

NLWJC- Kagan

Counsel - Box 011 - Folder 005

Timber - Other Litigation: Seattle
Audubon v. Thomas [3]

10/24/95 10:48

002/003



U.S. Department of Justice

Environment and Natural Resources Division

General Litigation Section

Washington, D.C. 20530

October 24, 1995

ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT DOCUMENT

MEMORANDUM

TO: Don Barry
Bob Baum
Dinah Bear
Mark Gaede
Terry Garcia
Dave Geyer
Mike Gippert
Nancy Hayes
Tom Jensen
Ann Kennedy
Jay McWhirter
Rick Prausa

FROM: Peter Coppelman

RE: First and Last Timber Sales:
Unenjoined Sales at Issue before Judge Dwyer

We met at DOJ last week to discuss how we should respond to Sierra Club's filing before Judge Dwyer as to six section 318 timber sales. At that time we reviewed four of these sales which were under a court injunction, having been found to violate the section 318 fragmentation requirement. We determined that as to those sales we would agree with the Sierra Club's position and not seek to have the sales go forward. We also included two other sales (the First and Last) in that category. However, those sales were never enjoined, but were withdrawn following the entry of other injunctions.

Although we had discussed taking the same position on the First and Last sales as we were taking on the other four sales, I do not believe we can take that position. After reviewing all the pleadings to date and the memorandum of Jack Ward Thomas on this issue, I believe the argument in favor of a continued injunction is foreclosed.

First, on September 27, 1995, Jack Ward Thomas sent a Memorandum to the Regional Forester, Region 6. This memo outlined the steps that should be taken to comply section 2001(k). The regional Forester was told not to award those timber sales that are currently enjoined by court order. For those sales not enjoined, however, Jack Ward Thomas explained:

For those sales listed on Table 3 that are not currently enjoined [which include First and Last] but are delayed as a result of other court actions, the Department of Justice will begin the process of providing notification to the relevant court and parties to the litigation of the applicability of Section 2001(k) and the Administration's proposal to proceed with these sales upon resolution of any outstanding issues.

Memo, at 1, attached hereto. Second, in response to pleadings filed before Judge Hogan, we have repeated this position, explaining that those sales -- including First and Last -- will go forward following notice to all the parties in the current and previous litigation.

Therefore, at this time and based upon these prior statements, I want to advise you that we will continue to argue that an injunction should remain in place for all previously enjoined sales. However, as to those that were never enjoined, we have no choice but to indicate that we believe those sales should be allowed to go forward. Please call me if you have any questions.

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

FAX NUMBER (202) 305-0506
CONFIRMATION NUMBER (202) 305-0460

PLEASE DELIVER TO:

To: Dinah Bear 456-0753
Lois Schiffer 514-0557
Peter Coppelman
Mike Gippert, 690-2730
Jay McWhirter
Tim Obst
Elena Kagan 456-1647

NUMBER OF PAGES:

DATE: January 17, 1996

FROM: Michelle Gilbert

MESSAGE: Attached is a draft notice for filing before Judge Dwyer relating to the First and Last sales. Please let me know if you have any comments by 10:00 tomorrow morning, so I can get back to Scott Horngren and file this with the Court. I will also file it pursuant to a notice of filing with Judge Hogan, to keep him apprised of our actions relating to these sales.

THE HONORABLE WILLIAM L. DWYER

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

SEATTLE AUDUBON SOCIETY, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 JACK WARD THOMAS, et al.)
)
 Defendants.)
)
 _____)

Civ. No. C89-160WD

NOTICE OF FILING
AND REQUEST FOR
STATUS CONFERENCE

The United States Forest Service, through and by its counsel, hereby files the Order issued by Judge Hogan of the United States District Court of the District of Oregon on January 10, 1996 in Northwest Forest Resource Council v. Glickman, No. 95-6244 (consolidated with Case Nos. 95-6267, 95-6384). Pursuant to the January 10 Order, Judge Hogan declared that certain sales, including the First, Last, Cowboy, Nita and South Nita timber sales located on the Umpqua National Forest and the Garden sale located in the Siskiyou National Forest are subject to the requirement of Section 2001 of the Rescissions Act of 1995. Pub. L. 104-19 (July 27, 1995). Judge Hogan's January 10 Order enjoins the federal defendants to "immediately award, release and permit to be completed all sales subject to section 2001(k)(1) as declared in this order. However, with respect to

NOTICE OF INTENT TO RELEASE
FIRST AND LAST TIMBER SALES - 1

1 offered sales subject to a preceding injunction issued by another
2 court, this order shall operate only as declaratory judgment
3 under Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201.
4 Plaintiffs may seek relief in the court that issued the preceding
5 injunction or in this court subsequent to the issuing court's
6 modification or vacation of the preceding injunction."

7 The above-mentioned sales were previously the subject of
8 litigation in the above-captioned action. The First and Last
9 sales were the subject of dismissals based on the Forest
10 Service's decision to withdraw the sales.¹ The Cowboy, Nita,
11 South Nita and Garden sales were enjoined for violations of
12 Section 318 of the Department of the Interior and Related
13 Agencies Appropriations Act for Fiscal Year 1990. Pub. L. No.
14 101-121 (103 Stat. 701) (1989). These six sales were more
15 recently the subject of plaintiffs' October 3, 1995 motion to
16 clarify and enforce judgment filed with this Court.² On
17 November 3, 1995, this Court stayed plaintiff's motion to clarify
18 and enforce judgment "pending further orders on the same or

19
20 ¹ In 1990, plaintiffs Seattle Audubon Society et al.
21 sought to halt the release of these two sales through separate
22 motions for summary judgment and a permanent injunction. See
23 Minute Order (October 16, 1990) (Dkt.# 675). In response to
24 these motions, the Forest Service agreed to withdraw the First
25 and Last Timber Sales. Upon notice of the Forest Service's
26 action, this Court declared the motions for summary judgment and
27 permanent injunction "stricken as moot." Id.

28 ² On October 3, 1995, plaintiffs' Pilchuck Audubon
Society et al. filed a Motion to Clarify and Enforce Judgment as
to six sales, including the First and Last timber sales, that
were enjoined or withdrawn from release as a result of earlier
litigation in this court. See Motion to Clarify and Enforce
Judgment (10/3/95).

1 related matters concerning Section 2001(k) (1) in the District of
2 Oregon. Any party may renote the motion on one week's notice,
3 with responses to be due the day before the renoted hearing
4 date."

5 The First and Last timber sales were not enjoined by this
6 Court and are now subject to Judge Hogan's injunction ordering
7 their release. However, because these two sales were the subject
8 of previous proceedings before this Court, including the recent
9 motion to clarify and enforce judgment filed by the plaintiffs in
10 this action, the Forest Service believes that direction from this
11 Court is necessary. Accordingly, the Forest Service seeks a
12 status conference to clarify what action must be taken with these
13 two sales.³ Pursuant to Local Rule LR 7(f), federal defendants
14 respectfully request to participate in the status conference by
15 telephone. The Forest Service notes that the four other sales,
16 Cowboy, Nita, South Nita, and Garden, are not subject to Judge
17 Hogan's January 10 injunction.⁴

18
19 ³ In previous filings before Judge Hogan, federal
20 defendants explained that in light of this Court's stay of
21 plaintiffs' motion to clarify and enforce this Court's prior
22 orders, the First and Last sales should not be released unless
23 Judge Hogan were to rule that the sales are covered by section
2001(k) and ~~that~~ this Court were to confirm that the sales should
be released upon consideration of Judge Hogan's ruling. See
Defendants' Response to NFRC's Two Motions Seeking Release of 11
Sales Subject to Injunctions or Other Court Orders at page 9,
note 7 (dated November 21, 1995).

24 ⁴ Federal defendants had argued before Judge Hogan that
25 these four sales which had been enjoined for violations of
26 Section 318 and were never cured to comply with the statute were
void ab initio and accordingly not subject to Section 2001(k) (1).
Judge Hogan rejected that argument and declared that these sales
(continued...)

27 NOTICE OF INTENT TO RELEASE
28 FIRST AND LAST TIMBER SALES - 3

1 Respectfully submitted this ____ day of January 1996.

2

LOIS J. SCHIFFER
Assistant Attorney General

3

4

PETER D. COPPELMAN
Deputy Assistant Attorney General

5

6

KATRINA C. PFLAUMER
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9

10

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12

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Attorneys for Federal Defendants

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⁴(...continued)

also were subject to Section 2001(k)(1). Judge Hogan did not
enjoin award of these four sales in light of this Court's
previous injunctions.

27

NOTICE OF INTENT TO RELEASE
FIRST AND LAST TIMBER SALES - 4

28

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

FAX NUMBER (202) 272-6817, 6815, 5775
CONFIRMATION NUMBER (202) 272-8056

PLEASE DELIVER TO:

To:

Dinah Bear 456-0753
Elena Kagan 456-1647

DATE: January 16, 1996

FROM: Michelle L. Gilbert

MESSAGE: Attached is the letter that we sent to Scott
Horngren this evening. Also attached is one of our memorandum
responding to NFERC's motion for release of 11 enjoined or
withdrawn sales, as well as the briefing paper that we circulated
to the group before drafting the memo. Please call with any
questions.



U.S. Department of Justice

Environment and Natural Resources Division

General Litigation Section

Washington, D.C. 20530

January 16, 1996

Scott W. Horngren, Esq.
Haglund & Kirtley
One Main Place
101 S.W. Main, Suite 1800
Portland, Oregon 97204

Facsimile Number: 503 225-1257

Re: Northwest Forest Resource Council v. Glickman

Dear Mr. Horngren:

We received today your letters of January 12, and January 16, 1996, in which you raise questions about compliance with Judge Hogan's Order of January 10, 1996. As you may be aware, the federal government has been shut down due to a funding shortage from December 16 through January 5, 1996. Following that furlough situation, Washington, D.C. was hit with a winter blizzard, and these weather conditions closed the federal government for January 8-10 and 12. Thus, today represents our first day back in the office.

