

NLWJC- Kagan

Counsel - Box 011 - Folder 011

Timber - Other Litigation: Pilchuck v.
Glickman [2]

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moves to intervene in this case as a defendant pursuant to Fed. R. Civ. P. 24. Intervention will clarify NFRC's status as a party with respect to any rulings from the court in this case. Plaintiffs Pilchuck Audubon Society et al. have consented to this motion. Defendants Glickman et al. do not oppose this motion.

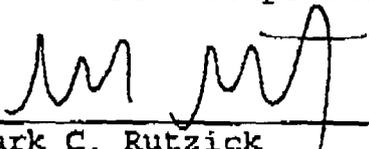
NFRC meets the requirements for intervention in this case. The motion is timely; NFRC has a significantly protectable interest in some or all of the timber sales challenged in this case, as reflected by its litigation efforts to secure the award and release of these sales; that interest may be impaired by the outcome of this case; and no current party represents NFRC's interests.

In light of plaintiffs' efforts to expedite the decision in this case, which NFRC supports, NFRC requests expedited consideration of this motion.

NFRC's proposed answer to the complaint is attached hereto.

Dated this 14th day of November, 1995.

MARK C. RUTZICK LAW FIRM
A Professional Corporation

By: 

Mark C. Rutzick
Alison Kean Campbell
Attorneys for Applicant for
Intervention Northwest
Forest Resource Council

Page

2 - NORTHWEST FOREST RESOURCE COUNCIL'S
MOTION TO INTERVENE

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 6 Attorneys for Defendant-Intervenor
 Northwest Forest Resource Council

7
 8
 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE DISTRICT OF OREGON

11	PILCHUCK AUDUBON SOCIETY,)	Civil No. 95-6384-TC
12	OREGON NATURAL RESOURCES)	
13	COUNCIL, PORTLAND AUDUBON)	DEFENDANT-INTERVENOR
14	SOCIETY, BLACK HILLS AUDUBON)	NORTHWEST FOREST RESOURCE
15	SOCIETY, WESTERN ANCIENT FOREST)	COUNCIL'S ANSWER TO
16	CAMPAIGN, HEADWATERS, COAST)	COMPLAINT FOR DECLARATORY
17	RANGE ASSOCIATION, FRIENDS OF)	AND INJUNCTIVE RELIEF
18	THE ELK RIVER, LEAVENWORTH)	
19	AUDUBON ADOPT-A-FOREST, NORTH)	
20	CENTRAL WASHINGTON AUDUBON)	
21	SOCIETY, and KNUT and ANN)	
22	AAGAARD,)	
23)	
24	Plaintiffs,)	
25)	
26	vs.)	
27)	
28	DAN GLICKMAN, Secretary of)	
29	Agriculture, BRUCE BABBITT,)	
30	Secretary of Interior, UNITED)	
31	STATES FOREST SERVICE, and)	
32	BUREAU OF LAND MANAGEMENT,)	
33)	
34	Defendants,)	
35)	
36	and)	
37)	
38	NORTHWEST FOREST RESOURCE)	
39	COUNCIL,)	
40)	
41	Defendant-Intervenor.)	

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1 For its answer to the complaint herein, defendant-intervenor
2 Northwest Forest Resource Council ("NFRC") responds as follows:
3 1. Admit the complaint seeks the relief requested; deny
4 plaintiffs are entitled to any relief.
5 2. Admit.
6 3. Admit.
7 4. Deny knowledge or information sufficient to form a
8 belief as to the truth of the allegations.
9 5. Deny knowledge or information sufficient to form a
10 belief as to the truth of the allegations.
11 6. Deny knowledge or information sufficient to form a
12 belief as to the truth of the allegations.
13 7. Deny knowledge or information sufficient to form a
14 belief as to the truth of the allegations.
15 8. Deny knowledge or information sufficient to form a
16 belief as to the truth of the allegations.
17 9. Deny knowledge or information sufficient to form a
18 belief as to the truth of the allegations.
19 10. Deny knowledge or information sufficient to form a
20 belief as to the truth of the allegations.
21 11. Deny knowledge or information sufficient to form a
22 belief as to the truth of the allegations.
23 12. Deny knowledge or information sufficient to form a
24 belief as to the truth of the allegations.
25 13. Deny knowledge or information sufficient to form a
26 belief as to the truth of the allegations.

Page

2 - DEFENDANT-INTERVENOR NORTHWEST FOREST RESOURCE
COUNCIL'S ANSWER TO COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

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1 14. Deny knowledge or information sufficient to form a
2 belief as to the truth of the allegations.

3 15. Deny knowledge or information sufficient to form a
4 belief as to the truth of the allegations.

5 16. Deny knowledge or information sufficient to form a
6 belief as to the truth of the allegations.

7 17. Admit.

8 18. Admit.

9 19. Admit.

10 20. Admit.

11 21. Admit Pub. L. 104-19 became law on July 27, 1995. The
12 rest of paragraph 21 is a characterization of the law, the text
13 of which speaks for itself.

14 22. Admit that paragraph 22 accurately quotes § 2001(k)(1).

15 23. Admit that § 2001(k)(2) exempts from release any sale
16 unit in which a threatened or endangered bird species is known to
17 be nesting. Admit the second sentence.

18 24. Paragraph 24 is too vague for response, and is there-
19 fore denied.

20 25. Deny.

21 26. Admit there is litigation over § 2001(k), and that some
22 applicants for intervention were partially denied intervention on
23 some issues.

24 27. Deny the court has limited its rulings to sales offered
25 since October 23, 1989. See October 17 Order, ¶ 1.

26 28. Admit defendants have identified some cancelled or

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1 withdrawn sales as sales that must be awarded and released under
2 § 2001(k) (1); otherwise deny.

3 29. Deny knowledge or information sufficient to form a
4 belief as to the truth of the allegations.

5 30. Admit.

6 31. Deny knowledge or information sufficient to form a
7 belief as to the truth of the allegations.

8 32. Deny.

9 33. Deny.

10 34. Admit.

11 35. Deny.

12 36. Deny.

13 37. Admit.

14 38. Deny.

15 39. Deny.

16 WHEREFORE defendant-intervenor NFRC prays for judgment
17 dismissing the action, denying plaintiffs any and all relief,
18 granting NFRC such relief as to which it may be entitled, and

19 / / /

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4 - DEFENDANT-INTERVENOR NORTHWEST FOREST RESOURCE
COUNCIL'S ANSWER TO COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

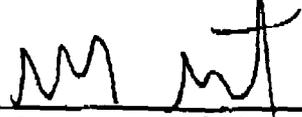
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1 granting NFERC its costs, and attorney fees under the Equal Access
2 to Justice Act, to the extent permitted by law.

