts associated with preparing or administering the sale of timber from any public lands under the jurisdiction of the Secretary concerned, range or minerals management, or any permanent appropriation or trust funds, subject to the approval of the House and Senate Committees on Appropriations, based on mutual agreement of the Secretary and the purchaser.~~ *Provided, that the total sum paid for all such buy-out payments does not exceed \$20 million by each Secretary and \$40 million in total; Provided further, that no less than half of the funds used by the Secretary concerned must come from funds otherwise available to fund Oregon and Washington programs of the Forest Service and the Bureau of Land Management.* Such volume and such payment shall be mutually agreed to by the Secretary and the purchaser. The authority provided by this paragraph to reach such agreement shall expire 45 days after the enactment of this paragraph."

Conference Report on Section 325

This text utilizes the Senate report of March 6, 96 as basis.

Section 325. Section 325 of the bill amends subsection 2001 (k) of Public Law 104-19. The new language neither expand nor reduces the sales to be released under this provision. The managers do not intend to interdict or affect prior or pending judicial decisions with this language.

Both the House and the Senate had similar paragraphs regarding the provision of alternative timber. That provision is retained, with a minor technical change to assure that purchasers can not operate on the total volume of both the original sale and the alternative timber. The Senate included another paragraph, absent in the House bill, providing buy-out authority. This buy-out authority is retained but with certain restrictions and conditions.

The amendment increases the administration's flexibility by allowing the Secretary concerned to agree with a purchaser within 45 days of the date of enactment of the amendment to provide alternative volume for part or all of any sale subject to subsection (k), in a volume, value, and kind satisfactory to the purchaser, by a date agreed to by the purchaser. The precise designation of alternative timber need not occur within the initial 45-day period. For any sale that cannot be released due to threatened or endangered bird nesting within the sale unit, the amendment requires the agreement for alternative volume, in quantity, value, and kind satisfactory to the purchaser, and by a date agreed to by the purchaser, to be reached within 45 days of the date of enactment of this section.

The amendment also reflects that the administration has delayed implementing subsection 2001 (k) well beyond the original 45-day time limit set by Congress, and still has not released all the sales required under the statute. Therefore, except for sale units affected by paragraph 2 of Subsection 2001(k), after the date for designation of alternative timber agreed to between the purchaser and the Secretary, the purchaser is entitled to operate the original sale under subsection (k) if the Secretary has not designated and released timber as agreed to by the purchaser. Also, a purchaser may enforce the rights established in this paragraph in federal district court. It remains the intent of the managers that timber sale units occupied by a marbled murrelet under the Pacific Seabird Group protocol will be released unless there is recent observation of an active nest, fecal ring or eggshell fragments within the boundaries of the sale unit.

A purchaser may not be compelled to accept alternative volume over the purchaser's objection as he cannot be under present law. The purchaser may not operate on both the portion of the original sale to be replaced, and the alternative timber such that the combined contract value harvested exceeds the contract value of the alternative timber in the agreement. Sales with alternative volume under the amendment are subject to the original terms of the contract unless the parties agree otherwise, and are subject to paragraph (1) of subsection (k). Any alternative volume under paragraph (3) shall not count against current allowable sales quantities or timber sales to be offered under subsection (b) and (d) of section 2001 of Public Law 104-19. Alternative volume may, at the Secretary's discretion, come from areas not otherwise

contemplated for harvesting.

To avoid forcing purchasers to operate sales hastily before environmental considerations can be taken into account, the limitation in paragraph (1) to fiscal years 1995 and 1996 is deleted, and all sales awarded or released under subsection (k) are now subject to the legal protections in paragraph (1) for a period equal to the length of the original contract (including any term adjustment or extensions permitted under the original contract or agreed to by the Secretary and the purchaser). The period of legal protection for each sale begins when the sale is awarded or released under subsection (k), or when alternative volume is provided under this statute.

Paragraph 4 would grant, upon request of the sale owner, the Secretary the authority to purchase all or a specific volume of timber under a sale contract covered under this subsection. This may be done with cash payments either directly to the purchaser, or to an agent or creditor designated by the purchaser and agreed to by the Secretary. The volume and payment must be mutually agreed to by the Secretary and the purchaser. The cash payments would come from any funds available to the Secretary concerned, except for any permanent appropriation or trust funds, such as the timber salvage sale funds and the Knudsen Vandenburg fund. In order to partially relieve the burden on programs in the rest of the nation, no less than half of the funds used in the cash payments must come from accounts which otherwise would be available to the Secretaries for Oregon and Washington programs of the Forest Service and the Bureau of Land Management. Each Secretary may issue up to \$20 million in cash payments. The authority provided under paragraph 4 expires 45 days after the date of enactment.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY

TO: ELENA KAGAN

FROM: DINAH BEAR

DATE: 3/28/96

FAX: 6-1647

Number of pages including cover: 9

COMMENTS: HATFIELD LTR.



PHONE (202) 456-6224 FAX: (202) 456-2710
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WASHINGTON, D.C. 20501



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

March 28, 1996

The Honorable Mark O. Hatfield
Chairman
Senate Committee on Appropriations
SH-711 Hart Senate Office Building
Washington, D.C. 20510-3701

Dear Senator Hatfield:

Thank you for the opportunity you afforded the Administration on Wednesday to discuss our concerns with your Omnibus Appropriations bill amendment related to the timber provisions of the 1995 Rescission Act. We have undertaken a quick analysis of the modifications to your amendment and the report language that you shared with us Wednesday as well as the further changes your staff forwarded yesterday morning.

As you know, our preference is to strike this language completely and to replace it with language similar to that in the legislation recently offered by Senator Murray. But given your opposition to this approach, we appreciate your sincere efforts to address some of our concerns by modifying last year's enactment and by further changing the language in the Senate-passed Omnibus Appropriations bill. We also appreciate your continuing efforts on this matter.

Above all, we appreciate your offer to provide the land management agencies with the authority to withhold sales and/or suspend harvesting where they believe that "serious environmental damage" would be done by proceeding. If the agencies had that authority, they would pledge to negotiate with contract holders over alternative timber on a prompt basis. We think that giving the Forest Service and the Bureau of Land Management (BLM) this authority could do much to prevent the conflict and potential environmental damage arising from the Rescissions Act provision, as that Act has been interpreted by the courts. This addition to the 1995 Act would be a valuable tool for sound land management and environmental protection.