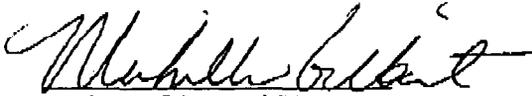
You advise us in your letter that unless you hear from us by the close of business today regarding the First and Last timber sales you will file a motion of contempt based on the court's January 10, 1996 Order. As with all previous orders, we take the Court's directions seriously. We are aware of the Court's ruling on First and Last and the importance of prompt compliance.

We are also mindful, however, that these sales are also the subject of a motion for clarification and enforcement by the plaintiffs in SAS v. Thomas Civ. No. 89-160(WD) before Judge Dwyer. On November 3rd, 1995, Judge Dwyer stayed that motion pending a ruling by Judge Hogan. Thus, we are in the process of determining [what filings are required before Judge Dwyer before releasing these sales.] We will, of course, want to keep Judge Hogan apprised of our actions in connection with these sales before the District Court for the Western District of Washington.

We are committed to complying fully and promptly with Judge Hogan's Order. We will be contacting you by Thursday to discuss our next step. In the meanwhile, we certainly believe that any motion for contempt would be improper.

Sincerely,

By:



Michelle Gilbert
Ellen M. Athas

Gilbert, M.

RECEIVED

1 KRISTINE OLSON
United States Attorney
2 888 SW Fifth Avenue
Portland, OR 97204-2024
3 (503) 727-1008

SENOV 21 PM 4:24

CLERK U.S. DISTRICT COURT
DISTRICT OF OREGON
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90-1-1-2928

DEPARTMENT OF JUSTICE	
<i>#90</i>	
LANDS	

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF OREGON

12 NORTHWEST FOREST RESOURCE COUNCIL,)

13 Plaintiff,)

14 v.)

15 DAN GLICKMAN, is his capacity)
16 as Secretary of Agriculture;)
17 BRUCE BABBITT, in his capacity as)
Secretary of Interior,)

18 Defendants.)

Civil No. 95-6244-HO
(lead case)
Civil No. 95-6267-HO
(consolidated case)
DEFENDANTS' RESPONSE
TO NFRC'S TWO MOTIONS
SEEKING RELEASE OF 11
SALES SUBJECT TO
INJUNCTIONS OR OTHER
COURT ORDERS

19 INTRODUCTION

20 Defendants hereby respond to NFRC's two motions seeking the
21 release under subsection 2001(k)(1) of 11 timber sales that had
22 been the subject of court injunctions or other orders.¹ By a
23

24 ¹ See NFRC's Motion for Leave to File Supplemental
25 Memorandum; Motion for Further Clarification or Enforcement of
26 October 17 Injunction; Supplemental Memorandum in Support of
Third Motion for Summary Judgment and in Support of Motion for
Further Clarification or Enforcement of the Court's October 17

27 DEFENDANTS' RESPONSE TO
NFRC'S TWO MOTIONS SEEKING
RELEASE OF 11 SALES

1 third motion for summary judgment, NFRC had sought the immediate
2 release of 24 timber sales that had initially been offered under
3 Section 318 of the 1990 Appropriations Act, Pub. L. 101-121. As
4 explained in defendants' opposition to that motion, and as
5 further clarified in the Seventh Declaration of Jerry Hofer,
6 attached as Ex.A, 14 of those 24 sales were released for
7 operation or award to the high bidder.² In addition, four sales
8 were withheld for known to be nesting determinations.³ The
9 remaining six sales were the subject of a proceeding before Judge
10 Dwyer in the Western District of Washington and have not been
11 released. It is these six sales, in addition to three sales
12 offered more recently in 1994, 1993 and 1991 that also were the
13 subject of other courts' orders, that remain at issue pursuant to
14
15
16

17 Injunction. As explained in Defendants' Response to NFRC's
18 Motions for Leave to File Supplemental Brief, filed November 3,
19 1995 and incorporated herein by reference (hereafter "Defendants'
20 Response"), defendants strongly contest NFRC's allegations that
21 defendants have taken inconsistent positions in connection with
22 the sales at issue herein. As explained, defendants have clearly
23 stated how they intended to address the subject sales and have at
24 all times acted consistent with those statement. See Defendants'
25 Response at 4-7.

26 ² For one sale, the Holdaway II sale, the high bidder
27 declined the award. See Seventh Declaration of Jerry Hofer at ¶
3. Accordingly, that sale will not proceed further under
subsection 2001(k)(1).

28 ³ See Declaration of Grant Gunderson at ¶ 10 and
29 Supplemental Gunderson Declaration at ¶ 12, dated September 27,
30 1995 and attached as Ex. B to Defendants' Opposition to
31 Plaintiff's Third Motion for Summary Judgment and in Support of
32 Defendants' Cross Motion (hereafter "Defendants' Opposition").

33 DEFENDANTS' RESPONSE TO
34 NFRC'S TWO MOTIONS SEEKING
35 RELEASE OF 11 SALES

1 NFRC's motions.⁴

2 For the majority of the subject sales, the agencies reassert
3 that subsection 2001(k)(1) does not mandate their immediate
4 release as they were not sales that were "subject to section
5 318."⁵ However, given the Court's September 13 decision and
6 October 17 Order, the agencies recognize that such a position,
7 while on appeal, does not currently provide a grounds for not
8 releasing the subject sales, and the agencies are acting
9 accordingly. Nevertheless, for the four sales that had been
10 enjoined by Judge Dwyer for noncompliance with section 318,
11 alternative grounds exist for concluding that such sales do not
12 fall within the scope of subsection 2001(k)(1) as interpreted by
13 this Court. As to the remaining seven sales, [while defendants
14 maintain the right to act in accordance with any favorable
15 decision on appeal, defendants are not aware of grounds for
16 contesting their release.] Indeed, two sales have been released
17 under subsection 2001(k)(1), as described below. Defendants do
18 request that, upon issuance of a ruling by this Court, defendants
19 be provided the opportunity to advise the relevant court of this

20
21 ⁴ While NFRC's two recently filed motions seek the
22 release of 11 sales, 2 of those sales have already been released,
as further explained above.

23 ⁵ The only sales whose release may not be affected by the
24 outcome of the pending appeal to the Ninth Circuit are BOULDER
25 KRAB, ELK FORK, FIRST and LAST sales, which were initially
26 offered under section 318 and were not subject to a judicial
determination that the sales violated section 318. See
discussion infra regarding COWBOY, NITA, SOUTH NITA and
GARDEN.

27 DEFENDANTS' RESPONSE TO
NFRC'S TWO MOTIONS SEEKING
RELEASE OF 11 SALES

1 Court's ruling.

2 STATEMENT OF FACTS

3 I. THE 11 SALES SUBJECT OF NFRC'S TWO MOTIONS

4 6 Sales before 5 J. Dwyer *	2 Sales before J. Panner *	3 FY 91 95 Sales
6 4 Sales enjoined (Cowboy, Nita, 7 South Nita, Garden)	2 Sales subject of stipulated dismissals (Boulder Krab, Elk Fork)	2 sales enjoined (Tip, Tiptop)
8 2 Sales subject of stipulated dismissals (First, Last)	*Released.	1 Sale subject of orders effectively prohibiting release (Gatorson)
9 *Subject of motion to clarify and enforce judgment (stayed)		

12
13 II. THE SIX SALES SUBJECT TO
14 PROCEEDINGS BEFORE JUDGE DWYER

15 The action involving the six sales before Judge Dwyer
16 commenced in 1989 with the filing of a complaint in the United
17 States District Court for the Western District of Washington
18 challenging the Forest Service's adoption of the 1988 ROD and
19 FSEIS for an Amendment to the Pacific Northwest Regional Guide
20 ("Spotted Owl Guidelines"). See Order on Motions Heard on
21 November 1, 1995, SAS v. Thomas, C89-160WD. SAS plaintiffs
22 sought a preliminary injunction, and on March 24, 1989, the court
23 preliminarily enjoined certain planned timber sales. Following
24 enactment of Section 318, defendants moved to vacate the
25 preliminary injunction, which was granted in November 1989. See
26 generally Seattle Audubon Society v. Robertson, 914 F.2d 1311

27 DEFENDANTS' RESPONSE TO
NFRC'S TWO MOTIONS SEEKING
RELEASE OF 11 SALES

1 (9th Cir. 1990), rev'd and remanded, Robertson v. Seattle Audubon
2 Soc'y, 503 U.S. 429 (1992).

3 Meanwhile, on various dates in 1990, pursuant to Congress's
4 directives in Section 318, the Forest Service proceeded to
5 auction the COWBOY, NITA, SOUTH NITA, FIRST and LAST timber sales
6 on the Umpqua National Forest, and the GARDEN timber sale on the
7 Siskiyou National Forest, under authority of section 318. See
8 Order on November 1, 1995 Motions. In March of 1990, SAS
9 plaintiffs amended their complaint to add, inter alia, claims
10 under Section 318. The amended complaint sought an injunction
11 against all sales that were not in compliance with Section 318
12 and specifically alleged violations of subsection 318(b) that
13 sets forth the Forest Service's duties to minimize fragmentation
14 of the most ecologically significant old-growth forests ("ESOG")
15 when possible within the parameters of Section 318. See First
16 Amended Complaint (3/30/90).

17 In April 1990, SAS plaintiffs filed the first challenge to
18 one of the six sales at issue here. The motion for summary
19 judgment and a permanent injunction as to the COWBOY timber sale
20 located on the Umpqua National Forest alleged that the Forest
21 Service failed to comply with the fragmentation requirements of
22 Section 318(b)(2). Challenges to the NITA, SOUTH NITA, FIRST and
23 ~~LAST~~ sales also located on the Umpqua National Forest, and the
24 GARDEN timber sale located on the Siskiyou National Forest, were
25 brought on similar grounds. See Seattle Audubon Soc'y v. Evans,
26 771 F.Supp. 1081, 1085 (W.D.Wash. 1991).