3 Dated this 14th day of November, 1995.

4 MARK C. RUTZICK LAW FIRM
5 A Professional Corporation

6 By: 

7 Mark C. Rutzick
8 Alison Kean Campbell
9 Attorneys for Defendant-
10 Intervenor Northwest Forest
11 Resource Council
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Page

5 - DEFENDANT-INTERVENOR NORTHWEST FOREST RESOURCE
COUNCIL'S ANSWER TO COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

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5 Attorneys for Applicant for
6 Intervention Northwest
7 Forest Resource Council

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF OREGON

11 PILCHUCK AUDUBON SOCIETY,) Civil No. 95-6384-TC
12 OREGON NATURAL RESOURCES)
13 COUNCIL, PORTLAND AUDUBON) CERTIFICATE OF SERVICE
14 SOCIETY, BLACK HILLS AUDUBON)
15 SOCIETY, WESTERN ANCIENT FOREST)
16 CAMPAIGN, HEADWATERS, COAST)
17 RANGE ASSOCIATION, FRIENDS OF)
18 THE ELK RIVER, LEAVENWORTH)
19 AUDUBON ADOPT-A-FOREST, NORTH)
20 CENTRAL WASHINGTON AUDUBON)
21 SOCIETY, and KNUT and ANN)
22 AAGAARD,)

23 Plaintiffs,)

24 vs.)

25 DAN GLICKMAN, Secretary of)
26 Agriculture, BRUCE BABBITT,)
Secretary of Interior, UNITED)
STATES FOREST SERVICE, and)
BUREAU OF LAND MANAGEMENT,)

Defendants.)

27 I hereby certify that I served the following:

- 28 1. Northwest Forest Resource Council's Unopposed Motion to
Intervene; and

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2. Defendant-Intervenor Northwest Forest Resource Council's Answer to Complaint for Declaratory and Injunctive Relief

on:

Wells D. Burgess
Michelle L. Gilbert
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
601 Pennsylvania Avenue N.W., 8th Floor
Washington, D.C. 20044

James L. Sutherland
Assistant United States Attorney
701 High Street
Eugene, Oregon 97401

Attorneys for Defendants

Patti A. Goldman
Sierra Club Legal Defense Fund
705 Second Avenue, Suite 203
Seattle, Washington 98104

Attorneys for Proposed Intervenor-Defendants

on November 14, 1995, by delivering to said attorneys via Federal Express true copies thereof, certified by me as such, contained in sealed envelopes, prepaid, addressed to said attorneys at said attorneys' last known addresses, and deposited with Federal Express in Portland, Oregon, on said day, and on:

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

Attorneys for Plaintiff Scott Timber Co.

on November 14, 1995, by mailing to said attorney a true copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorney at said attorney's

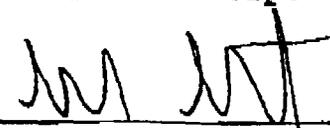
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last known address, and deposited in the post office at Portland, Oregon, on said day.

Dated this 14th day of November, 1995.

MARK C. RUTZICK LAW FIRM,
A Professional Corporation

By: 

Mark C. Rutzick
Alison Kean Campbell
Attorneys for Applicant for
Intervention Northwest
Forest Resource Council



Sunrise, Mt. McKinley Ansel Adams

SIERRA CLUB LEGAL DEFENSE FUND, INC.

The Law Firm for the Environmental Movement

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

November 9, 1995

By Facsimile

Michelle Gilbert
Dept. of Justice
ENR Division
General Litigation Section
PO Box 663
Washington, DC 20044-0663

Re: Pilchuck Audubon Society et al. v. Glickman et al. No. 95-06483-TC

Dear Michelle:

Our discovery requests are attached. As we discussed at the November 7, 1995 hearing, we would like to obtain responses as soon as possible. Toward that end, we would be happy to work with you and your clients to develop the most expeditious way of obtaining this information. We would be happy to clarify the requests and discuss the form and timing of responses.

In addition, we will not involve the Court in establishing an expedited schedule at this time. However, if we cannot agree on a satisfactory schedule, we are prepared to ask the Court to order expedited responses.

Sincerely,

Patti A. Goldman

1 PATTI A. GOLDMAN (WSB# 24426)
 2 KRISTEN L. BOYLES (WSB# 23806)
 3 Sierra Club Legal Defense Fund
 4 705 Second Avenue, Suite 203
 5 Seattle, Washington 98104
 6 (206) 343-7340

7 Attorneys for Plaintiffs

8 MARIANNE DUGAN (OSB #93256)
 9 Western Environmental Law Center
 10 1216 Lincoln Street
 11 Eugene, OR 97401
 12 (503) 485-2471

13 Local Counsel for Plaintiffs

14 IN THE UNITED STATES DISTRICT COURT
 15 FOR THE DISTRICT OF OREGON

16 PILCHUCK AUDUBON SOCIETY, OREGON)
 17 NATURAL RESOURCES COUNCIL,)
 18 PORTLAND AUDUBON SOCIETY, BLACK)
 19 HILLS AUDUBON SOCIETY, WESTERN)
 20 ANCIENT FOREST CAMPAIGN,)
 21 HEADWATERS, COAST RANGE)
 22 ASSOCIATION, FRIENDS OF THE ELK)
 23 RIVER, LEAVENWORTH AUDUBON ADOPT-)
 24 A-FOREST, NORTH CENTRAL WASHINGTON)
 25 AUDUBON SOCIETY, and KNUT and ANN)
 26 AAGAARD,)
 27 Plaintiffs,)

Civil No. 95-06384-TC

PLAINTIFFS' FIRST SET OF
 INTERROGATORIES AND
 REQUESTS FOR PRODUCTION
 OF DOCUMENTS TO
 DEFENDANTS HABBITT AND
 BUREAU OF LAND MANAGEMENT

v.

DAN GLICKMAN, Secretary of)
 Agriculture, BRUCE HABBITT,)
 Secretary of Interior, UNITED)
 STATES FOREST SERVICE, and BUREAU)
 OF LAND MANAGEMENT.)

Defendants.

TO THE DEFENDANTS AND THEIR COUNSEL:

Pursuant to Rules 33 and 34 of the Federal Rules of Civil
 Procedure, plaintiffs request that you respond, in writing and

1 under oath, within thirty (30) days of service, to the following
2 interrogatories and requests for production of documents.

3 1. In answering these interrogatories and requests for
4 production of documents, please furnish all information available
5 to you at the time you make your answers, including information
6 in the possession of your attorneys, subordinates, employees, and
7 agents. If any requested document is not within your possession,
8 custody, or control, please state in whose possession, custody,
9 or control such documents may be found.