Unfortunately, the current draft of your legislative proposal does not provide the Forest Service or BLM with that authority, and therefore, does not address the fundamental problem arising from the current judicially-mandated application of the Rescissions Act provision. Beyond this major short-coming, there are a number of specific concerns we have about the latest draft of your proposal:

Senator Mark Hatfield
Page Two

APPLICABLE DATES:

O We agree with you that contracts for replacement timber should be allowed to run the course of their full term - generally three years, plus any extensions. However, by deleting the references to FY 1995 and 1996, the extraordinary terms currently in §2001(k) would be extended for an indefinite period of time. We are fully prepared to honor contracts terms, but plan to do so within the framework of environmental law. To do otherwise would, we believe, continue for several more years the level of discord and controversy currently being experienced in the Pacific Northwest over the implementation of Section 2001(k), which otherwise expires on September 30, 1996.

REPLACEMENT TIMBER:

O We appreciate the modification made to address our concern that sale units we believe contain "known to be nesting" threatened or endangered birds not be harvested while replacement timber is being negotiated. However, as you know, we are currently litigating the proper interpretation of the "known to be nesting" language in §2001(k)(2). The language carried in the draft report provided to us speaks directly to the issue in litigation in a way that is quite injurious to the government's position in this litigation, and therefore is objectionable to us. Given that all of the sales that the government has withheld would jeopardize the marbled murrelet, the release of these sales poses a serious threat to sound forest management in this area.

O The language continues to require mutual agreement for all replacement timber, and permits the purchaser of any sales other than those covered under the "known to be nesting" provision to continue harvesting until mutual agreement is reached. This should be changed to be consistent with your proposal in Monday's meeting that the Forest Service or BLM should be able to stop a sale or harvest until a replacement agreement is reached. We believe your proposal is a far better formulation than what is currently in the proposed language.

O Your amendment requires the Forest Service and BLM to reach agreement with the purchaser within 45 days of the enactment of the legislation to identify and provide, by a date agreed to by the purchaser, a volume, value and kind of timber satisfactory to the purchaser as replacement timber. As we told you, under current funding levels, the Forest Service in particular believes that 45 days is simply too short a period of time to accomplish this task responsibly given the number of sales at issue, and the need to move forward on green timber sales at the same time. We believe that 90 days is a more appropriate period of time.

O We are concerned that the language added to the end of the replacement timber provisions regarding the purchaser's enforcement of rights established in this paragraph will lead to lawsuits to enforce the requirement that the Secretaries "reach agreement" with timber

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Page Three

purchasers on a specific volume, value and kind of timber and by a date demanded by purchasers. This may inadvertently result in an unprecedented level of court involvement in agency forest management.

The language is not needed as the purchasers have adequate rights under the contracts, and it should be stricken.

BUY-OUT PROVISIONS:

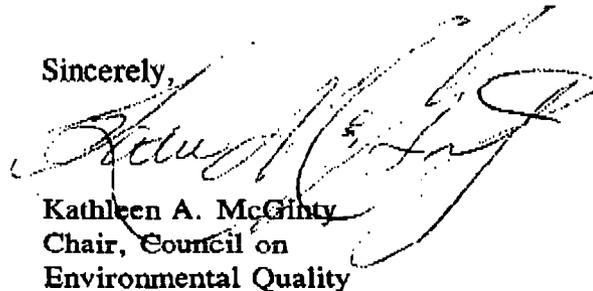
O In the current language, the authority to buy back sales expires completely 45 days after passage of this amendment. Again, we are concerned this is too short a period of time to negotiate responsibly in the context of the relevant sales. In fact, authority for buy-back should extend past the authority to offer replacement sales, since that could be a secondary option.

O The current language also requires the government and the purchasers to agree on the level of compensation. Again, we believe that land management agencies should have the ultimate authority to set such compensation, or, at the least, the authority you suggested to suspend sales or harvesting until any such agreement is reached. The amount of compensation should be based on the price and availability of replacement timber from other sources. Approval of settlements by appropriations committees may raise significant legal and procedural problems.

O The current language provides no new source of funding for buy-outs. Nor does the language address the costs of finding and preparing replacement timber. While we expect buyouts be used as a last resort, if this authority were used to the maximum level, it under the funding levels provided to the Forest Service, the enactment of this provision could result in lay-offs and a reduction in the green timber sale program. We suggest an additional appropriation of \$50 million to meet these needs.

Thank you for the opportunity to meet and discuss our concerns.

Sincerely,



Kathleen A. McGinty
Chair, Council on
Environmental Quality

Attachment

1 SEC. ____09. FINDINGS.

2 Congress finds that--

3 (1) when events such as forest fire, wind
4 storms, or epidemic disease or insect infestations
5 occur, the Forest Service and the Bureau of Land
6 Management should have available the tools nec-
7 essary to harvest timber expeditiously in order to get
8 a high commodity value from dead or dying trees;

9 (2) improving the health of our forests is a na-
10 tional priority that should be addressed through
11 comprehensive analysis and public involvement, and
12 should focus not only on the health of trees, but on
13 the health of the entire forest, including watersheds,
14 soils, fisheries, and wildlife; and

15 (3) timber sales, including salvage timber sales,
16 should be conducted in accordance with all applica-
17 ble laws in order to ensure the sustainability of the
18 components and functions of the forests.

19 **Subtitle A--Repeal of Emergency**
20 **Salvage Timber Sale Program**

21 SEC. ____11. REPEAL OF EMERGENCY SALVAGE TIMBER
22 SALE PROGRAM.

23 Section 2001 of Public Law 104-19 (109 Stat. 240;
24 16 U.S.C. 1611 note) is repealed.

1 SEC. 12. EXISTING TIMBER SALE CONTRACTS.

2 (a) SUSPENSION.—Notwithstanding any outstanding
3 judicial order or administrative proceeding interpreting
4 subsection (k) of section 2001 of Public Law 104-19 (109
5 Stat. 240; 16 U.S.C. 1611 note) (as in existence prior to
6 the date of enactment of this Act), the Secretary of Agri-
7 culture and the Secretary of the Interior shall suspend
8 each timber sale that the Secretary concerned determines
9 that was being undertaken under the authority provided
10 in the subsection.