27 DEFENDANTS' RESPONSE TO
NFRS TWO MOTIONS SEEKING
RELEASE OF 11 SALES

1 The result of these actions were four injunctions
2 prohibiting the Forest Service from advertising, offering,
3 awarding or operating the COWBOY, NITA, SOUTH NITA and GARDEN
4 timber sales "until such time as the agency shows that a non-
5 ESOG-fragmenting sale . . . cannot be substituted feasibly and
6 consistently with existing management plans." Orders attached as
7 Ex. C to Defendants' Opposition.

8 Prior to a ruling on the FIRST and LAST timber sales, the
9 Forest Service rejected all bids and informed the apparent high
10 bidder of its intention not to reoffer the sales as part of the
11 fiscal year 1990 timber sale program.⁶ Consequently, the
12 actions against the FIRST and LAST timber sales were stricken as
13 moot. See Minute Order attached as Ex. D to Defendants'
14 Opposition.

15 In October of 1990 SAS plaintiffs amended their complaint a
16 second time claiming that the Forest Service had violated
17 National Environmental Policy Act (NEPA), National Forest
18 Management Act (NFMA), Migratory Bird Treaty Act (MBTA) and the
19 fragmentation provision of Section 318 in failing to provide
20 adequate standards and guidelines for the management of suitable
21 spotted owl habitat. Second Amended Complaint (10/22/90). SAS
22 plaintiffs also renewed their motion for summary judgment and a
23 permanent injunction as to Garden, Nita, South Nita, First and
24 Last timber sales alleging violations of NEPA, NFMA, MBTA and the

25
26 ⁶ See Ex. A to Declarations of Allan Brock attached
hereto as Ex. B.

27 DEFENDANTS' RESPONSE TO
NFRC'S TWO MOTIONS SEEKING
RELEASE OF 11 SALES

1 APA. See Seattle Audubon Soc'y v. Robertson, 931 F.2d 590 (9th
2 Cir. 1991).

3 Prior to issuing the May 23, 1991 Memorandum Decision and
4 Injunction compelling the Forest Service to complete and adopt
5 revised standards and guidelines for management of spotted owl
6 habitat, Judge Dwyer denied SAS plaintiffs' renewed motion as to
7 the five sales as moot, indicating that "nothing in the record
8 suggests the Forest Service plans to go forward with these
9 sales." Decision on Motions for Summary Judgment and for
10 Dismissal (3/7/91) (attached as Ex. C).

11 The phase of the litigation relating to the management of
12 the old-growth forests concluded in April 1992 with the entry of
13 a final judgment dismissing all claims as to the 1988 ROD and SAS
14 plaintiffs' NEPA claims as moot, granting summary judgment in
15 favor of SAS plaintiffs' NFMA claims and granting summary
16 judgment for defendants' MBTA claims. The judgment did not
17 address SAS plaintiffs' section 318 claims. See Seattle Audubon
18 Soc'y v. Mosley, 798 F. Supp. 1473, 1476 (W.D.Wash. 1992).

19 On October 3, 1995, SAS plaintiffs filed a motion to clarify
20 and enforce the prior judgments of the Dwyer Court regarding the
21 six timber sales. On November 7, 1995, Judge Dwyer stayed that
22 motion pending further orders of this Court. See Order on
23 November 1, 1995 Motions.

24 //

25 //

26 //

27 DEFENDANTS' RESPONSE TO
NFRS TWO MOTIONS SEEKING
RELEASE OF 11 SALES

1 **III. TWO SECTION 318 SALES SUBJECT TO**
2 **COURT PROCEEDINGS BEFORE JUDGE PANNER**

3 Two other sales initially offered under section 318, BOULDER
4 KRAB and ELK FORK, were challenged under NEPA and the Wild and
5 Scenic Rivers Act in an action before Judge Panner of the United
6 States District Court of for the District of Oregon, Civil No.
7 90-969-PA. See Complaint for Declaratory Judgment and Injunctive
8 Relief, attached hereto as Ex. D. Those actions did not raise
9 challenges for violations of section 318. The complaint
10 involving those sales was dismissed without prejudice on March
11 25, 1991 on the basis of a stipulation of the parties, in which
12 the Forest Service agreed to perform a new NEPA review for the
13 projects, issue a new Decision Notice and hold a new auction if
14 the sales were to proceed in the future. See Order attached as
15 Ex. D to Defendants' Opposition.

16 These two sales, that had been offered pursuant to section
17 318 and were never challenged under, or found to violate, section
18 318, have been released pursuant to subsection 2001(k)(1).
19 Because of the prior court proceedings involving the sales,
20 defendants explained in previous filings in this Court that "such
21 sales cannot be released without, at a minimum, alerting the
22 interested parties and relevant court of the potential
23 applicability of section 2001(k)" Defendants' Opposition
24 at 11. Consistent with that representation, for the ELK FORK and
25 BOULDER KRAB sales, defendants provided notice to the relevant
26 courts and all parties of the agency's intent to release the

27 DEFENDANTS' RESPONSE TO
NFRS TWO MOTIONS SEEKING
RELEASE OF 11 SALES

1 sales following expiration of 15 days from the date of the
 2 notice.⁷ See Notice of Filing dated October 16, 1995.
 3 Following the 15-day notice period, the Forest Service issued the
 4 award letters for these two sales. See Declaration of Jerry
 5 Hofer dated November 3, 1995, attached as Ex. A to Defendants'
 6 Response.

7 **IV. THE THREE SALES THAT WERE OFFERED IN 1994,**
 8 **1993 AND 1991 AND NOT PURSUANT TO SECTION 318**

9 The three remaining sales, TIP, TIPTOP and GATORSON, were
 10 not offered pursuant to Section 318, but were Fiscal Year 1991-95
 11 Sales, as addressed by this Court's October 17 Order.⁸

12 The TIP and TIPTOP sales are located on the Wenatchee
 13 National Forest. The TIP sale was awarded on September 9, 1994
 14 to Longview Fibre Co. See Chart attached to Seventh Declaration
 15 of Jerry Hofer. The TIPTOP sale was awarded February 16, 1994 to

16
 17 ⁷ The FIRST and LAST sales, before Judge Dwyer, also were
 18 the subject of prior court proceedings but had never been
 19 enjoined. Because these sales were the subject of the pending
 20 motion before Judge Dwyer to clarify and enforce his prior
 21 orders, defendants provided notice of intent to release these
 22 sales upon resolution of pending legal issues. See Notice of
 Filing dated October 16, 1995. On November 7, Judge Dwyer stayed
 that motion pending further orders by this Court. Accordingly,
 the FIRST and LAST sales are not scheduled to be released unless
 this Court were to order that they are covered by subsection
 2001(k)(1) and Judge Dwyer were to confirm that the sales should
 be released upon consideration of this Court's ruling.]

23 ⁸ As an initial matter, plaintiff NFRC has not
 24 demonstrated that it represents the companies which had been
 25 awarded these three sales, the TIP, TIPTOP and GATORSON sales.
 26 NFRC, therefore, has not demonstrated that it has standing to
 seek the release of these particular sales. See Defendants'
 Opposition to NFRC's Third Motion for Summary Judgment and in
 Support of Cross Motion at 12 - 16.

27 DEFENDANTS' RESPONSE TO
 NFRC'S TWO MOTIONS SEEKING
 RELEASE OF 11 SALES

1 St. Joe Lumber Co. Id. Before the contracts could be awarded,
2 these sales were enjoined by Judge Coughenour of the Western
3 District of Washington in Leavenworth Audubon v. Ferraro, 881 F.
4 Supp. 1482 (W.D. Wash. 1995). The sales were enjoined for NEPA
5 violations, including the failure to consider the impact of the
6 sales on the bull trout in the area, effect of the project on the
7 detrimental soil conditions of the drainage areas in the sale
8 area, significance of scientific information in the eastside
9 report and the August 1993 directive and subsequent May 1994
10 amendments, and the impact of the proposed project on the sale
11 area's streams' sediment quality and water temperature in light
12 of the 1994 wildfires. See generally Leavenworth Audubon, 881
13 F.Supp. at 1493-94.

14 The GATORSON sale, located in the Colville National Forest
15 in Washington, was awarded on May 6, 1993. See Chart to Hofer
16 Declaration. The high bidder was Vaagen Timber Products. Id.
17 The sale was challenged by Mitchell Smith, a recreational user,
18 who claimed: (1) the sale violated the Washington State
19 Wilderness Act and NEPA for failure to consider uninventoried
20 unroaded area for possible wilderness classification before
21 development and (2) violated NEPA for failure of the NEPA
22 documents to consider effect of the sale on a separate 5000 acre
23 roadless area. Smith v. United States Forest Service, 33 F.3d
24 1072 (9th Cir. 1994). The district court rejected the
25 challenges, granting the defendant Forest Service's motion for
26 summary judgment on both claims. However, the district court

27 DEFENDANTS' RESPONSE TO
NFRC'S TWO MOTIONS SEEKING
RELEASE OF 11 SALES

1 extended its preliminary injunction, enjoining most of the
2 logging pending the appeal. Smith, 33 F.3d at 1073. The Ninth
3 Circuit upheld the district court's decision as to the first
4 claim, but reversed as to the second claim, finding that the NEPA
5 documentation was insufficient. Id. at 1078-1079. The Ninth
6 Circuit affirmed the judgment of the district court in part and
7 reversed in part, and remanded the case to the district court.
8 Id. On March 30, 1995, the district court granted plaintiff
9 judgment in part in accordance with the Ninth Circuit's opinion,
10 and vacated the district court's December 13 judgment. See
11 Order attached hereto as Ex. E. The district court did not issue
12 a specific permanent injunction, although the sale effectively
13 was prohibited from proceeding.