10 2. If you do not or cannot respond to each of the requests
11 after exercising due diligence to secure the information needed
12 to do so, please state both why the responsive information or
13 documents are not or will not be made available, as well as what
14 efforts have been made to locate any responsive information or
15 documents.

16 3. If any documents or responsive information concerning
17 documents are withheld on the grounds of privilege or other
18 protection from discovery, then for each such document, please
19 set forth the date and nature of the document; the author and any
20 recipients thereof; a general description of the subject matter
21 of the document; and the basis for the claim of privilege. If
22 responsive information regarding oral communication is withheld
23 on grounds of privilege or other protection from discovery,
24 please set forth the date, place, and general subject matter of
25 the communication; the identity of the person making the
26 communication and the persons present when it was made, the
27

1 relationship between the persons present and the person making
2 the communication; and the basis for your claim of privilege.

3 4. If anything is deleted from a document produced please
4 state: (a) the reason for the deletion; (b) the subject matter of
5 the deletion; and (c) the name of the person or persons who
6 decided to delete such matter.

7 5. When asked to identify a document or communication
8 contained in a document, please state: (a) its title and/or
9 subject matter; (b) its date; (c) its author; (d) the sender and
10 the recipients of all copies; (e) the present location of the
11 document; and (f) the form control number, if any. When asked to
12 identify a communication not contained in a document, please
13 state: (a) the date and place of the communication; (b) the
14 manner of communication; (c) the identity of each person making
15 and receiving the communication; (d) what was said by each person
16 making, receiving, or present during the communication, or, if
17 not known, the substance of what was said by each person; and (e)
18 whether there are any documents that set forth, summarize, or
19 refer to all or any portion of any unwritten communications.

20 6. When asked to identify a person, please state the
21 person's name, present or former position, and current business
22 address and phone number.

23 7. The obligations imposed upon defendants by Rules 26,
24 33, and 34 of the Federal Rules of Civil Procedure are
25 incorporated by reference including, but not limited to, the duty
26 imposed by Rule 26(e) to supplement your responses to these
27 interrogatories and requests for production of documents.

1 8. These interrogatories and requests are not interposed
2 to harass or to cause unnecessary delay or needless increase in
3 the cost of litigation, and are not intended to be unreasonable
4 or unreasonably burdensome or expensive. If the defendants have
5 suggestions for responding to these interrogatories and requests
6 or for providing the information requested herein in some
7 reasonable alternative manner that they believe will be more
8 expeditious or less expensive, please contact the undersigned
9 counsel for plaintiffs.

10 DEFINITIONS

11 As used herein, the following definitions apply:

12 1. "Forest Service" refers to the United States Forest
13 Service, its officers, and employees.

14 2. "BLM" refers to the Bureau of Land Management, its
15 officers, and employees.

16 3. "Section 318" refers to Section 318 of Pub. L. No. 101-
17 121, 103. Stat. 745.

18 4. "Section 2001(k)" refers to Section 2001(k) of the 1995
19 Emergency Supplemental Appropriations for Disaster Relief and
20 Rescissions Act, Pub. L. No. 104-19.

21 5. "Logging rider" refers to Section 2001 of the 1995
22 Emergency Supplemental Appropriations for Disaster Relief and
23 Rescissions Act, Pub. L. No. 104-19.

24 6. "Rescissions Act" refers to the 1995 Emergency
25

1 Supplemental Appropriations for Disaster Relief and Rescissions
2 Act, Pub. L. No. 104-19.

3 7. "NFRC v. Glickman" refers to Northwest Forest Resource
4 Council v. Glickman, No. 95-6244-HO (D. Or.).

5 8. The terms "record" and "document" mean the complete
6 original (or a complete copy when the original is not available).
7 unless otherwise stated, and each non-identical copy (whether
8 different from the original because of notes made on the copy or
9 otherwise), together with all worksheets, back-up documents and
10 other relevant materials. The terms "record" and "document"
11 include any written reports, letters, books, telegrams,
12 memoranda, electronic and computer mail, tape recordings,
13 drawings, graphs, charts, photographs, and other written or
14 graphic material or communication however denominated from which
15 information may be obtained.

16 9. The term "person" includes natural persons, government
17 agencies, partnerships, corporations, and every other form of
18 legally recognized entity.

19 10. All terms include the past, present and future, the
20 singular includes the plural, and the plural includes the
21 singular.

22 11. "Or" shall mean and/or.

23 //
24 //
25 //

INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

INTERROGATORY NO. 1:

List every timber sale that has been identified in papers and reports filed in NFRC v. Glickman and every sale alleged by any representative of the timber industry to defendants to be subject to section 2001(k).

RESPONSE:

INTERROGATORY NO. 2:

For each timber sale listed in response to interrogatory number 1, state whether:

(a) a timber sale contract was awarded and accepted and the BLM did not cancel or withdraw it, in whole or in part, prior to July 27, 1995;

(b) a timber sale contract was awarded or awarded and accepted prior to July 27, 1995, but the BLM, prior to July 27, 1995, cancelled, withdrew, or otherwise decided not to proceed with the sale, in whole or in part, as originally planned;

(c) a timber sale contract was not awarded prior to July 27, 1995 for all or part of the sale;

(d) none of the above describe the sale and explain.

1 RESPONSE:

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5 INTERROGATORY NO. 3:

6 For every timber sale identified in response to
7 interrogatories number 2(b), (c), and (d), provide the following
8 information:

9 (a) the date(s) the sale was advertised, in whole or in
10 part;

11 (b) the prices, volumes, and contract terms under which the
12 sale was advertised, in whole or in part;

13 (c) the date(s) the sale was auctioned, in whole or in part,
14 and the type of auction, e.g., oral, sealed bids, etc.;

15 (d) the date(s) and manner in which a high bidder was
16 identified;

17 (e) the identity of the high bidder(s);

18 (f) whether a notice of intent to award or an award letter
19 was sent, and if so, the date and to whom;

20 (g) a description of any response to a notice of intent to
21 award or an award letter, including a rejection of the award; and

22 (h) a full description of the reasons why the BLM decided
23 not to go forward with all or part of the sale, including the
24 date(s) on which such decisions were made; any actions taken to
25 discontinue the sale; and any determination by the BLM that the

1 sale would violate applicable environmental laws, regulations,
2 forest plans, biological opinions, PACFISH, the eastside screens,
3 or agency policies, or would cause adverse environmental effects.

4

5 RESPONSE:

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9 REQUEST FOR PRODUCTION NO. 1: Please provide all documents
10 supporting your response to Interrogatory No. 3. above.