11 (b) REPLACEMENT OR TERMINATION OF TIMBER
12 SALE CONTRACTS.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of contract law, the Secretary concerned
15 shall negotiate with a purchaser of timber offered,
16 awarded, or released pursuant to section 318 of
17 Public Law 101-121 (103 Stat. 745) or section
18 2001(k) of Public Law 104-19 (109 Stat. 246; 16
19 U.S.C. 1611 note) (as in existence prior to the date
20 of enactment of this Act) ^{to modify the sale to comply with environmental +} to provide, within 1 year
21 after the date of enactment of this Act (unless oth-
22 erwise agreed by the Secretary and the purchaser),
23 a volume, value, and kind of alternative timber as a
24 replacement for the remaining timber offered,
25 awarded, or released.

*to modify the sale to comply with environmental +
Natural Resources 1c
or*

1 (2) ENVIRONMENTAL AND NATURAL RESOURCE
 2 *Modified Sales or*
 LAWS.—~~Replacement~~ timber provided under para-
 3 graph (1) shall comply with—

4 (A) any applicable environmental or natu-
 5 ral resource law;

6 (B) any resource management plan, land
 7 and resource management plan, regional guide
 8 or forest plan, including the Northwest Forest
 9 Plan and any plan developed under the Interior
 10 Columbia Basin Ecosystem Management
 11 Project; and

12 (C) any relevant standard or guideline, in-
 13 cluding PACFISH, INFISII, and Eastside
 14 screens,

and shall be subject to administrative appeal and judicial review

15 (3) TERMINATION.—If the Secretary and the
 16 purchaser do not reach agreement under paragraph
 17 (1), the Secretary concerned may—

18 (A) exercise any provision of the original
 19 contract that authorizes termination; or

20 (B) if the Secretary concerned determines
 21 that termination or modification of the contract
 22 is necessary to avoid adverse effects on the en-
 23 vironment or natural resources, terminate or
 24 modify the contract.

1 (c) PAYMENT FOR TIMBER SALE CONTRACTS RELIN-
2 QUISHED.—Any claim, whether as a result of a judgment
3 or an agreement, against the Federal Government arising
4 from a timber sale contract offered, awarded, or released
5 under section 318 of Public Law 101-121 (103 Stat.
6 745), from section 2001(k) of Public Law 104-19 (109
7 Stat. 246; 16 U.S.C. 1611 note) (as in existence prior to
8 the date of enactment of this Act), from this Act, or from
9 the exercise of the Secretary's right to suspend, modify,
10 or terminate the contract may be—

11 (1) paid from funds made available under sec-
12 tion 1304 of title 31, United States Code, and shall
13 not require reimbursement under section 13(c) of
14 the Contract Disputes Act of 1978 (41 U.S.C.
15 612(e));

16 (2) paid through a certificate of bidding rights
17 credits to be used by the purchaser (or a successor
18 or assign of the purchaser) as payment for past, cur-
19 rent or future timber sales; or

20 (3) paid through funds appropriated for the
21 purpose.

22 (d) REPAYMENT OF GOVERNMENT GUARANTEED
23 LOANS.—The Secretary may repay any government-guar-
24 anteed loan related to a timber processing facility.

(e) Funding. - The Secretary concerned shall pay purchasers for agreement negotiated in this subsection from any funds available to the Secretary.

1 (c) NEGOTIATIONS BETWEEN THE SECRETARY CON-
2 CERNED AND THE PURCHASER.—The Secretary con-
3 cerned and the timber sale purchaser may use any com-
4 bination of methods provided in subsections (b), (c) or (d)
5 or other authorized means to dispose of a timber sale con-
6 tract under this section.

7 (f) DISPUTES.—Any claim by a purchaser against the
8 Federal Government relating to a contract replaced, modi-
9 fied, suspended, or terminated under this section shall be
10 subject to the Contract Disputes Act of 1978 (41 U.S.C.
11 601 et seq.) except that reimbursement under section
12 13(c) of that Act is not required.

13 SEC. 18. SALES INITIATED UNDER EXISTING LAW.

14 (a) IN GENERAL.—A sale initiated but not awarded
15 to a purchaser by the Forest Service or the Bureau of
16 Land Management under subsection (b) or (d) of section
17 2001 of Public Law 104-19 (109 Stat. 240; 16 U.S.C.
18 1611 note) (as in existence prior to the date of enactment
19 of this Act) as of March 5, 1996, may, in appropriate cir-
20 ^{shall} ~~cumstances~~, be subject to subtitle C and shall be subject
21 to all environmental and natural resource laws.

22 (b) SALES AWARDED TO PURCHASERS.—

23 (1) IN GENERAL.—A timber sale contract that
24 has been awarded to a purchaser under subsection
25 (b) or (d) of section 2001 of Public Law 104-19

The Secretary concerned may elect to proceed with sales initiated under subsection (b) of Section 2001 of Public Law 104-19 either under the provisions of subtitle C of this Act or other applicable law authorizing the Secretary concerned to conduct salvage timber sales. Provided however, that if, prior to enactment of this Act, an environmental assessment or environmental impact statement has been issued for public comment, the public comment period shall not be repeated and the proposal shall proceed through the applicable agency appeal process.

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

09-Mar-1996 05:25pm

TO: Martha Foley
TO: Dinah Bear

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: hatfield language

On looking over this report this weekend, I struck by the following sentence: "A purchaser may not be compelled to accept alternative volume over the purchaser's objection as he cannot be under present law." I'm not sure what the drafters intended this sentence to mean, but it could be read to say that under current law, purchasers can't ever be compelled to accept alternative volume. Of course that's not so; current law provides that in the standard (k)(2) case, purchasers CAN be compelled to accept alternative volume (of like kind and value).