14 As the sales have been enjoined, or effectively
15 prohibited from proceeding by court order,⁹ defendants cannot
16 unilaterally release such sales. Accordingly, the agencies are
17 preparing notices for filing with the relevant courts and
18 parties,¹⁰ advising them of the enactment of Section 2001, this
19 Court's September 13 and October 17 Orders, the pending appeal,
20

21 ⁹ While it does not appear that the district court issued
22 a specific injunction permanently enjoining the Gatorson sale,
23 the district court's judgment in accordance with the Ninth
24 Circuit opinion finding the underlying NEPA documentation
inadequate and declaring that the sale should not proceed absent
further NEPA analysis, effectively operated to prohibit the sale
from proceeding.

25 ¹⁰ In the event that defendants were to prevail on appeal,
26 defendants reserve the right to proceed in accordance with any
such decision in connection with these sales.

1 the subject of the current proceedings, and the defendants'
 2 intention to notify the court of a ruling by this Court. The
 3 defendants will file copies of those notices with this Court as
 4 well.

5 ARGUMENT

6 THE FOUR SALES ENJOINED FOR VIOLATING SECTION 318
 7 ARE NOT COVERED BY SUBSECTION 2001(K)

8 Of the 24 sales that were the subject of NFRC's third motion
 9 for summary judgment, defendants are contesting the release of
 10 four sales that were never offered in accordance with the
 11 authorizing statute's mandates and accordingly are not subject to
 12 subsection 2001(k). Assuming, as this Court has ruled, that
 13 section 2001(k)(1) applies to all of Washington and Oregon,
 14 limits on what sales must proceed necessarily exist under the
 15 statute.¹¹ While this Court, in its September 13 order defined
 16 the geographic scope of the subsection, it did not define which
 17 specific sales fall within that area. The statute and
 18 legislative history, which define those parameters, make it clear
 19 that subsection 2001(k) does not require the release of sales

20
 21 ¹¹ As explained in prior filings before this Court,
 22 defendants believe that subsection 2001(k)(1) only applies to
 23 certain sales that had been "subject to section 318." Because
 24 these four enjoined sales were subject to judicial determination
 25 that the sales violated section 318, they cannot be deemed to be
 26 "subject to section 318" within the meaning of the statute.
 27 Defendants have not asserted this position in connection with the
 FIRST and LAST sales as they were not judicially determined to
 violate section 318. As (this argument) is dependent upon the
 outcome of defendants' pending appeal, defendants preserve the
 right to reassert this argument in the event of a favorable
 ruling on appeal. *

DEFENDANTS' RESPONSE TO
 NFRC'S TWO MOTIONS SEEKING
 RELEASE OF 11 SALES

1 that were enjoined for failure to comply with section 318, the
2 statute which authorized the sales very existence. Nothing in
3 the language of the statute or the legislative history suggests
4 that in enacting subsection 2001(k), Congress intended to
5 validate otherwise invalid offers.

6 Subsection 2001(k)(1) requires the Secretary concerned to:
7 act to award, release, and permit to be completed in
8 fiscal years 1995 and 1996, with no change in
9 originally advertised terms, volumes, and bid prices,
all timber sale contracts offered or awarded before
that date [of enactment]

10 By directing the Secretary to "act to award, release and
11 permit to be completed . . . with no change in originally
12 advertised terms," the statute clearly contemplated that viable
13 offers had been extended pursuant to which the award and
14 completion could have been accomplished. This is confirmed by
15 the legislative history which shows that Congress was targeting
16 timber sales that, but for various delays or suspension, would
17 otherwise have proceeded. See 141 Cong. Rec. H 3233 (statement
18 by Representative Taylor that "in some cases the agencies
19 rejected bids well after the auction due to administrative
20 reviews and delays and changing standards . . . even though the
21 preponderance of these sales were approved for harvest in the
22 Record of Decision accompanying the President's Pacific Northwest
23 Plan"); 141 Cong. Rec. H 5558.

24 These four sales enjoined by Judge Dwyer do not fall into
25 this category of sales. The sales were never offered in
26 accordance with section 318, the statute from which the Forest

27 DEFENDANTS' RESPONSE TO
NPRC'S TWO MOTIONS SEEKING
RELEASE OF 11 SALES

1 Service derived its authority to offer and proceed with any such
2 sales. Judge Dwyer expressly found that the four enjoined sales
3 violated section 318(b) requiring that sales "offered pursuant to
4 this section shall minimize fragmentation of the most
5 ecologically significant old growth forest stands." Accordingly,
6 the court enjoined the sales until the defects were cured. The
7 defects, however, were not cured during the life of section 318.
8 Thus, these were not sales that were held up by "administrative
9 reviews and delays and changing standards." Instead, the sales
10 could not proceed because they never satisfied the initial
11 requirement for forming a valid contract -- they were never
12 offered in accordance with the authorizing statute. Cf. Croman
13 Corp. v United States, 31 Fed. Cl. 741, 746 (Ct. Cl. 1994) ("re-
14 offer" of substantially modified section 318 sale without
15 compliance with competitive procurement regulations was
16 unauthorized and invalid); United States v. Amdahl Corp., 786
17 F.2d 387 (Fed. Cir. 1986) (recognizing general proposition that
18 failure to comply with statutory requirements in making award may
19 render contract nullity); Alabama Rural Fire Ins. Co. v. United
20 States, 572 F.2d 727, 733 (Ct. Cl. 1978); see also Utah Power v.
21 United States, 243 U.S. 389 (1917) (administrative actions taken
22 in violation of statutory authorization or requirement are of no
23 effect). Most significantly, when Section 318, the authorizing
24 statute, expired, the sales became null and void, as if they had
25 never been offered, because the authority to offer them had
26 disappeared.

27 DEFENDANTS' RESPONSE TO
NFRG'S TWO MOTIONS SEEKING
RELEASE OF 11 SALES

1 The legislative history confirms that these four sales,
2 enjoined for violations of section 318, were not the section 318
3 sales that Congress was targeting for release in subsection
4 2001(k)(1). In discussing the effect of subsection 2001(k)(1) in
5 connection with 318 sales, Representative Taylor stated:

6 For instance, the section 318 timber, it is in
7 Washington and Oregon, this area already met all the
8 environmental requirements. This is green timber but
9 it has not yet been released. It has been waiting
10 since 1990, over 5 years. And this meets all the
environmental requirements, and it meets, it has
already been approved to move, but it has been held up
for over 5 years while people in Washington and Oregon
are without jobs.

11 See Cong. Rec. H 5558. These four sales are not the 318 sales
12 Congress was talking about, as they did not pass the first test
13 of satisfying Congress's basic environmental requirements set
14 forth in section 318. Because Judge Dwyer expressly found that
15 the sales violated section 318(b), the sales were never "approved
16 to move."

17 Moreover, the sales are not resurrected by this Court's
18 determination that subsection 2001(k)(1) required the release of
19 not just traditional 318 sales, but sales offered at any time
20 before enactment within Washington or Oregon. Once section 318
21 expired, the sales became null and void; to proceed, the sales
22 would had to have been reoffered. See Section 318(k); Croman
23 Corp., 31 Fed. Cl. at 746. Of course, these sales were not. To
24 allow these sales to go forward would attribute to Congress an
25 intent that any sale, even those which have been judicially
26 determined to violate the authorizing statute's requirements and

27 DEFENDANTS' RESPONSE TO
NFRG'S TWO MOTIONS SEEKING
RELEASE OF 11 SALES

1 which were never reoffered pursuant to an applicable management
2 plan, are to proceed. This position simply is not supported by
3 the language of the statute or the legislative history.¹²

4 CONCLUSION

5 For the reasons set forth herein, and as further explained
6 in defendants' prior filings including Defendants' Opposition and
7 Defendants' Response, NFRC's motions should be denied and this
8 Court should declare that the COWBOY, NITA, SOUTH NITA and GARDEN
9 timber sales are not covered by subsection 2001(k).

10 Dated this 21st day of November 1995.

11 Respectfully submitted,

12 KRISTINE OLSON
13 United States Attorney

14 LOIS J. SCHIFFER
15 Assistant Attorney General

16 *Michelle L. Gilbert*
17 MICHELLE L. GILBERT *by Susan Jansson*
18 EDWARD A. BOLING
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21 U.S. Department of Justice
22 Environment and Natural
Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
(202) 272-8056

23 Attorneys for Defendants

24 _____
25 ¹² Defendants have not taken this same position in
26 connection with the FIRST and LAST sales because no court ever
reached the merits and rendered a judicial determination that the
sales did not comply with section 318.]

ATTORNEY CLIENT
WORK PRODUCT
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NFRC has filed two motions seeking the release under subsection 2001(k)(1) of 11 timber sales that had been the subject of court injunctions or other orders. Our response is due November 21, 1995. The Court has set oral argument for December 12. The following is a description of the subject sales and possible responses to NFRC's motions.

DESCRIPTION OF THE RELEVANT SALES

The 11 sales are broken down into the following categories:

Four sales, COWBOY, NITA, SOUTH NITA and GARDEN, were enjoined by Judge Dwyer of the Western District of Washington who held that the sales had not complied with section 318, Congress's interim plan for sales offered in fiscal year 1990. Judge Dwyer found that the four sales violated section 318's requirements that sales offered under section 318 were to minimize fragmentation of ecologically sensitive old growth forests. Three of the sales, COWBOY, NITA and SOUTH NITA, are located on the Umpqua National Forest. The GARDEN sale is located on the Siskiyou National Forest.