11

12 INTERROGATORY NO. 4:

13 Describe step-by-step the process utilized by the BLM to
14 enter into a contract for a timber sale, beginning with the
15 initiation of the process and leading to the point where the
16 contract may be performed.

17

18 RESPONSE:

19

20

21 REQUEST FOR PRODUCTION NO. 2: Please provide all documents
22 supporting your response to Interrogatory No. 4. above.

23

24 INTERROGATORY NO. 5:

25 To the extent not explained in response to interrogatory

26

27 PLAINTIFFS' 1ST SET OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS TO DEFTS BABBITT AND BLM

1 number 4, define the following terms or phrases; describe the
2 circumstances in which the BLM takes each of the following
3 actions in connection with a timber sale; and explain the
4 significance of the action:

- 5 (a) advertisement;
- 6 (b) notice of availability;
- 7 (c) solicitation of bids;
- 8 (d) sealed bids;
- 9 (e) oral auctions;
- 10 (f) requiring posting of bid bonds;
- 11 (g) requiring posting of bid bond by high bidder;
- 12 (h) identification of a high bidder;
- 13 (i) negotiation of specific contract terms with high bidder;
- 14 (j) determination that the high bidder is eligible to
15 receive an award of the contract;
- 16 (k) award of a contract to a bidder other than the high
17 bidder;
- 18 (l) notice of intent to award a contract;
- 19 (m) award of a contract;
- 20 (n) suspension of a contract;
- 21 (o) any action that prevents performance of a timber sale
22 contract temporarily or permanently;
- 23 (p) return of bid bond;
- 24 (q) return of bid bond of high bidder.

1 RESPONSE:

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4 REQUEST FOR PRODUCTION NO. 3: Please provide all documents
5 supporting your response to Interrogatory No. 5, above.
6

7 INTERROGATORY NO. 6:

8 If the response to interrogatory number 4 and 5 varies for
9 (1) sales offered after July 27, 1995; (2) sales initiated prior
10 to October 23, 1989; (3) Section 318 sales; or (4) sales offered
11 after expiration of Section 318 but before July 27, 1995, please
12 explain any differences and provide complete answers to
13 interrogatory number 4 and 5 for each distinct time period.
14

15 RESPONSE:

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18 REQUEST FOR PRODUCTION NO. 3: Please provide all documents
19 supporting your response to Interrogatory No. 6, above.
20

21 INTERROGATORY NO. 7:

22 Identify the stage in the contract formation process at
23 which the BLM is bound by, or to enter into, a timber sale
24 contract.
25

1 RESPONSE:

5 INTERROGATORY NO. 8:

6 Identify all sales that are encompassed by the following
7 categories and statements in the Record of Decision for
8 Amendments to Forest Service and BLM Planning Documents Within
9 the Range of the Northern Spotted Owl (April 13, 1994): (a) the
10 statement on page 13 that certain previously-offered sales
11 located in late-successional reserves will not substantially
12 impair the integrity of the late-successional reserves or cause
13 significantly different cumulative effects than set forth in the
14 final supplemental environmental impact statement; (b) timber
15 sales awarded prior to the effective date discussed in section
16 3(a) on page 13-14; (c) timber sales sold but unawarded discussed
17 in section 3(c) on page 14; and (d) timber sales sold, unawarded
18 but enjoined discussed in section 3(c)(1) on page 14.

20 RESPONSE:

24 REQUEST FOR PRODUCTION NO. 4: Please provide all documents
25 supporting your response to Interrogatory No: 8 above, including

1 documents generated in the course of developing the April 13,
2 1994 Record of Decision and the corresponding environmental
3 impact statements.

4
5 INTERROGATORY NO. 9:

6 Identify each timber sale that was offered but not logged
7 before July 27, 1995 in Washington and Oregon, which falls, in
8 whole or part, within the boundaries of a National Park, a
9 Wilderness Area, National Recreation Area, or a National
10 Monument. For each such sale, identify the National Park,
11 Wilderness Area, National Recreation Area, or the National
12 Monument, the proposed volume, the bid price, the high bidder, if
13 any, and the reasons why the sale did not go forward.

14
15 RESPONSE:

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18 INTERROGATORY NO. 10: Please identify all persons who
19 provided information used in preparing the responses to the
20 interrogatories and requests stated herein. For each such
21 person, state the interrogatory or request for which the person
22 provided information. If more than one person provided
23 responsive information for a particular request, please identify
24 the information each person provided.

RESPONSE:

DATED this 9th day of November, 1995.

Respectfully Submitted,

Patti A. Goldman

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13 Local Counsel for Plaintiffs

14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF OREGON

16 PILCHUCK AUDUBON SOCIETY, OREGON)
17 NATURAL RESOURCES COUNCIL,)
18 PORTLAND AUDUBON SOCIETY, BLACK)
19 HILLS AUDUBON SOCIETY, WESTERN)
20 ANCIENT FOREST CAMPAIGN,)
21 HEADWATERS, COAST RANGE)
22 ASSOCIATION, FRIENDS OF THE ELK)
23 RIVER, LEAVENWORTH AUDUBON ADOPT-)
24 A-FOREST, NORTH CENTRAL WASHINGTON)
25 AUDUBON SOCIETY, and KNUT and ANN)
26 AAGAARD,)
27 Plaintiffs,)

Civil No. 95-06384-TC

PLAINTIFFS' FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
OF DOCUMENTS TO
DEFENDANTS GLICKMAN AND
FOREST SERVICE

v.

DAN GLICKMAN, Secretary of
Agriculture, BRUCE BABBITT,
Secretary of Interior, UNITED
STATES FOREST SERVICE, and BUREAU
OF LAND MANAGEMENT,

Defendants.

TO THE DEFENDANTS AND THEIR COUNSEL:

Pursuant to Rules 33 and 34 of the Federal Rules of Civil
Procedure, plaintiffs request that you respond, in writing and

1 under oath, within thirty (30) days of service, to the following
2 interrogatories and requests for production of documents.

3 1. In answering these interrogatories and requests for
4 production of documents, please furnish all information available
5 to you at the time you make your answers, including information
6 in the possession of your attorneys, subordinates, employees, and
7 agents. If any requested document is not within your possession,
8 custody, or control, please state in whose possession, custody,
9 or control such documents may be found.

10 2. If you do not or cannot respond to each of the requests
11 after exercising due diligence to secure the information needed
12 to do so, please state both why the responsive information or
13 documents are not or will not be made available, as well as what
14 efforts have been made to locate any responsive information or
15 documents.