This highlights how much worse the new statutory language is than current law. The new language says that in (k)(2) cases, the Secretary "shall reach agreement" with the purchaser regarding alternative timber; it doesn't say what the current language does -- that the Secretary "shall provide alternative timber" (with the purchaser having nothing to say about the matter). So under the new language, a purchaser in (k)(2) cases can harvest the "original trees"; accepting alternative timber is wholly discretionary.

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

11-Mar-1996 08:15am

TO: Elena Kagan

FROM: Dinah Bear
 Council on Environmental Quality

CC: Martha Foley

SUBJECT: RE: hatfield language

good point, although I'd be careful with it. The easy rebuttal is that the rider specifies the criteria for replacement timber in a way that ensures satisfaction for the purchaser, while the Hatfield/Gorton language being offered to "fix" the rider waives those specifications upon agreement by the purchaser. In other words, it is unfortunately not the case that under the current rider we have unilateral authority to deviate from the very rigid terms in k(3) and as you know, we're struggling w/the issue of legal authority for mutually agreed replacement timber.

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

11-Mar-1996 09:52am

TO: Dinah Bear

FROM: Elena Kagan
 Office of the Counsel

CC: Martha Foley

SUBJECT: RE: hatfield language

Everything you say is right. The only point I wanted to make is that in (k)(2) cases, we currently have unilateral authority to (indeed, we must) provide replacement timber meeting the admittedly rigid terms of (k)(3). The new report language may suggest otherwise -- it may suggest that even under current law, the purchaser must agree to the provision of this timber. And the new statutory language, though giving us authority to provide mutually agreeable replacement timber in circumstances where we may not now have it, also takes away this (again, admittedly constrained) unilateral authority.

EXECUTIVE OFFICE OF THE PRESIDENT

29-Feb-1996 07:06pm

TO: (See Below)
FROM: Dinah Bear
Council on Environmental Quality
SUBJECT: Gorton/Hatfield language

A quick review by agency lawyers of the latest Hatfield language we have (2/27/96) has identified the following problems with it:

REPLACEMENT TIMBER PROVISION:

- o carries sufficiency language for replacement timber sales;
- o prohibits us from using option 9 or salvage sales for replacement timber;
- o makes replacement timber subject to agreement of purchaser;
- o allows purchasers to continue cutting even murrelet sales until replacement timber is agreed to (this makes it WORSE than the original language and could definitely undermine the Forest Plan);
No
- o still carries 45 day requirement for agreement to identify replacement timber (probably negotiable).

BUYOUT PROVISIONS

- o amount of compensation subject to agreement by purchaser

In short, we believe the Hatfield language doesn't give us the administrative tools we need to address released sales consistent with the administration's policies, and in some instances (especially the murrelet sale problem) makes it worse.

* * * * *

Hatfield's press release regarding this language states that "We

Calendar No. 343

104TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 104-236

MAKING OMNIBUS CONSOLIDATED RESCISSIONS AND AP-
PROPRIATIONS FOR THE FISCAL YEAR ENDING SEP-
TEMBER 30, 1996, AND FOR OTHER PURPOSES

MARCH 6, 1996.—Ordered to be printed

Mr. HATFIELD, from the Committee on Appropriations,
submitted the following

REPORT

[To accompany S. 1594]

The Committee on Appropriations reports the bill (S. 1594) mak-
ing omnibus consolidated rescissions and appropriations for the fis-
cal year ending September 30, 1996, and for other purposes, re-
ports favorably thereon and recommends that the bill do pass.

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

The provision restricting the National Park Service's involvement in the Mojave National Preserve has been removed.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

Adjustments totaling \$2,700,000 have been made to four Forest Service appropriations to reflect international forestry expenditures made by the agency. These expenditures were authorized under the continuing resolutions in effect through March 15, 1996

Funds totaling \$994,000 are provided in three Forest Service appropriations for colocation of the Pacific Northwest Regional Office of the Forest Service and the Oregon State Office of the Bureau of Land Management. Both agencies have gone through considerable downsizing efforts and have reduced to organization sizes such that the building occupied presently by the Forest Service in Portland, OR, can accommodate both agencies. This should facilitate further cost savings and efficiencies.

A minor addition is made to the Columbia Gorge Discovery Center conference language to allow the Forest Service to include the granting of related trail construction funds to the Non-Profit Citizens for the Columbia Gorge Discovery Center.

ADMINISTRATIVE PROVISIONS

→ The Tongass National Forest provision is similar to the language in H.R. 1977 in that it allows continuation of the current Tongass National Forest land management planning process. In amending or revising the current plan, the Secretary may establish habitat conservation areas, and impose any restriction or land use designations deemed appropriate, so long as the number of acres in the timber base and resulting allowable sale quantity is not less than the amounts identified in the preferred alternative (alternative P) in the October 1992 Tongass land and resource management plan. The Secretary may implement compatible standards and guidelines, as necessary, to protect habitat and preserve multiple uses of the Tongass National Forest.

The language has been augmented from the version included in H.R. 1977 to address the administration's concerns about clearcutting. The provision makes it clear that nothing in this section shall be interpreted as mandating clearcutting or unsustainable timber harvesting. The language also makes it clear that any revision, amendment, or modification shall be based on the application of the scientific method and sound, verifiable scientific data. Data is sound, verifiable, and scientific only when it is collected and analyzed using the scientific method. The scientific method requires the statement of a hypothesis capable of proof or disproof; preparation of a study plan designed to collect accurate data to test the hypothesis; collection and analysis of the data in conformance with the study plan; and confirmation, modification, or denial of

the hypothesis based upon peer-reviewed analysis of the collected data. The data used shall be from the southeast Alaska ecosystem.

The section also includes language to allow certain timber sales to be awarded that have cleared the National Environmental Policy Act [NEPA] and the Alaska National Interest Lands Conservation Act [ANILCA] review process if the Forest Service determines that additional analysis under NEPA and ANILCA is not necessary.

DEPARTMENT OF ENERGY

FOSSIL ENERGY RESEARCH AND DEVELOPMENT

The Committee understands that the fiscal year 1997 budget will reflect the transfer of the health and safety research programs of the Bureau of Mines to the National Institute for Occupational Safety and Health [NIOSH]. The Committee encouraged such a transfer in the fiscal year 1996 conference agreement and sees no reason to delay this transfer. The Committee strongly encourages the Department of Energy to enter into an interagency agreement with NIOSH for the fiscal year 1996 funding.