Two sales, FIRST and LAST, also located on the Umpqua National Forest, had been challenged in an action before Judge Dwyer on similar grounds as those four noted above for failure to comply with the fragmentation requirements of section 318(b)(2). Based upon the Forest Service's withdrawal of the two sales, the court struck the pending motions for summary judgment and permanent injunctions as to these sales as moot.

Two other sales initially offered under section 318, BOULDER KRAB and ELK FORK, were the subject of NEPA challenges brought before Judge Panner of the United States District Court of Oregon, Civil No. 90-969-PA. The complaint involving those sales was dismissed without prejudice on March 25, 1991 on the basis of a stipulation of the parties.

The three remaining sales, TIP, TIPTOP and GATERSON, were not 318 sales, but were offered after fiscal year 1990.

The TIP and TIPTOP sales are located on the Wenatchee National Forest and were enjoined by Judge Coughenour of the Western District of Washington in Leavenworth Audubon v. Ferraro, 881 F. Supp. 1482 (W.D. Wash. 1995). The sales were

enjoined for NEPA violations, including the failure to consider the impact of the sales on the bull trout in the area and the impact of the proposed project on the sale area's streams' sediment quality and water temperature in light of the 1994 wildfires.

The GATERSON sale is located in the Colville National Forest in Washington. The sale was challenged by Mitchell Smith, a recreational user, who claimed: (1) the sale violated the Washington State Wilderness Act and NEPA for failure to consider uninventoried unroaded area for possible wilderness classification before development and (2) violated NEPA for failure to consider effect of the sale on a separate 5000 acre roadless area. The district court rejected the challenges, granting the defendant Forest Service's motion for summary judgment on both claims. However, the district court extended its preliminary injunction, enjoining most of the logging pending the appeal. The Ninth Circuit upheld the district court's decision as to the first claim, but reversed as to the second claim, finding that the NEPA documentation was insufficient. See Smith v. United States Forest Service, 33 F.3d 1072 (9th Cir. 1994). On March 30, 1995, the district court granted plaintiff judgment in part in accordance with the Ninth Circuit's opinion, and vacated the district court's December 13 judgment. The district court did not issue a specific permanent injunction, although the sale effectively was prohibited from proceeding.

POTENTIAL RESPONSES

1. General position as to the majority of sales

For the majority of the subject sales, consistent with the agencies' previous position taken before Judge Hogan, subsection 2001(k)(1) does not mandate their immediate release as they were not sales that were "subject to section 318."¹ However, given the Court's September 13

¹ The only sales whose release may not be dependent upon the issue currently on appeal to the Ninth Circuit are BOULDER KRAB, ELK FORK, FIRST and LAST sales. These sales initially had been offered under section 318. As no court ever rendered a judicial determination that the sales violated section 318 (which provides a possible argument for contesting the release of the enjoined sales, as further described above), they may fall within

decision and October 17 Order, such a position, while on appeal, does not currently provide a grounds for not releasing the subject sales. Absent an alternative argument not dependent upon the issue on appeal, it would appear that the sales must be released.

2. Section 318 sales that had not been enjoined

For the sales that had not been enjoined, defendants have represented that "such sales cannot be released without, at a minimum, alerting the interested parties and relevant court of the potential applicability of section 2001(k)" Defendants' Opposition at 11. Accordingly, for two sales, ELK FORK and BOULDER KRAB, the defendants provided notice of intent to release the sales following expiration of 15 days from the date of the notice. Consistent with that notice, the Forest Service has issued the relevant award letters.

The two other sales that had been the subject of prior court proceedings, but which were never enjoined, are the FIRST and LAST sales. As these sales were the subject of the pending motion before Judge Dwyer to clarify and enforce his prior orders, defendants provided notice of intent to release the sales upon resolution of pending legal issues. On November 7, Judge Dwyer stayed that motion pending further orders by Hogan. Accordingly, the FIRST and LAST sales are not scheduled to be released until Hogan rules and Dwyer authorizes the sales' release upon presentation of said ruling.

3. The four enjoined sales that had initially been offered under section 318

As to the four sales that had been enjoined by Judge Dwyer for violation of section 318, the COWBOY, NITA, SOUTH NITA, and GARDEN sales, an alternative argument may be made that the sales became null and void upon expiration of section 318, and accordingly do not fall within the scope of subsection 2001(k)(1); even under the Court's prior rulings. We presented this position in oral argument before Judge Dwyer in response to the motion to clarify and enforce that court's prior orders. This argument may be developed for inclusion in the brief to be filed on Tuesday, November 21 as follows.

Assuming, as the Hogan court has ruled, that section 2001(k)(1) applies to all of Washington and Oregon, there are still limits under the statute on what sales must proceed. The

the scope of subsection 2001(k)(1) as interpreted by the agencies. Indeed, it appears that Boulder Krab and Elk Fork were challenged on NEPA grounds. [CONFIRM NOT CHALLENGED FOR 318 VIOLATIONS]

legislative history makes it clear that Congress was targeting sales that had been delayed or suspended, for a variety of reasons. These four previously offered but enjoined sales do not fall into that category.

First, they were no longer "sales" at the time section 2001(k)(1) was enacted. The Dwyer Court ruled that the enjoined sales did not meet the minimization of fragmentation requirements of section 318, the statute authorizing offering of the sales. The court enjoined the sales until the defects were cured; the defects were not cured during the life of section 318. Accordingly, when the statute expired, the sales became null and void, as if they had never been offered because the authority to offer them had disappeared.

Second, Congress made it clear that these were not the section 318 sales they were targeting for release. See Congressional Record for the House, May 25, 1995, statement by Representative Taylor:

For instance, the section 318 timber, it is in Washington and Oregon, this area already met all the environmental requirements. This is green timber but it has not yet been released. It has been waiting since 1990, over 5 years. And this meets all the environmental requirements, and it meets, it has already been approved to move, but it has been held up for over 5 years while people in Washington and Oregon are without jobs.

These four sales are not the 318 sales Congress was talking about, as they did not even meet section 318's environmental requirements. Moreover, they are not resurrected by the Hogan Court's determination that subsection 2001(k)(1) required the release of not just traditional 318 sales, but later-offered sales. These were not sales that were reoffered at some other time pursuant to any applicable land management plan in place at that time. These were sales that were never remedied to comply with the statute under which they were originally authorized, and as a result became null and void upon expiration of the statute. To allow these sales to go forward, would attribute to Congress an intent that any sale, even those which failed to satisfy the authorizing statute and which were never reoffered pursuant to an applicable management plan, are to proceed. This is not supported by the language of the statute or the legislative history.²

² We cannot take this same position in connection with the FIRST and LAST sales because the court never reached the merits and rendered a judicial determination that the sales did not comply with section 318.

5. The three post-fiscal year 1990 sales

The November 21 filing also will address three non-318 sales that were offered more recently, but which cannot be unilaterally released by the agencies, the TIP, TIPTOP, and GATORSON sales. Unless an argument exists which is not dependent upon the issue on appeal, it would appear that these sales fall within the scope of subsection 2001(k)(1) as interpreted by the Hogan court.³ Accordingly, the agencies should determine whether notice should be provided to the relevant courts regarding these sales.⁴ The notice could indicate the following: enactment of section 2001(k)(1); the Hogan Court's interpretation as applying to all of Washington and Oregon; the October 17 injunction ordering the release of covered sales; the current litigation before Hogan regarding these sales, including the new Pilchuck case; and defendants' intent to seek clarification of effect of court's orders upon issuance of a ruling by Judge Hogan on this matter and to proceed accordingly upon resolution of the legal issues.

Issue on appeal

³ We are not aware of any argument, other than the one on appeal, that these sales are not required to be released under subsection 2001(k).

⁴ While it does not appear that the district court issued a specific injunction permanently enjoining the Gatorson sale, the district court's judgment in accordance with the Ninth Circuit opinion finding the underlying NEPA documentation inadequate and declaring that the sale should not proceed absent further NEPA analysis, effectively operated to prohibit the sale from proceeding.

3 pp.

Headwaters

To protect and restore forest ecosystems

FOR IMMEDIATE RELEASE: THURSDAY, NOV. 9, 1995

CONTACTS: JULIE NORMAN, Headwaters 503/482-4459
JIM INCE, Umpqua Watersheds 503/837-3636

TIMBER INDUSTRY SUES THE FOREST SERVICE TO GET COURT INJUNCTIONS SCRAPPED AND TO FORCE THROUGH OLD, ILLEGAL TIMBER SALES ON THE SISKIYOU & UMPQUA NATIONAL FORESTS.

Headwaters and other citizen conservation groups across the Pacific Northwest are once again battling for the rights of citizens to protect America's public forests. The groups are fighting off a **sneak attack on the forests** via a 1995 federal appropriations "**rider**" that **suspends the environmental laws** in our National Forests and BLM lands **until 1997**, thereby unleashing another logging and roadbuilding free-for-all, funded by citizen taxes. [The rider was slipped through Congress by the Gingrich-Republicans (cheered on by our own Rep. Wes Cooley) and the powerful, industry-funded Senators from the West.]

As a result, **giant healthy trees** (firs, pines and cedars) that are key to restoring imperiled salmon runs **are falling today**, in a whole host of recently-awarded **old-growth timber sales** in the Pacific Northwest. These old-growth sales aren't "salvage sales;" they are outdated 1990 sales that include brutal clearcuts on steep slopes, right down to the streambanks. Congress expressly stipulated that **no changes may be made to the sales!** [See Sec. 2001(k) of the rider.]

In a lawsuit now before federal Judge Hogan of Eugene, Oregon, the Northwest Forest Resource Council is demanding that these illegal timber sales in prime salmon habitat be logged, even if they were enjoined (stopped) by a federal court. Patti Goldman, attorney for Sierra Club Legal Defense Fund in Seattle (206/343-7340), is representing the conservation groups in order to stop this attempt to overturn existing court injunctions. In a Nov. 6, 1995 letter to the Dept. of Justice, Ms. Goldman argues that "...because courts reached final decisions with respect to these sales, Congress's ability to undo those final decisions is limited by the doctrine of separation of powers....[A]ll these sales were derailed by the power of the courts and thus they raise the specter of a serious constitutional confrontation, should section 2001(k)(1) [of the Rescission Bill] mandate their release in defiance of the previous court order."