16 3. If any documents or responsive information concerning
17 documents are withheld on the grounds of privilege or other
18 protection from discovery, then for each such document, please
19 set forth the date and nature of the document; the author and any
20 recipients thereof; a general description of the subject matter
21 of the document; and the basis for the claim of privilege. If
22 responsive information regarding oral communication is withheld
23 on grounds of privilege or other protection from discovery,
24 please set forth the date, place, and general subject matter of
25 the communication; the identity of the person making the
26 communication and the persons present when it was made; the
27

1 relationship between the persons present and the person making
2 the communication; and the basis for your claim of privilege.

3 4. If anything is deleted from a document produced please
4 state: (a) the reason for the deletion; (b) the subject matter of
5 the deletion; and (c) the name of the person or persons who
6 decided to delete such matter.

7 5. When asked to identify a document or communication
8 contained in a document, please state: (a) its title and/or
9 subject matter; (b) its date; (c) its author; (d) the sender and
10 the recipients of all copies; (e) the present location of the
11 document; and (f) the form control number, if any. When asked to
12 identify a communication not contained in a document, please
13 state: (a) the date and place of the communication; (b) the
14 manner of communication; (c) the identity of each person making
15 and receiving the communication; (d) what was said by each person
16 making, receiving, or present during the communication, or, if
17 not known, the substance of what was said by each person; and (e)
18 whether there are any documents that set forth, summarize, or
19 refer to all or any portion of any unwritten communications.

20 6. When asked to identify a person, please state the
21 person's name, present or former position, and current business
22 address and phone number.

23 7. The obligations imposed upon defendants by Rules 26,
24 33, and 34 of the Federal Rules of Civil Procedure are
25 incorporated by reference including, but not limited to, the duty
26 imposed by Rule 26(e) to supplement your responses to these
27 interrogatories and requests for production of documents.

1 8. These interrogatories and requests are not interposed
2 to harass or to cause unnecessary delay or needless increase in
3 the cost of litigation, and are not intended to be unreasonable
4 or unreasonably burdensome or expensive. If the defendants have
5 suggestions for responding to these interrogatories and requests
6 or for providing the information requested herein in some
7 reasonable alternative manner that they believe will be more
8 expeditious or less expensive, please contact the undersigned
9 counsel for plaintiffs.

10 DEFINITIONS

11 As used herein, the following definitions apply:

- 12 1. "Forest Service" refers to the United States Forest
13 Service, its officers, and employees.
- 14 2. "BLM" refers to the Bureau of Land Management, its
15 officers, and employees.
- 16 3. "Section 318" refers to Section 318 of Pub. L. No. 101-
17 121, 103. Stat. 745.
- 18 4. "Section 2001(k)" refers to Section 2001(k) of the 1995
19 Emergency Supplemental Appropriations for Disaster Relief and
20 Rescissions Act, Pub. L. No. 104-19.
- 21 5. "Logging rider" refers to Section 2001 of the 1995
22 Emergency Supplemental Appropriations for Disaster Relief and
23 Rescissions Act, Pub. L. No. 104-19.
- 24 6. "Rescissions Act" refers to the 1995 Emergency
25
26

1 Supplemental Appropriations for Disaster Relief and Rescissions
2 Act, Pub. L. No. 104-19.

3 7. "NFRC v. Glickman" refers to Northwest Forest Resource
4 Council v. Glickman, No. 95-5244-HO (D. Or.).

5 8. The terms "record" and "document" mean the complete
6 original (or a complete copy when the original is not available),
7 unless otherwise stated, and each non-identical copy (whether
8 different from the original because of notes made on the copy or
9 otherwise), together with all worksheets, back-up documents and
10 other relevant materials. The terms "record" and "document"
11 include any written reports, letters, books, telegrams,
12 memoranda, electronic and computer mail, tape recordings,
13 drawings, graphs, charts, photographs, and other written or
14 graphic material or communication however denominated from which
15 information may be obtained.

16 9. The term "person" includes natural persons, government
17 agencies, partnerships, corporations, and every other form of
18 legally recognized entity.

19 10. All terms include the past, present and future; the
20 singular includes the plural, and the plural includes the
21 singular.

22 11. "Or" shall mean and/or.

23 //

24 //

25 //

26 PLAINTIFFS' 1ST SET OF INTERROGATORIES AND REQUESTS
27 FOR PRODUCTION OF DOCUMENTS TO DEFTS GLICKMAN AND USFS

INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

INTERROGATORY NO. 1:

List every timber sale that has been identified in papers and reports filed in NFRC v. Glickman and every sale alleged by any representative of the timber industry to defendants to be subject to section 2001(k).

RESPONSE:

INTERROGATORY NO. 2:

For each timber sale listed in response to interrogatory number 1, state whether:

(a) a timber sale contract was awarded and accepted and the Forest Service did not cancel or withdraw it, in whole or in part, prior to July 27, 1995;

(b) a timber sale contract was awarded or awarded and accepted prior to July 27, 1995, but the Forest Service, prior to July 27, 1995, cancelled, withdrew, or otherwise decided not to proceed with the sale, in whole or in part, as originally planned;

(c) a timber sale contract was not awarded prior to July 27, 1995 for all or part of the sale;

(d) none of the above describe the sale and explain.

RESPONSE:

INTERROGATORY NO. 3:

For every timber sale identified in response to interrogatories number 2(b), (c), and (d), provide the following information:

(a) the date(s) the sale was advertised, in whole or in part;

(b) the prices, volumes, and contract terms under which the sale was advertised, in whole or in part;

(c) the date(s) the sale was auctioned, in whole or in part, and the type of auction, e.g., oral, sealed bids, etc.;

(d) the date(s) and manner in which a high bidder was identified;

(e) the identity of the high bidder(s);

(f) whether a notice of intent to award or an award letter was sent, and if so, the date and to whom;

(g) a description of any response to a notice of intent to award or an award letter, including a rejection of the award; and

(h) a full description of the reasons why the Forest Service decided not to go forward with all or part of the sale, including the date(s) on which such decisions were made; any actions taken to discontinue the sale; and any determination by the Forest Service that the sale would violate applicable environmental

1 laws, regulations, forest plans, biological opinions, PACFISH,
2 the eastside screens, or agency policies, or would cause adverse
3 environmental effects.

4
5 RESPONSE:

6
7
8 REQUEST FOR PRODUCTION NO. 1: Please provide all documents
9 supporting your response to Interrogatory No. 3, above.

10
11 INTERROGATORY NO. 4:

12 Describe step-by-step the process utilized by the Forest
13 Service to enter into a contract for a timber sale, beginning
14 with the initiation of the process and leading to the point where
15 the contract may be performed.