OTHER RELATED AGENCY

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

PUBLIC DEVELOPMENT

(RESCISSION)

The Committee recommends a rescission of \$2,172,000 to be derived from prior year unobligated balances available through previous appropriations. The rescission offsets funding provided for salaries and expenses in previous continuing resolutions for fiscal year 1996.

GENERAL PROVISIONS

→ SEC. 314. The Committee has modified the language dealing with the Columbia River Basin project to provide the administration with more time to complete the assessment and two accompanying draft environmental impact statements by the two project offices. The language is also modified to provide the Forest Service and the Bureau of Land Management more time to utilize the information contained in the assessment to amend individual unit plans of the National Forest System or the public domain, and to eliminate the requirement that any plan amendment which changes the plan's land allocation or goals and objectives must be treated as a significant plan amendment. Most importantly, the managers have deleted from the provision language that could be interpreted as limiting the contents of the documents to exclude information on fisheries and watersheds. In all other significant respects, the language has the same effect as the original language in section 314 of H.R. 1977.

The basic purposes of this section are to: (1) release all existing scientific information; (2) assure that the assessment and accompanying EIS's are not used to produce one-size-fits-all solutions to land and water resource issues in the Columbia basin; (3) protect

this effort from broad scale legal challenges that could enjoin land management activities regionwide, producing gridlock; and (4) direct the Forest Service and the BLM to follow proper National Forest Management Act and Federal Land and Policy Management Act procedures in revising individual land and resource management plans. The managers are especially concerned that local considerations be properly evaluated in any land management plan changes emanating from the project.

The provision does not impede completion of the project, nor does it exclude any information from the project documents. Finally, the provision protects the land management agencies from the sort of litigation-induced gridlock that has plagued resource managers in the Columbia basin region for the past several years.

→ SEC. 325. The previous language regarding the redefinition of the marbled murrelet nesting area is replaced with a provision that amends subsection 2001(k) of Public Law 104-19. The language does not expand the sales to be released under this provision, and does not affect prior judicial decisions. The Committee agrees with the interpretations of section 2001(k) made by the Federal district court in Oregon on September 13, 1995, December 5, 1995, and January 17, 1996, and agrees with that court's January 19, 1996, ruling insofar as it determined that the administration's interpretation of subsection (k)(2) was in error.

The amendment increases the administration's flexibility by allowing the Secretary concerned to agree with a purchaser within 45 days of the date of enactment of the amendment to provide alternative volume for part or all of any sale subject to subsection (k), in a volume, value, and kind satisfactory to the purchaser, by a date agreed to by the purchaser.

The amendment also reflects that the administration has delayed implementing subsection 2001(k) well beyond the original 45-day time limit set by Congress, and still has not released all the sales required under the statute. For any sale that cannot be released due to paragraph (2), the amendment requires the agreement for alternative volume, in quantity, value, kind, and location satisfactory to the purchaser, and by a date agreed to by the purchaser, to be reached within 45 days of the date of enactment of this amendment.

The precise designation of alternative timber need not occur within the initial 45-day period, but after the date for designation of timber agreed to between the purchaser and the Secretary, the purchaser is entitled to operate the original sale under subsection (k) until the Secretary designates and timber purchaser subsequently agrees to the quantity, value, kind, and location of the new volume. [A purchaser may not be compelled to accept alternative volume over the purchaser's objection as he cannot be under present law.] Sales with alternative volume under the amendment are subject to the original terms of the contract unless the parties agree otherwise, and are subject to paragraph (1) of subsection (k). Any alternative volume under paragraphs (3) or (4) shall not count against current allowable sales quantities or timber sales to be offered under subsections (b) and (d) of section 2001 of Public Law 104-19 and may, in the Secretary's discretion, come from areas not otherwise contemplated for harvesting.

Paragraph 5 would grant, upon request of the sale owner, the administration the authority to purchase all or a specific volume of timber under the sale contract covered under this subsection. The volume would be purchased from funds available to the Secretary concerned, except for those accounts governing or related to forest land management, fire-fighting, timber sale preparation, harvest administration, road construction and maintenance, timber sale program support; any accounts associated with preparing or administering the sale of timber from any public lands under the jurisdiction of the Secretary concerned, range or minerals management; or any permanent appropriation or trust funds, such as the timber salvage sale funds and the Knudsen-Vandenburg fund. The volume and payment must be mutually agreed to by the Secretary and the purchaser. The authority provided under paragraph 5 expires 45 days after the date of enactment.

SEC. 336. In response to recent court decisions, this section has been added to the bill to prohibit the Department of the Interior and the Department of Agriculture from expending funds to assume management authority of navigable waters in the State of Alaska. The prohibition expires on May 15, 1997.

Assumption of additional subsistence management responsibilities could cost the two Departments well over \$20,000,000 annually. In an era of declining budgets, this added burden would have an adverse impact on other important programs funded in the Interior bill. The Committee, therefore, has included a moratorium to provide sufficient time for the development of a viable, long-term solution to the subsistence problem. The Committee strongly urges all parties involved to work diligently toward this goal, and to develop a solution that provides State management of fish and wildlife in Alaska while protecting those who depend on subsistence resources.

SEC. 337. This provision repeals the previous continuing resolution provisions related to Interior bill appropriations.

1. What we gain

a) Authority to buy cut (mutually)

But - Have anyway in almost all cases -
structure as settlement

b) Authority to provide rep timber (mutually)

But: found a way to do this anyhow!

- Way will be challenged in CT

- Also, binds us to env. laws (but
don't we want this?)

2. What we give up

Key is murrelet sales (k2s)

Now - we provide like kind timber

we have an arg that this timber must
meet env. laws

purchase has no rt to harvest original

Under
Hatfield:

- If purchase doesn't reach of what
happens? Just harvest orig sale?

If agreed-to date goes by w/out sale
+ purchase designation + agreeing to
all timber, purchase just goes ahead.

Public law, now clearly applies, so we lose
any arg that rep timber must comply w/
env. laws.