One of the seven enjoined sales is on the Siskiyou National Forest, in a big block of intact forest that is extremely important to rebuilding populations of salmon and wildlife. The Garden Timber Sale is adjacent to the Wild Rogue River Wilderness, just uphill from the famous Mule Creek Canyon in the Stair Creek watershed. The Garden Timber sale was found to be in violation of the law (the Sec. 318 appropriations rider of FY89/90), because it would fragment the forest with clearcuts. Judge William Dwyer established a permanent injunction against the sale in 1990. The Clinton Forest Plan designated the area as a Forest Reserve in 1994.

Three other enjoined sales (Cowboy, Nita, and S. Nita) are located on the Umpqua National Forest and are also inside Forest Reserves. These court injunctions would also be thrown out if the timber industry lawyers have their way.

The Northwest Forest Resource Council's attorney, Mr. Mark Rutzick (503/499-4573) has submitted a court brief stating, "Environmental impacts are not relevant under Sec. 2001(k); the statute mandates the release and completion of the sales notwithstanding other laws."

On Monday, Nov. 6th the Siskiyou Natl. Forest (503/471-6500) sent "award letters" to the high-bidders of two other (503/471-6500) timber sales that were previously stopped by the court. This flaunts a court-negotiated stipulation stating that the Elk Fork and Boulder Krab sales must be reviewed, revised, and re-auctioned. Logging these old sales, located in the steep Elk River drainage on the Oregon Coast, threatens to add choking sediments to one of the finest salmon and steelhead fisheries in Oregon.

Julie Norman, President of Headwaters: "We are requesting that the Forest Service **not approve Operating Plans for cutting the Elk Fork and Boulder Krab Timber Sales until our case can be heard by Judge Hogan on December 12th.**"

She continued, "This terrible timber sale rider was passed through Congress in a sneak attack on our nation's forest protection laws. It never was reviewed by the proper committees. And now the industry lobbyists and lawyers who wrote this rider are using the courts to deliberately undermine our system of checks and balances and scrap previous court decisions in one fell swoop. They must be stopped."

-30-

attached: report about letter of concern from Will Stelle, Director of the National Marine Fisheries Service in Seattle, Washington

NMFS IDENTIFIES SEVERAL 318 TIMBER SALES WHICH WILL HARM SALMON STOCKS ALREADY LISTED OR PROPOSED FOR LISTING UNDER THE ESA

In a letter to John Lowe, USFS Regional Forester in the Pacific Northwest Region, and Elaine Zielinski, Oregon State Supervisor for BLM dated October 3, 1995, the National Marine Fisheries Service Director Will Stelle identified a number of 318 timber sales likely to jeopardize or adversely impact depressed salmon populations, stating:

"NMFS is concerned that some of the sold and awarded sales, and many of the sold but unawarded sales, have not been reviewed using the aquatic screens, and modified as necessary to reduce or avoid significant adverse impacts to aquatic and riparian resources, including anadromous salmonids and their habitats. By minimizing adverse effects, jeopardy can be avoided. NMFS does not believe that these particular actions can be modified to completely avoid adverse effects to anadromous salmonids....

"NMFS is particularly concerned by timber sales that are concentrated in Tier 1 key watersheds within the range of anadromous salmonids proposed for listing under the ESA. These watersheds were identified in the NWFP as those that encompass the best remaining relatively high quality habitat (refugia) for at-risk anadromous fish stocks on Federal lands, and hence form the building blocks for recovery of these species....

"Like the South Fork Umpqua, many Tier 1 watersheds have already experienced significant timber harvest entry and road-related disturbance in the past, and currently exhibit degraded baseline environmental conditions. The recent round of watershed analyses, done in key watersheds in 1994-5, confirm that the typical Tier 1 key watershed as a whole is barely able to provide the high quality habitats anadromous salmonids need to survive and reproduce; many show evidence of high sediment loads, elevated water temperatures, loss of large woody debris, reduced channel sinuosity, increased channel width, and loss of overall instream habitat complexity. While usually only a portion of a Tier 1 key watershed is fully functional, these "last best habitats" are critical to the long-term survival of the species, and it is in fact these remaining high quality areas that are most at risk from the 318 sales."

The NMFS letter went on to identify those sales in the South Fork Umpqua River and Chetco River (both NWFP Tier 1 key watersheds) and the 14 FS sales in the Wallow-Whitman National Forest as of particular concern because of their impact on some of the most badly depressed coho and some of the already ESA listed stock in the upper Columbia Basin.

Anadromous fish species currently proposed for listing are Klamath Mountain Province steelhead, Umpqua River sea-run cutthroat trout, and coastal coho salmon. Unless many of these 318 sales are substantially modified, NMFS believes they will "increase the likelihood of a species becoming listed under the Endangered Species Act (ESA)."



Sierra, Mt. McKinley

Ansel Adams

SIERRA CLUB LEGAL DEFENSE FUND, INC.

The Law Firm for the Environmental Movement

205 Hoge Building, 705 Second Avenue, Seattle, WA 98104-1711 (206) 343-7340 FAX (206) 343-1526

November 6, 1995

By facsimile

Ellen Athas
Michelle Gilbert
Wells Burgess
Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530

Re: Timber Sales Enjoined by Courts or Withdrawn in the Face of Court Challenges

Dear Ellen, Michelle, and Wells:

I am writing to insist that the Forest Service refrain from awarding or releasing timber sales that were enjoined by a court or withdrawn in the face of court challenges until the courts finally determine whether such sales are covered by the mandate to award and release timber sales under section 2001(k)(1) of the logging rider. Weighty constitutional and statutory construction issues await judicial determination. To award and release these sales before the courts decide those issues would risk creating property rights and allowing old-growth stands to be cut before it is clear that Congress intended that result or that the Constitution permits it. As the custodian of the nation's forest resources and of the public fisc, it would be extremely unwise to take any other course of action.

As you know, we represent many of the environmental organizations that obtained injunctions barring the Cowboy, Nita, and South Nita timber sales on the Umpqua National Forest and the Garden timber sale on the Siskiyou National Forest and that convinced the Forest Service to withdraw the First and Last timber sales on the Umpqua National Forest. We also represent the individual who stopped the Gatorson timber sale on the Colville National Forest, and some of the organizations that succeeded in convincing the Forest Service to withdraw the Elk Fork and Boulder Krab timber sales on the Siskiyou National Forest and that obtained an injunction preventing the Tip and Tiptop sales on the Wenatchee National Forest from proceeding in their original form.

Most of these timber sales cannot proceed under current environmental standards. The old Section 318 sales - Cowboy, Nita, South Nita, Garden, First, Last, Elk Fork, and Boulder Krab -- are in late successional reserves and cannot be logged under Option 9.

Bozeman, Montana Denver, Colorado Honolulu, Hawaii Juneau, Alaska New Orleans, Louisiana
San Francisco, California Tallahassee, Florida Washington, D.C.

Athas/Gilbert/Burgess
November 6, 1995
Page 2

Several of these sales contain important habitat for the threatened marbled murrelet. However, because these sales were cancelled so long ago, no surveys have been conducted to determine whether murrelets use these areas for nesting. It would defy logic for Congress to mandate the logging of these sites when the only reason murrelets are not known to be nesting there is because no one has looked. There is absolutely no indication in the text or history of section 2001(k)(1) that Congress intended such a harsh result. The Gatorson timber sale likewise is inconsistent with the controlling forest plan. These timber sales were simply not in the timber pipeline at the time the logging rider was enacted, and therefore, we believe they are outside the mandates of section 2001(k)(1) of the logging rider.

In addition, because courts reached final decisions with respect to these sales, Congress's ability to undo those final decisions is limited by the doctrine of separation of powers. Last term, the Supreme Court held that Congress may not revise the final decisions of courts, even by passing a new statute. Plaut v. Spendthrift Farm, Inc., 115 S. Ct. 1447 (1995). Under our constitutional system, the courts have full and final authority to decide the facts in cases before them and the legal effect of those facts.

In Seattle Audubon Society v. Mosley, No. C89-160WD, the court decided that four timber sales violated Section 318 and enjoined the Forest Service from offering, awarding, or operating those sales in their original form. After the Forest Service withdrew two other sales, the court found that the Forest Service had no plans to proceed with them and ruled that the plaintiffs' challenges to them were moot. The court made it clear that if these sales were resurrected, new decisions would necessarily need to be made, which the plaintiffs could then challenge in the courts. To read the logging rider to encompass these sales conflicts directly with the court's conclusion that these sales could not go forward in their old form and needed to be reconfigured and subject to new agency decisionmaking to proceed.

Similarly, when Friends of Elk River, Oregon Natural Resources Council, and others challenged the Elk Fork and Boulder Krab timber sales, the Forest Service reconsidered its decision to go forward with the sales. The Forest Service and the plaintiffs entered into a stipulation stating that the Forest Service had rejected all bids and that if it decided to proceed with these sales in the future, it would perform a new environmental review, issue a new decision notice, and hold a new auction. A district judge dismissed the lawsuit without prejudice based expressly on the stipulation. If construed in an overbroad fashion, the new logging rider would mandate that these sales proceed without any new decision, environmental review, and auction, in defiance of the stipulation and basis for the court's dismissal of the case.