16
17 RESPONSE:

18
19
20
21 REQUEST FOR PRODUCTION NO. 2: Please provide all documents
22 supporting your response to Interrogatory No. 4, above.

23
24 INTERROGATORY NO. 5:

25 To the extent not explained in response to interrogatory

1 number 4, define the following terms or phrases; describe the
2 circumstances in which the Forest Service takes each of the
3 following actions in connection with a timber sale; and explain
4 the significance of the action:

- 5 (a) advertisement;
- 6 (b) notice of availability;
- 7 (c) solicitation of bids;
- 8 (d) sealed bids;
- 9 (e) oral auctions;
- 10 (f) requiring posting of bid bonds;
- 11 (g) requiring posting of bid bond by high bidder;
- 12 (h) identification of a high bidder;
- 13 (i) negotiation of specific contract terms with high bidder;
- 14 (j) determination that the high bidder is eligible to
15 receive an award of the contract;
- 16 (k) award of a contract to a bidder other than the high
17 bidder;
- 18 (l) notice of intent to award a contract;
- 19 (m) award of a contract;
- 20 (n) suspension of a contract;
- 21 (o) any action that prevents performance of a timber sale
22 contract temporarily or permanently;
- 23 (p) return of bid bond;
- 24 (q) return of bid bond of high bidder.
- 25
- 26

1 RESPONSE:

2
3
4 REQUEST FOR PRODUCTION NO. 3: Please provide all documents
5 supporting your response to Interrogatory No. 5, above.
6

7 INTERROGATORY NO. 6:

8 If the response to interrogatory number 4 and 5 varies for
9 (1) sales offered after July 27, 1995; (2) sales initiated prior
10 to October 23, 1989; (3) Section 318 sales; or (4) sales offered
11 after expiration of Section 318 but before July 27, 1995, please
12 explain any differences and provide complete answers to
13 interrogatory number 4 and 5 for each distinct time period.
14

15 RESPONSE:

16
17
18 REQUEST FOR PRODUCTION NO. 3: Please provide all documents
19 supporting your response to Interrogatory No. 6, above.
20

21 INTERROGATORY NO. 7:

22 Identify the stage in the contract formation process at
23 which the Forest Service is bound by, or to enter into, a timber
24 sale contract.
25

1 **RESPONSE:**

2
3
4
5 **INTERROGATORY NO. 8:**

6 Identify all sales that are encompassed by the following
7 categories and statements in the Record of Decision for
8 Amendments to Forest Service and BLM Planning Documents Within
9 the Range of the Northern Spotted Owl (April 13, 1994): (a) the
10 statement on page 13 that certain previously-offered sales
11 located in late-successional reserves will not substantially
12 impair the integrity of the late-successional reserves or cause
13 significantly different cumulative effects than set forth in the
14 final supplemental environmental impact statement; (b) timber
15 sales awarded prior to the effective date discussed in section
16 3(a) on page 13-14; (c) timber sales sold but unawarded discussed
17 in section 3(c) on page 14; and (d) timber sales sold, unawarded
18 but enjoined discussed in section 3(c)(1) on page 14.

19
20 **RESPONSE:**

21
22
23
24 **REQUEST FOR PRODUCTION NO. 4:** Please provide all documents
25 supporting your response to interrogatory No. 8 above, including

26
27 **PLAINTIFFS' 1ST SET OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS TO DEFTS GLICKMAN AND USFS**

1 documents generated in the course of developing the April 13,
2 1994 Record of Decision and the corresponding environmental
3 impact statements.

4
5 INTERROGATORY NO. 9:

6 Identify each timber sale that was offered but not logged
7 before July 27, 1995 in Washington and Oregon, which falls, in
8 whole or part, within the boundaries of a National Park, a
9 Wilderness Area, National Recreation Area, or a National
10 Monument. For each such sale, identify the National Park,
11 Wilderness Area, National Recreation Area, or the National
12 Monument, the proposed volume, the bid price, the high bidder, if
13 any, and the reasons why the sale did not go forward.

14
15 RESPONSE:

16
17
18 REQUEST FOR PRODUCTION NO. 5:

19 Produce the timber sale contracts for the Gatorson timber
20 sale on the Colville National Forest, the Tip and Tiptop timber
21 sales on the Wenatchee National Forest, and the Elk Fork and
22 Boulder Krab timber sales on the Siskiyou National Forest.

23
24 INTERROGATORY NO. 10: Please identify all persons who
25 provided information used in preparing the responses to the

1 interrogatories and requests stated herein. For each such
 2 person, state the interrogatory or request for which the person
 3 provided information. If more than one person provided
 4 responsive information for a particular request, please identify
 5 the information each person provided.

6
7 RESPONSE:

8
9
10
11 DATED this 9th day of November, 1995.

12 Respectfully Submitted,

13 

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 15 KRISTEN L. BOYLES (WSB# 23806)
 16 Sierra Club Legal Defense Fund
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 18 Seattle, Washington 98104
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20 Attorneys for Plaintiffs

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 22 Western Environmental Law Center
 23 1216 Lincoln Street
 24 Eugene, OR 97401
 25 (503) 485-2471

26 Local Counsel for Plaintiffs

United States District Court

DISTRICT OF
OREGON

PILCHUCK AUDUBON SOCIETY, OREGON NATURAL
RESOURCES COUNCIL, PORTLAND AUDUBON SOCIETY,
BLACK HILLS AUDUBON SOCIETY, WESTERN ANCIENT
FOREST CAMPAIGN, HEADWATERS, COAST RANGE ASSOC.,
FRIENDS OF THE ELK RIVER, LEAVENWORTH AUDUBON
ADOPT-A-FOREST, NORTH CENTRAL WASHINGTON
AUDUBON SOCIETY and KNUT and ANN AAGAARD,

SUMMONS IN A CIVIL ACTION

CASE NUMBER: 95-6384-TC

v.