Control over
sales

Efficiency in
rep timber

No 8.9 re
rep timber

Also - we use y. 0.9 as salvage for rep timber

1 the Interior shall allow the applicant to fund a qualified
2 third-party contractor to be selected by the Bureau of
3 Land Management to conduct a mineral examination of the
4 mining claims or mill sites contained in a patent applica-
5 tion as set forth in subsection (b). The Bureau of Land
6 Management shall have the sole responsibility to choose
7 and pay the third-party contractor in accordance with the
8 standard procedures employed by the Bureau of Land
9 Management in the retention of third-party contractors.

DRAFT

10 Sec. 323. None of the funds appropriated or other-
11 wise made available by this Act may be used for the pur-
12 poses of acquiring lands in the counties of Lawrence, Mon-
13 roe, or Washington, Ohio, for the Wayne National Forest.

14 Sec. 324. No part of any appropriation contained in
15 this Act or any other Act shall be expended or obligated
16 to fund the activities of the Office of Forestry and Eco-
17 nomic Development after December 31, 1995.

18 SEC. 325. Amend section 2001(k) of Public Law
19 104-19 by striking "in fiscal years 1995 and 1996" in
20 paragraph (1) and adding paragraph (4) to read:

21 "(4) TIMING AND CONDITIONS OF ALTERNATIVE VOL-
22 UME.—For any sale subject to paragraph (2) of this sub-
23 section, the Secretary concerned shall, and for any other
24 sale subject to this subsection, the Secretary concerned
25 may, within 45 days of the date of enactment of this para-

*Re: alteration of
a paragraph
to bird species*

8 0000 RS

503

1 graph, reach agreement with the purchaser to provide, by
2 a date agreed to by the purchaser, a volume, value and
3 kind of timber satisfactory to the purchaser to substitute
4 for all or a portion of the timber subject to the sale, which
5 shall be subject to the original terms of the contract except
6 as otherwise agreed, and shall be subject to paragraph (1).
7 After the agreed date for providing alternative timber the
8 purchaser may operate the original sale under the terms
9 of paragraph (1) until the Secretary concerned designates
10 and the purchaser accepts alternative timber under this
11 paragraph. Any sale subject to this subsection shall be
12 awarded and released and may be operated under the
13 terms of paragraph (1) until completed and shall not
14 count against current allowable sale quantities or timber
15 sales to be offered under subsection (b) and (d)."

16 SEC. 326. (a) LAND EXCHANGE.—The Secretary of
17 the Interior (hereinafter referred to as the "Secretary")
18 is authorized to convey to the Boise Cascade Corporation
19 (hereinafter referred to as the "Corporation"), a corpora-
20 tion formed under the statutes of the State of Delaware,
21 with its principal place of business at Boise, Idaho, title
22 to approximately seven acres of land, more or less, located
23 in sections 14 and 23, township 36 north, range 37 east,
24 Willamette Meridian, Stevens County, Washington, fur-
25 ther identified in the records of the Bureau of Reclama-

8 0000 RS

*Salvage
Replacement
Volume*

1 SEC. 325. Amend section 2001(k) of Public Law
2 104-19 by striking "in fiscal years 1995 and 1996" in
3 paragraph (1) and adding paragraph (4) to read:

4 "(4) TIMING AND CONDITIONS OF ALTERNATIVE VOL-
5 UME.—For any sale subject to paragraph (2) of this sub-
6 section, the Secretary concerned shall, and for any other
7 sale subject to this subsection, the Secretary concerned
8 may, within 45 days of the date of enactment of this para-
9 graph, reach agreement with the purchaser to identify and
10 provide, by a date agreed to by the purchaser, a volume,
11 value and kind of timber satisfactory to the purchaser to
12 substitute for all or a portion of the timber subject to the
13 sale, which shall be subject to the original terms of the
14 contract except as otherwise agreed, and shall be subject
15 to paragraph (1). After the agreed date for providing al-
16 ternative timber the purchaser may operate the original
17 sale under the terms of paragraph (1) until the Secretary
18 concerned designates and the purchaser accepts alter-
19 native timber under this paragraph. Any sale subject to
20 this subsection shall be awarded and released and may be
21 operated under the terms of paragraph (1) until completed
22 and shall not count against current allowable sale quan-
23 tities or timber sales to be offered under subsection (b)
24 and (d)."

[Handwritten scribbles]

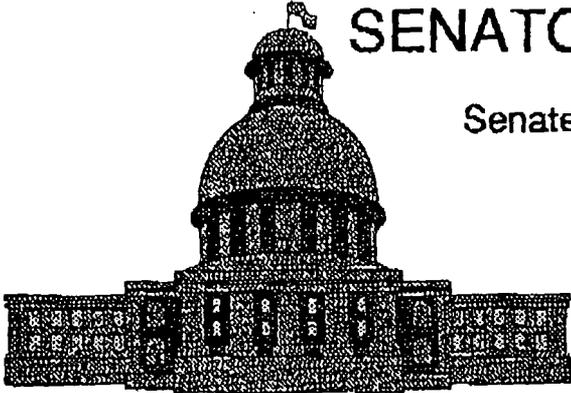
1 “(5) BUY-OUT AUTHORIZATION.—The Secretary con-
 2 cerned is authorized to permit a requesting purchaser of
 3 any sale subject to this subsection to return to the Govern-
 4 ment all or a specific volume of timber under the sale con-
 5 tract, and shall pay to such purchaser upon tender of such
 6 volume a buy-out payment for such volume from any funds
 7 available to the Secretary concerned except from accounts
 8 governing or related to forest land management, fire fight-
 9 ing, timber sale preparation, harvest administration, road
 10 construction and maintenance, timber sale program sup-
 11 port; any accounts associated with preparing or admin-
 12 istering the sale of timber from any public lands under
 13 the jurisdiction of the ~~secretary~~ secretary concerned, range or min-
 14 erals management; or any permanent appropriation or
 15 trust funds. Such volume and such payment shall be mu-
 16 tually agreed to by the Secretary and the purchaser. The
 17 authority provided by this paragraph to reach such agree-
 18 ment shall expire 45[^] after the enactment of this para-
 19 graph.”

*similar to
 that field
 on language
 on buyout*

S/

DAYS/?