Likewise, Mitchell Smith successfully challenged the Gatorson timber sale because the Forest Service had not assessed the impacts on logging in a 5000-acre roadless tract. After the Ninth Circuit so ruled, the district judge issued an injunction. When the Forest Service

Athas/Gilbert/Burgess
November 6, 1995
Page 3

then re-evaluated the sale, it found that the sale would violate the forest plan as it had recently been amended. By the time the logging rider became law, the Gatorson sale had been abandoned by the Forest Service. To require the old Gatorson sale to proceed would defy the decisions of the Ninth Circuit and the district court injunction mandating new environmental review and agency decisions before the sale could proceed.

The Tip and Tiptop sales were enjoined by a court just last spring because the agency failed to ensure that the sales would not imperil the viability of bull trout, a species eligible for listing as threatened under the Endangered Species Act. The Forest Service has been reconsidering the sales in accordance with the terms of the injunction. To date, the Forest Service has not issued any new decision documents, nor has it asked the district court to lift its injunction. Again, reading the logging rider to mandate the release of these sales without the court-mandated analysis and new decision clashes with the final direction issued by a court of law.

The particular facts and court orders vary. However, a common thread runs throughout these cases; all these timber sales were derailed by the power of the courts and thus they raise the specter of a serious constitutional confrontation, should section 2001(k)(1) mandate their release in defiance of the previous court orders.

As you know, we have tried to bring this issue to Judge Dwyer in the context of the Seattle Audubon Society case for decision. On Friday, November 3, 1995, Judge Dwyer stayed our pending motion to enable Judge Hogan to rule on the scope of section 2001(k)(1).

We understand that the Forest Service is intending to award the Elk Fork and Boulder Krab timber sales immediately. We insist that the Forest Service refrain from doing so prior to a judicial determination of whether such an award is required under the law.

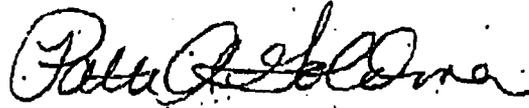
It would defy the spirit of Judge Dwyer's decision to award and release these sales before the courts decide whether they, in fact, must be released. It would also be both hasty and foolish since the government might, in the process, create property rights, where none currently exist or are required to be given under the new logging rider. Of course, the real tragedy would be logging that would destroy the last remaining old-growth stands that the Forest Service itself has decided cannot be logged under our environmental laws. The forests and old-growth dependent species will suffer permanently and irreparably if these sales go forward.

To date, neither Judge Hogan nor any other judge has determined whether section 2001(k)(1) reaches enjoined or withdrawn timber sales. Nor have these issues been briefed in the motions now pending before Judge Hogan. We would be happy to work with you to determine the most expeditious procedure to follow in obtaining a final judicial resolution of

Athas/Gilbert/Burgess
November 6, 1995
Page 4

these issues. In the meantime, the Forest Service and the Justice Department should respond fully to these concerns and ensure that they are resolved by the courts before taking any action to award or release these sales.

Sincerely,



Patti A. Goldman

cc: Jack Ward Thomas
Jim Lyons
Katy McGinty

Dwyer Racine

Basically this belongs in Hogan's Ct.
~~stay~~ hold in - wait + see what he does
(but didn't transfer - a pool rip)

In front of Hogan Tuesday.

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

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CONFIRMATION NUMBER (202) 272-8056

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NUMBER OF PAGES: 12

DATE: November 3, 1995

FROM: Paula Clinedinst, Legal Assistant, (202) 272-8019

MESSAGE: Seattle Audubon Soc'y v. Thomas, C89-160WD.
Attached is Judge Dwyer's Order on Motions
Heard on November 1, and the order denying
WCLA's Motion to Transfer.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEATTLE AUDUBON SOCIETY, et al.,)
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 Plaintiffs,)
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 v.)
)
 JACK WARD THOMAS, et al.,)
)
 Defendants.)
)
 and)
)
 WASHINGTON CONTRACT LOGGERS)
 ASSOCIATION, et al.,)
)
 Defendants-)
 Intervenor.)

NO. C89-160WD
ORDER ON MOTIONS
HEARD ON
NOVEMBER 1, 1995

This lawsuit was filed more than six years ago and was concluded by the entry of judgment more than three years ago. Several of the plaintiffs now seek an order determining that injunctions entered in 1990, while the case was in progress, preclude the award of six timber sales in Oregon under a statute enacted by Congress in 1995. A review of past cases concerning the federal forests and the northern spotted owl is necessary to understand how the question arises.

The plaintiff environmental organizations filed this case in early 1989 to challenge the legality of a 1988 United States

1 Forest Service plan to manage the forests within its jurisdiction
2 that contain spotted owl habitat. While the case was pending, the
3 United States Fish & Wildlife Service announced on April 25, 1989,
4 its intent to list the owl as "threatened" under the Endangered
5 Species Act ("ESA"), 16 U.S.C. § 1531 et seq. Soon afterward,
6 Congress enacted a temporary statute, which became law on Octo-
7 ber 23, 1989, directing the Forest Service and the Bureau of Land
8 Management ("BLM") to offer specified quantities of timber for
9 sale in fiscal years 1989 and 1990. The statute, Section 318 of
10 the Department of the Interior and Related Agencies Appropriation
11 Act, Fiscal Year 1990, Pub. L. 101-121 ("Section 318"), was based
12 upon wildlife viability assumptions that the federal agencies
13 later recognized were false. Section 318 did, however, contain
14 certain safeguards against needless destruction of old growth
15 forest stands. Among these was a requirement that the Forest
16 Service and BLM avoid fragmenting ecologically significant old
17 growth except to the extent necessary to meet the state-wide sales
18 quotas, and that they minimize fragmentation of old growth on a
19 national forest-by-national forest basis. Several proposed sales
20 were judicially reviewed under these Section 318 standards.
21 Because of violations of Section 318, this court issued injunc-
22 tions prohibiting the Forest Service from going forward with four
23 sales in Oregon (the Cowboy, Nita, South Nita, and Garden Sales)
24 until compliance was shown. The Cowboy sale ruling was affirmed
25 on appeal by the Ninth Circuit; the other rulings were not ap-
26 pealed. The Forest Service withdrew two other challenged sales

1 (the First and Last sales); plaintiffs' motions for summary
2 judgment as to them were therefore stricken as moot.

3 Section 318 expired at the end of fiscal year 1990. In
4 October 1990 the Forest Service published notice that future
5 timber sales would be consistent with an interagency scientific
6 report; it did not, however, adopt standards and guidelines as
7 required by the National Forest Management Act ("NFMA"), 16 U.S.C.
8 § 1600 et seq., and did not promulgate an environmental impact
9 statement as required by the National Environmental Policy Act
10 ("NEPA"), 42 U.S.C. § 4321 et seq. On March 7, 1991, this court
11 entered an order declaring unlawful the Forest Service proposal to
12 log spotted owl habitat without complying with statutory require-
13 ments. Seattle Audubon Soc'y v. Evans, 771 F. Supp. 1081 (W.D.
14 Wash. 1991), aff'd, 952 F.2d 297 (9th Cir. 1991). Following an
15 evidentiary hearing on the scope of injunctive relief, the court
16 then issued an injunction protecting owl habitat from further
17 timber sales pending the Forest Service's adoption of a management
18 plan that complied with statutory law. Final judgment was entered
19 in this case on April 9, 1992, the Forest Service having by then
20 published a new environmental impact statement ("EIS") and adopted
21 a record of decision ("ROD") for managing spotted owl habitat.
22 The judgment dismissed as moot plaintiffs' NEPA claims and all
23 claims relating to the abandoned 1988 ROD, granted plaintiffs
24 summary judgment on their NFMA claims, and granted summary judg-
25 ment to the federal defendants on plaintiffs' claims under the
26 Migratory Bird Treaty Act. The judgment did not mention the

1 Section 318 claims, which had been resolved through injunctive
2 relief.

3 On May 28, 1992, following briefing and a hearing, the court
4 found that the 1992 ROD and EIS violated NEPA in three ways.
5 Seattle Audubon Soc'y v. Moseley, 798 F. Supp. 1473 (W.D. Wash.
6 1992), aff'd sub nom. Seattle Audubon Soc'y v. Espy, 998 F.2d 699
7 (9th Cir. 1993). The Forest Service was enjoined to prepare a new
8 or supplemental EIS curing these defects and, in the meantime, to
9 refrain from awarding additional timber sales that would log
10 suitable habitat for the northern spotted owl.

11 Litigation over the BLM forests followed a similar course in
12 the District of Oregon. See Portland Audubon Soc'y v. Lujan, 712
13 F. Supp. 1456 (D. Or. 1989); Portland Audubon Soc'y v. Lujan, 795
14 F. Supp. 1489 (D. Or. 1992), aff'd sub nom. Portland Audubon Soc'y
15 v. Babbitt, 998 F.2d 705 (9th Cir. 1993).

16 In April 1993, the executive branch began a major effort to
17 resolve the forest controversy on a legally and scientifically
18 sound basis. The result, after months of study and public pro-
19 cess, was a new ROD and EIS adopted by the Secretaries of Agricul-
20 ture and Interior. On judicial review, the 1994 plan was upheld
21 in Seattle Audubon Soc'y v. Lyons, 871 F. Supp. 1291 (W.D. Wash.
22 1994). The court stated:

23 The FSEIS and ROD are the result of a massive
24 effort by the executive branch of the federal government
25 to meet the legal and scientific needs of forest manage-
ment. They reflect unprecedented thoroughness in doing
this complex and difficult job.

26 Id. at 1303.

1 The Lyons decision also stated:

2 The order now entered, if upheld on appeal, will
3 mark the first time in several years that the owl-habi-
4 tat forests will be managed by the responsible agencies
5 under a plan found lawful by the courts. It will also
6 mark the first time that the Forest Service and BLM have
7 worked together to preserve ecosystems common to their
8 jurisdictions.