DAN GLICKMAN, Secretary of Agriculture, BRUCE
BABBITT, Secretary of Interior, UNITED STATES
FOREST SERVICE, and BUREAU OF LAND MANAGEMENT

TO: (Name and Address of Defendant)

United States Attorney
438 Federal Courthouse
211 E. 7th Ave.
Eugene, OR 97401

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFFS' ATTORNEY (name and address)

PATTI A. GOLDMAN
KRISTEN L. BOYLES
Sierra Club Legal Defense Fund
705 Second Avenue, Suite 203
Seattle, WA 98104

and

MARIANNE DUGAN
Western Environmental Law Ctr.
1216 Lincoln St.
Eugene, OR 97401

an answer to the complaint which is herewith served upon you, within 60 (sixty) days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

DONALD M. CINNAMOND

CLERK

DATE

11-7-95

S. [Signature]
BY DEPUTY CLERK

RECEIVED

95 NOV -7 PM 1:24

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
EUGENE, OREGON

1 PATTI A. GOLDMAN (WSB# 24426)
KRISTEN L. BOYLES (WSB# 23806)
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8 Local Counsel for Plaintiffs

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

12 PILCHUCK AUDUBON SOCIETY, OREGON)
NATURAL RESOURCES COUNCIL,)
13 PORTLAND AUDUBON SOCIETY, BLACK)
HILLS AUDUBON SOCIETY, WESTERN)
14 ANCIENT FOREST CAMPAIGN,)
HEADWATERS, COAST RANGE)
15 ASSOCIATION, FRIENDS OF THE ELK)
RIVER, LEAVENWORTH AUDUBON ADOPT-)
16 A-FOREST, NORTH CENTRAL WASHINGTON)
AUDUBON SOCIETY, and KNUT and ANN)
17 AAGAARD,)
Plaintiffs,)

Civil No. 95-6384-JC

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

18 v.)

19 DAN GLICKMAN, Secretary of)
20 Agriculture, BRUCE BABBITT,)
Secretary of Interior, UNITED)
21 STATES FOREST SERVICE, and)
BUREAU OF LAND MANAGEMENT,)
22 Defendants.)

24 INTRODUCTION

25 1. This action seeks a declaration that Section 2001(k) of
26 the 1995 Emergency Supplemental Appropriations for Disaster
27 Relief and Rescissions Act, Pub. L. No. 104-19 ("Rescissions

1 Act"), does not apply: (1) to timber sales that had been
 2 withdrawn or cancelled by the U.S. Forest Service or the Bureau
 3 of Land Management before July 27, 1995, the date that the
 4 Rescissions Act was enacted, or (2) to timber sales that were
 5 originally offered prior to October 23, 1989, the date of
 6 enactment of Section 318, Pub. L. No. 101-121, the law referenced
 7 in Section 2001(k) to identify the timber sales covered by
 8 Section 2001(k). This action also seeks an injunction preventing
 9 the release under Section 2001(k) of cancelled or withdrawn
 10 timber sales and of timber sales originally offered prior to
 11 October 23, 1989.

JURISDICTION

12
 13 2. This Court has jurisdiction pursuant to 28 U.S.C. §
 14 1331.

VENUE

15
 16 3. Venue is proper under 28 U.S.C. section 1391(e).

PARTIES

17
 18 4. Plaintiff Pilchuck Audubon Society is a registered
 19 Washington non-profit corporation dedicated to protecting,
 20 conserving, and enjoying the State of Washington's wildlife and
 21 other natural resources. Pilchuck Audubon Society's principal
 22 place of business is in Everett, Washington and its approximately
 23 1,300 members live in and around Everett, Washington.

24 5. Plaintiff Oregon Natural Resources Council ("ONRC") is a
 25 registered Oregon non-profit corporation with its principal place
 26 of business in Portland, Oregon. It has 6,000 members throughout
 27 the State of Oregon and the Pacific Northwest. ONRC and its

1 members are dedicated to protecting and conserving Oregon's
2 wildlife, lands, waters, and natural resources.

3 6. Plaintiff Portland Audubon Society is a registered
4 Oregon non-profit corporation dedicated to protecting and
5 conserving the wildlife, lands, waters, and natural resources of
6 the Pacific Northwest. Portland Audubon Society's approximately
7 5,000 members live in and around Portland, Oregon.

8 7. Plaintiff Black Hills Audubon Society is a registered
9 Washington non-profit corporation dedicated to protecting,
10 conserving, and enjoying the State of Washington's wildlife and
11 other natural resources. Black Hills Audubon Society's principal
12 place of business is in Olympia, Washington and its approximately
13 750 members live in and around Olympia, Washington.

14 8. Plaintiff Western Ancient Forest Campaign is a
15 registered Oregon non-profit corporation that works through
16 public education and advocacy to protect and conserve ancient
17 forests and public lands across the west, including forests,
18 land, and other natural resources in the Pacific Northwest. It
19 has its principal place of business in Washington, D.C.

20 9. Plaintiff Headwaters is a registered Oregon non-profit
21 corporation dedicated to protecting and conserving Oregon's
22 wildlife, lands, waters, and natural resources. Headwaters'
23 approximately 800 members live in and around southern Oregon.

24 10. Plaintiff Coast Range Association is a non-profit
25 organization formed under the laws of the State of Oregon with
26 its primary place of business in Newport, Oregon. It is
27 dedicated to protecting the forests of the Oregon Coast Range

1 from unwise use and fostering new visions of environmental
2 stewardship, long-term sustainability, and biological diversity
3 that include healthy populations of the animals that occur
4 naturally throughout the Coast Range. Coast Range Association
5 represents hundreds of members who enjoy the birdwatching and
6 other recreation that marbled murrelets provide, as well as
7 business members and individuals whose livelihood depends on the
8 Coast Range tourist industry, which is in turn dependent on the
9 healthy forests and bird populations of the Oregon Coast Range.

10 11. Plaintiff Friends of the Elk River is an unincorporated
11 association with a mailing list of over 700 people. Its members
12 use the Siskiyou National Forest, including the North Fork of the
13 Elk River, for hunting, fishing, photography, wildlife viewing,
14 family outings, and spiritual renewal. The solitude and
15 dominance of natural features and sounds in this area provide the
16 high quality recreational experience enjoyed by Friends of the
17 Elk River members.

18 12. Plaintiff Leavenworth Audubon Adopt-a-Forest is a
19 chapter of the National Audubon Society. It seeks to protect,
20 preserve, and ensure sustainable management of our national
21 forests, and the Wenatchee National Forest, in particular.
22 Members of Leavenworth Audubon Adopt-a-Forest use and enjoy the
23 Wenatchee National Forest, including areas subject to proposed
24 timber sales in the past, for skiing, hunting, hiking, wildlife
25 observation, bird watching, berry collection, nature photography,
26 horseback riding, mushrooming, and camping.

1 13. Plaintiff North Central Washington Audubon Society is a
 2 chapter of the National Audubon Society that seeks to protect,
 3 preserve, and ensure sustainable management of our national
 4 forests, and the Wenatchee National Forest, in particular.
 5 Members of the North Central Washington Audubon Society use the
 6 Wenatchee National Forest, including areas subject to proposed
 7 timber sales in the past, for diverse recreational activities,
 8 nature study and observation, and contemplation.