20 SEC. 326. (a) LAND EXCHANGE.—The Secretary of
 21 the Interior (hereinafter referred to as the “Secretary”)
 22 is authorized to convey to the Boise Cascade Corporation
 23 (hereinafter referred to as the “Corporation”), a corpora-
 24 tion formed under the statutes of the State of Delaware,
 25 with its principal place of business at Boise, Idaho, title



SENATOR MARK O. HATFIELD

Senate Hart Office Building, Room 711
Washington, D.C. 20510
202-224-3753

To: TJ

From: Doug

Date: _____

Number of Pages: 3

Comments:

Please call 224-3753 if there is a problem in transmission.

SECTION 2001(k) BUYOUT PROVISION

1. Add after the proposed new "alternative volume" paragraph in section 2001(k) of Public Law 104-19 the following:

"(5) BUY-OUT AUTHORIZATION - The Secretary concerned is authorized to permit a requesting purchaser of any sale subject to this subsection to return to the government all or a specific volume of timber under the sale contract, and shall pay to such purchaser upon tender of such volume a buy-out payment for such volume from funds available under section _____ (b) (1) (B) [section 327, the "Timber Sales Pipeline Restoration Funds" provision, of FY 1996 Interior Appropriations bill conference report]. Such volume and such payment shall be mutually agreed to by the Secretary and the purchaser. The authority provided by this paragraph shall expire two years after the enactment of this paragraph."

2. In the Timber Sales Pipeline Restoration Funds provision of the Fiscal Year 1996 Interior Appropriations Act [section 327 of the conference report] amend subsection (b) (1) (B) by striking "respectively." and inserting a lieu thereof "respectively, or the buy-out of timber sales under section 2001(k) (5) of Public Law 104-19."

2/27/96

Sec. _____ Amend subsection 2001(k) of Public Law 104-19 by striking "in fiscal years 1995 and 1996" in paragraph (1) and amending paragraph (3) to read:

"(3) TIMING AND CONDITIONS OF ALTERNATIVE VOLUME-- For any sale subject to paragraph (2) of this subsection, the Secretary concerned shall, and for any other sale subject to this subsection, the Secretary concerned may, within 45 days of the date of enactment of this paragraph, reach agreement with the purchaser to identify and provide, by a date agreed to by the purchaser, a volume, value and kind of alternative timber satisfactory to the purchaser to substitute for all or a portion of the timber subject to the sale, which shall be subject to the original terms of the contract, except as otherwise agreed, and shall be subject to paragraph (1). After the agreed date for providing alternative timber, the purchaser may operate the original sale under the terms of paragraph (1) until the Secretary concerned designates and the purchaser accepts alternative timber under this paragraph. Any sale subject to this subsection shall be awarded, released and completed pursuant to paragraph (1) for a period equal to the length of the original contract, and shall not count against the current allowable sales quantity or timber sales to be offered under subsections (b) and (d)."

2/27 5:30pm

SECTION 2001 (K) BUYOUT PROVISION

1. Add after the proposed new "alternative volume" paragraph in section 2001 (k) of Public Law 104-19 the following:

"(5) BUY-OUT AUTHORIZATION - The Secretary concerned is authorized to permit a requesting purchaser of any sale subject to this subsection to return to the Government all or a specific volume of timber under the sale contract, and shall pay to such purchaser upon tender of such volume a buy-out payment for such volume from any funds available to the Secretary concerned except from accounts governing or related to forest land management, fire-fighting, timber sale preparation, harvest administration, road construction and maintenance, timber sale program support; any accounts associated with preparing or administering the sale of timber from any public lands under the jurisdiction of the Secretary concerned, range or minerals management; or any permanent appropriation or trust funds. Such volume and such payment shall be mutually agreed to by the Secretary and the purchaser. The authority provided by this paragraph shall expire 45 days after the enactment of this paragraph."

Gorton's

Suggestion -

Please correct.
DP

SECTION 2001 (K) BUYOUT PROVISION

1. Add after the proposed new "alternative volume" paragraph in section 2001 (k) of Public Law 104-19 the following:

"(5) BUY-OUT AUTHORIZATION - The Secretary concerned is authorized to permit a requesting purchaser of any sale subject to this subsection to return to the Government all or a specific volume of timber under the sale contract, and shall pay to such purchaser upon tender of such volume a buy-out payment for such volume from any funds available to the Secretary concerned except from accounts governing or related to timber sale preparation, harvest administration, road contribution and maintenance, timber sale program support, or range or minerals management. Such volume and such payment shall be mutually agreed to by the Secretary and the purchaser. The authority provided by this paragraph shall expire 45 days after the enactment of this paragraph."

Section _____. Amendments to the Rescissions Act

(a) FINDING. -- The Congress finds and declares that it is in the national interest to ensure that valuable natural resources in Oregon and Washington are protected to prevent environmental injury to forest resources, chinook salmon and other wildlife, and rivers and streams, and jeopardy to the livelihoods of those who depend on commercial and sport fisheries and other natural resources; and that the Secretaries of Agriculture and the Interior will use the authority provided in this section with discretion, and in conjunction with a continuation of agency efforts to reach mutually agreeable accommodations with timber purchasers to protect these resources.

(b) PURPOSES. -- The purposes of these amendments are to-

- (i) clarify the intent of Congress with regard to certain provisions of Section 2001 of the Rescissions Act,
- (ii) protect the Secretaries' authority to implement the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl, and
- (iii) provide the Secretaries concerned with additional authority to replace, modify, suspend or terminate certain timber contracts.

(c) DEFINITION. -As used in this section, "Rescissions Act" means the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism initiatives, for Assistance in the Recovery from the Tragedy that occurred at Oklahoma City, and Rescissions Act, 1995 (Pub. Law No. 104-19).