9 The Secretaries have noted, however, that the plan
10 "will provide the highest sustainable timber levels from
11 Forest Service and BLM lands of all action alternatives
12 that are likely to satisfy the requirements of existing
13 statutes and policies." ROD at 61. In other words, any
14 more logging sales than the plan contemplates would
15 probably violate the laws. Whether the plan and its
16 implementation will remain legal will depend on future
17 events and conditions.

18 Id. at 1300.

19 The Northwest Forest Plan approved in Lyons was adopted in
20 compliance with NFMA, NEPA, the Federal Land Policy and Management
21 Act, 43 U.S.C. § 1701 et seq., and other applicable statutes. Id.
22 at 1302-03. Those statutes, and their implementing regulations,
23 remain in effect and are binding upon the Forest Service and the
24 BLM. The same is true of the Northwest Forest Plan, the implemen-
25 tation of which can go forward during appellate review.

26 Congress, however, has now adopted another short-term measure
which mandates that certain logging sales be made regardless of
the environmental laws. This is Section 2001 of the Fiscal Year
1995 Emergency Supplemental Appropriations for Disaster Relief and
Rescissions Act ("Rescissions Act"), Pub. L. No. 104-19, signed
into law by the President on July 27, 1995. Subsections 2001(b)
and (c) of the Rescissions Act deal with expediting salvage timber
sales, which are to go forward even if the costs to the government

1 exceed the likely revenues. Subsection (d) directs that notwith-
2 standing any other law, the Secretaries of Agriculture and
3 Interior "shall expeditiously prepare, offer, and award timber
4 sale contracts on Federal lands described in" the ROD that was
5 approved in the Lyons case. Subsection (f) provides for expedited
6 judicial review of Subsections (b) and (d) sales in the district
7 where the affected lands are located. Subsection (i) provides
8 that the documents and procedures required by Section 2001 for the
9 preparation and offering of sales under Subsection (b) or (d)
10 shall be deemed to satisfy the requirements of the environmental
11 laws. Subsection (j) provides that the authority afforded by
12 Subsections (b) and (d) shall expire on December 31, 1996.
13 Subsection (k) reads as follows:

14 **AWARD AND RELEASE OF PREVIOUSLY OFFERED AND
15 UNAWARDED TIMBER SALE CONTRACTS.**

16 (1) **AWARD AND RELEASE REQUIRED.** Notwithstanding
17 any other provision of law, within 45 days after the
18 date of the enactment of this Act, the Secretary con-
19 cerned shall act to award, release, and permit to be
20 completed in fiscal years 1995 and 1996, with no change
21 in originally advertised terms, volumes, and bid prices,
22 all timber sale contracts offered or awarded before that
23 date in any unit of the National Forest System or dis-
24 trict of the Bureau of Land Management subject to sec-
25 tion 318 of Public Law 101-121 (103 Stat. 745). The
26 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 con-
cerned shall provide the purchaser an equal volume of
timber, of like kind and value, which shall be subject

1 to the terms of the original contract and shall not
2 count against current allowable sale quantities.

3 On August 8, 1995, Northwest Forest Resources Council
4 ("NFRFC"), an industry association, brought suit in the district of
5 Oregon to compel the Secretaries to release timber sales in
6 accordance with Subsection 2001(k)(1). Northwest Forest Resource
7 Council v. Glickman, Civ. No. 95-6244-HO. On September 13, 1995,
8 Judge Hogan, in that case, granted NFRFC's motion for summary
9 judgment determining that Section 2001(k)(1) requires the release
10 of all sales offered before July 27, 1995, in the geographic area
11 that was subject to Section 318; the requirement is not limited to
12 sales offered pursuant to Section 318. On October 17, 1995, Judge
13 Hogan followed this ruling with an injunction directing the
14 release of sales offered or awarded between October 1, 1990, and
15 July 27, 1995. (The injunction does not order release of fiscal
16 year 1990 sales such as those at issue here; they are the subject
17 of another summary judgment motion scheduled for oral argument in
18 the District of Oregon on November 7, 1995.)¹ The federal defen-
19 dants have appealed the October 17 injunction and have obtained an
20 expedited hearing schedule in the Ninth Circuit.

21 This 1989 case does not, of course, concern Section 2001 of
22 the Rescissions Act passed in 1995. Some of the plaintiffs,

23 ¹Also noted for November 7 is a motion asking Judge Hogan
24 to transfer to this court (Judge Rothstein) a case, Scott Timber
25 Co. v. Glickman, Civ. No. 95-6267-HO, which challenges the
26 administrative agencies' interpretation of the "known to be
nesting" language of Subsection 2001(k)(2). The same issue is
raised in Pilchuck Audubon Soc'y v. Glickman, C95-1234R, filed
in this district on August 10, 1995. Judge Rothstein has
ordered that cross-motions for summary judgment be filed.

AO 72
10/1/95

ORD ON MTNS HEARD ON NOV. 1, 1995 - 7

1 however, have moved to "clarify and enforce" the injunctions
 2 entered five years ago under Section 318 and the judgment entered
 3 more than three years ago.² They seek an order declaring that
 4 the four sales enjoined by this court in 1990 pursuant to Section
 5 318, and the two others withdrawn in 1990 in the face of summary
 6 judgment motions, are not within the Section 2001(k)(1) category
 7 of "timber sale contracts offered or awarded before [July 27,
 8 1995]." They seek also a ruling that any contrary interpretation
 9 of Section 2001(k)(1) would violate the constitutional separation
 10 of powers. All six sales in question would be illegal but for
 11 Section 2001(k)(1); they are located in late successional reserve
 12 areas, as defined by the Northwest Forest Plan. The plaintiffs
 13 acknowledge that the relief they seek overlaps with what has been
 14 or will be decided in the District of Oregon. In regard to one of
 15 their arguments they state:

16 We recognize that Judge Hogan adopted a contrary
 17 interpretation in holding that Section 2001(k) requires
 18 the Forest Service and the Bureau of Land Management to
 19 allow every timber sale contract offered in all Oregon
 and Washington forests since 1989 to go forward to
 completion.

20 Memorandum in Support of Motion to Clarify and Enforce Judgment at
 21 21.

22 The District of Oregon, unlike this district, has litigation
 23 in progress over the meaning and interpretation of Section
 24

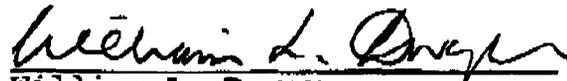
25 ²The plaintiffs bringing this motion are Pilchuck Audubon
 26 Society, Portland Audubon Society, Oregon Natural Resources
 Council, Lane County Audubon Society, and Washington Environmen-
 tal Council.

1 2001(k) (1). Major issues have already been decided; one important
 2 holding is now on appeal; and rulings on other issues, including
 3 those raised by the present motion, appear to be imminent.

4 The federal defendants and WCLA have suggested that, to avoid
 5 duplication of effort and potentially inconsistent results, the
 6 court should stay the plaintiffs' motion until further rulings are
 7 issued in the District of Oregon litigation. It is possible that
 8 the decisions made there will moot the present motion. The
 9 suggestion makes sense and is hereby adopted. Plaintiffs' motion
 10 is stayed pending further orders on the same or related matters
 11 concerning Section 2001(k) (1) in the District of Oregon. Any
 12 party may renote the motion on one week's notice, with responses
 13 to be due the day before the renoted hearing date.

14 The clerk is directed to send copies of this order to all
 15 counsel of record.

16 Dated: November 3, 1995.

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 18 
 19 William L. Dwyer
 United States District Judge

20 Did we suggest this?
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEATTLE AUDUBON SOCIETY, et al.,)
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 Plaintiffs,)
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 v.)
)
 JACK WARD THOMAS, et al.,)
)
 Defendants.)
)
 and)
)
 WASHINGTON CONTRACT LOGGERS)
 ASSOCIATION, et al..)
)
 Defendants-)
 Intervenor.)
)

NO. C89-160WD
MINUTE ORDER

The following minute order is made by the direction of the court, the Honorable William L. Dwyer:

The motion of plaintiffs Pilchuck Audubon Society, et al., for leave to file an overlength brief is granted. Plaintiffs' motion to expedite the hearing on their motion to clarify and enforce judgment is also granted, the hearing having been held on November 1, 1995.

Filed and entered this 3rd day of November, 1995.

BRUCE RIFKIN, Clerk

By Deputy Clerk

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEATTLE AUDUBON SOCIETY, et al.,)
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 Plaintiffs,)
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 v.)
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 JACK WARD THOMAS, et al.,)
)
 Defendants.)
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 and)
)
 WASHINGTON CONTRACT LOGGERS)
 ASSOCIATION, et al.,)
)
 Defendants-)
 Intervenor.)

NO. C89-160WD
MINUTE ORDER

The following minute order is made by the direction of the court, the Honorable William L. Dwyer:

WCLA's motion to transfer this case to the District of Oregon is denied. Its motion to stay proceedings is stricken as moot in view of the Order on Motions Heard on November 1, 1995, entered this date.

Filed and entered this 3rd day of November, 1995.

BRUCE RIFKIN, Clerk

By Deputy Clerk

U.S. DEPARTMENT OF JUSTICE
 ENVIRONMENT AND NATURAL RESOURCES DIVISION
 GENERAL LITIGATION SECTION
 601 PENNSYLVANIA AVENUE, N.W.
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NUMBER OF PAGES: ||

DATE: November 2, 1995

FROM: Lisa Holden, (202) 272-4698

MESSAGE: NFRC v. Glickman. Attached is Federal Defendants' November 1, 1995 Report Re: Timber Sale Contracts Offered or Awarded Prior to Fiscal Year 1991.

SAS v. Thomas. On November 1st, Judge Dwyer held oral argument on plaintiffs SAS' Motion to Clarify and Enforce Judgment (as to the Cowboy, Nita, South Nita, Garden, First and Last timber sales). Dwyer indicated that he would issue a ruling no later than November 7, 1995.