(d) OPTION 9 TIMBER SALES -- Section 2001 is amended-

- (1) by striking subsection (d);
- (2) by redesignating subsections (e) through (l) as (d) through (k), respectively;
- (3) in subsection (d) (as so redesignated), by striking ", timber sales conducted under subsection (d),";
- (4) in subsection (e) (as so redesignated),-
 - (A) in paragraph (1), by striking ", and a timber sale to be conducted under subsection (d),";
 - (B) in paragraph (2), by striking "or a timber sale to be conducted under subsection (d),";
 - (C) in paragraph (3), by striking "or any decision to prepare, advertise, offer, award, or operate a timber sale pursuant to subsection (d),";

(5) in subsection (h) (as so redesignated), by striking "and any timber sale under subsection (d)";

(6) in subsection (i) (as so redesignated),-

(A) in the first sentence, by striking "subsections (b) and (d)" and inserting "subsection (b)";

(B) in the second sentence, by striking "and timber sale contracts offered under subsection (d)".

(e) AWARD AND RELEASE OF TIMBER SALE CONTRACTS SUBJECT TO SECTION 318 OF PUBLIC LAW 101-121 -- Subsection 2001(j) (as redesignated by subsection (d) of this Section) is amended-

(1) by striking paragraphs (1) through (3) and inserting the following new paragraphs:

(1) REPLACEMENT, MODIFICATION, SUSPENSION OR TERMINATION OF TIMBER SALE CONTRACTS.

(A) Notwithstanding the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.), the Federal Land Management Policy Act (43 U.S.C. 1701 et seq.), the Oregon & California Lands Act (43 U.S.C. 1181a et seq.) or other law applicable to the award, release, completion, replacement, modification suspension or termination of timber sale contracts, the Secretary concerned may replace, modify, suspend or terminate any timber sale contract, currently suspended, that was offered or awarded in fiscal year 1990 under the authority of, and in compliance with, section 318(b) or that was released pursuant to this subsection where the Secretary concerned, in his discretion, finds that such replacement, modification, suspension or termination is authorized pursuant to originally advertised terms of the contract or that release or completion of the contract may have an adverse effect on the environment or natural resources. Any replacement, modification, suspension or termination shall be effective immediately upon issuance of the Secretary's finding.

(B) The Secretary concerned may expend, without further appropriation action, from sums otherwise available in the Treasury, up to \$100 million in compensation to contract holders for changes made pursuant to the authority provided in subparagraph (A) of this paragraph.

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

(f) EFFECT ON PLANS, POLICIES AND ACTIVITIES -- Subsection 2001(k) (as redesignated by subsection (d) of this Section) is amended in the first sentence by-

(1) striking "or permit"; and

(2) striking ", except" and all that follows through "program".

(5) in subsection (h) (as so redesignated); by striking "and any timber sale under subsection (d)";

(6) in subsection (i) (as so redesignated), -
 (A) in the first sentence, by striking

"subsections (b) and (d)" and inserting
 "subsection (b)";

(B) in the second sentence, by striking "and timber sale contracts offered under subsection (d)".

(e) AWARD AND RELEASE OF TIMBER SALE CONTRACTS SUBJECT TO SECTION 318 OF PUBLIC LAW 101-121 -- Subsection 2001(j) (as redesignated by subsection (d) of this Section) is amended-

(1) by striking paragraphs (1) through (3) and inserting the following new paragraphs:

(1) REPLACEMENT, MODIFICATION, SUSPENSION OR TERMINATION OF TIMBER SALE CONTRACTS.

(A) Notwithstanding the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.), the Federal Land Management Policy Act (43 U.S.C. 1701 et seq.), the Oregon & California Lands Act (43 U.S.C. 1181a et seq.) or other law applicable to the award, release, completion, replacement, modification suspension or termination of timber sale contracts, the Secretary concerned may replace, modify, suspend or terminate any timber sale contract, currently suspended, that was offered or awarded in fiscal year 1990 under the authority of, and in compliance with, section 318(b) or that was released pursuant to this subsection where the Secretary concerned, in his discretion, finds that such replacement, modification, suspension or termination is authorized pursuant to originally advertised terms of the contract or that release or completion of the contract may have an adverse effect on the environment or natural resources. Any replacement, modification, suspension or termination shall be effective immediately upon issuance of the Secretary's finding.

(B) The Secretary concerned may expend, without further appropriation action, from sums otherwise available in the Treasury, up to \$100 million in compensation to contract holders for changes made pursuant to the authority provided in subparagraph (A) of this paragraph.

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

(f) EFFECT ON PLANS, POLICIES AND ACTIVITIES -- Section 2001 is further amended by striking subsection (k) (as redesignated by subsection (d) of this Section).

Draft Amendments to § 2001, Pub. L. 104-19

Section _____. Amendments to the Rescissions Act

(a) FINDING. -- The Congress finds and declares that it is in the national interest to ensure that valuable natural resources in Oregon and Washington are protected to prevent environmental injury to forest resources, chinook salmon and other wildlife, and rivers and streams, and jeopardy to the livelihoods of those who depend on commercial and sport fisheries and other natural resources; and that the Secretaries of Agriculture and the Interior will use the authority provided in this section with discretion, and in conjunction with a continuation of agency efforts to reach mutually agreeable accommodations with timber purchasers to protect these resources.

- (b) PURPOSES. -- The purposes of these amendments are to-
- (i) clarify the intent of Congress with regard to certain provisions of Section 2001 of the Rescissions Act,
 - (ii) protect the Secretaries' authority to implement the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl, and
 - (iii) provide the Secretaries concerned with additional authority to replace, modify, suspend or terminate certain timber contracts.

(c) DEFINITION. -As used in this section, "Rescissions Act" means the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism initiatives, for Assistance in the Recovery from the Tragedy that occurred at Oklahoma City, and Rescissions Act, 1995 (Pub. Law No. 104-19).

- (d) OPTION 9 TIMBER SALES -- Section 2001 is amended-
- (1) by striking subsection (d);
 - (2) by redesignating subsections (e) through (l) as (d) through (k), respectively;
 - (3) in subsection (d) (as so redesignated), by striking ", timber sales conducted under subsection (d),";
 - (4) in subsection (e) (as so redesignated), -
 - (A) in paragraph (1), by striking ", and a timber sale to be conducted under subsection (d),";
 - (B) in paragraph (2), by striking "or a timber sale to be conducted under subsection (d),";
 - (C) in paragraph (3), by striking "or any decision to prepare, advertise, offer, award, or operate a timber sale pursuant to subsection (d),";