9 14. Plaintiffs Knut and Ann Aagaard own private property
 10 adjacent to the Wenatchee National Forest and in close proximity
 11 to areas that have been proposed for logging in the past. They
 12 use the Wenatchee National Forest and the areas proposed for
 13 logging in the past for skiing, hunting, hiking, wildlife
 14 observation, bird watching, berry collection, nature photography,
 15 the observation of rare and threatened plants, and camping. They
 16 depend on the watersheds located within portions of the Wenatchee
 17 National Forest that have been proposed for logging in the past
 18 to provide a long-term source of clean water.

19 15. Plaintiffs and their members use Washington and Oregon
 20 forests for birding, wildlife observation, nature photography,
 21 aesthetic enjoyment, and other recreational and educational
 22 activities. Plaintiffs' members derive scientific, recreational,
 23 aesthetic, and conservational benefit and enjoyment from the
 24 existence of various species in the wild. These interests will
 25 be irreparably damaged if defendants award, release, and permit
 26 logging of cancelled, withdrawn, and pre-1990 timber sales in
 27 disregard of their statutory obligations.

1 16. The aesthetic, conservational, recreational, and
2 scientific interests of plaintiffs and their members have been,
3 are being, and, unless the relief prayed for herein is granted,
4 will continue to be adversely affected and irreparably injured by
5 logging of cancelled, withdrawn, and pre-1990 timber sales.
6 Plaintiffs have no adequate remedy at law.

7 17. Defendant Dan Glickman is sued in his official capacity
8 as Secretary of United States Department of Agriculture. He is
9 charged with complying with § 2001(k) of the Rescissions Act as
10 it pertains to the U.S. Forest Service.

11 18. Defendant United States Forest Service is the agency of
12 the Department of Agriculture charged with management of the
13 national forest system.

14 19. Defendant Bruce Babbitt is sued in his official
15 capacity as Secretary of the United States Department of the
16 Interior. He is charged with complying with § 2001(k) of the
17 Rescissions Act as it pertains to the Bureau of Land Management.

18 20. Defendant Bureau of Land Management is the agency of
19 the Department of the Interior charged with management of certain
20 forestlands covered by § 2001 of the Rescissions Act.

21 BACKGROUND

22 21. On July 27, 1995, the Rescissions Act became law.
23 Section 2001 of the Rescission Act is a logging rider that has
24 three components. The first establishes minimal environmental
25 standards and judicial review for salvage timber sales until
26 December 31, 1996. The second expedites the preparation and
27 award of timber sales under the President's Northwest Forest Plan

1 governing the western ancient forests in the Pacific Northwest.
 2 The third is the mandated release of particular timber sales in
 3 Section 2001(k).

4 22. Section 2001(k)(1) of the logging rider provides:

5 Notwithstanding any other provision of law, within 45
 6 days after the date of enactment of this Act, the
 7 Secretary concerned shall act to award, release, and
 8 permit to be completed in fiscal years 1995 and 1996,
 9 with no change in originally advertised terms, volumes,
 10 and bid prices, all timber sale contracts offered or
 11 awarded before that date in any unit of the National
 12 Forest System or district of the Bureau of Land
 13 Management subject to section 318 of Public Law 101-121
 14 (103 Stat. 745). The return of the bid bond of the
 15 high bidder shall not alter the responsibility of the
 16 Secretary concerned to comply with this paragraph.

17 23. Section 2001(k)(2) exempts from release any sale "if
 18 any threatened or endangered bird species is known to be nesting
 19 within the acreage that is the subject of the sale . . ."

20 Section 2001(k)(3) requires the Secretaries to provide
 21 replacement timber "if for any reason a sale cannot be released
 22 and completed under the terms of this subsection within 45 days
 23 after the date of enactment of this Act."

24 24. The legislative history of this provision referred to a
 25 subset of timber sales that had been offered and/or awarded under
 26 Section 318, but had since been held up because the sales might
 27 adversely affect threatened or endangered species.

28 25. Nothing in the legislative history suggests an intent
 29 to require the Forest Service or BLM to go forward with timber
 30 sales that had been withdrawn or cancelled before July 27, 1995.

31 26. In the short time since its enactment, Section 2001(k)
 32 has been embroiled in litigation over its scope. Pending
 33 litigation addresses whether Section 2001(k)(1) extends beyond

1 the specific time frame covered by Section 318 to timber sale
 2 contracts offered after Section 318 expired. Several of the
 3 plaintiffs in this action were denied intervention in the pending
 4 lawsuit concerning the temporal reach of Section 2001(k).

5 27. In that litigation, this Court has construed Section
 6 2001(k)(1) to apply to all timber sale contracts offered since
 7 October 23, 1989, when Section 318 was enacted. Under this
 8 interpretation, Section 318 timber sales and timber sales offered
 9 since Section 318 expired, but before July 27, 1995, when the
 10 Rescissions Act was enacted, must be released immediately under
 11 their original terms.

12 28. In the course of the pending litigation, defendants
 13 have identified timber sales that were cancelled or withdrawn
 14 prior to July 27, 1995 as among those that must be, and, in fact,
 15 are being, released under a broad reading of Section 2001(k)(1).

16 29. Since their creation, both the Forest Service and the
 17 BLM have proposed, but then cancelled or withdrawn, countless
 18 timber sales. Many, and perhaps most, timber sales that were
 19 offered in the past, but cancelled or withdrawn prior to July 27,
 20 1995, were cancelled or withdrawn because they violated
 21 applicable environmental standards.

22 30. In the course of the pending litigation, defendant
 23 Forest Service has identified at least one timber sale that was
 24 originally offered prior to October 23, 1989 and its pre-October
 25 23, 1989 volumes as being subject to release under the broader
 26 interpretation of Section 2001(k)(1).

27

1 31. Many, and perhaps most, timber sales that were offered
2 prior to October 23, 1989, but have not been awarded and/or
3 logged, would violate current environmental standards.

4 32. If defendants award and release timber sales that were
5 cancelled or withdrawn prior to July 27, 1995 under their
6 original terms, public forestlands and species that depend on
7 them will be irreparably harmed.

8 33. If defendants award and release timber sales that were
9 originally offered prior to October 23, 1989 under their original
10 terms, public forestlands and species that depend on them will be
11 irreparably harmed.

12 CAUSES OF ACTION

13 COUNT ONE

14 SECTION 2001(k)(1) DOES NOT APPLY TO CANCELLED AND
15 WITHDRAWN SALES

16 34. Section 2001(k)(1) directs defendants to award and
17 release previously offered timber sale contracts.

18 35. Section 2001(k)(1) does not require defendants to offer
19 or re-offer previously cancelled or withdrawn timber sale
20 contract offers.

21 36. Section 2001(k)(1) applies only to timber sale contract
22 offers that remained outstanding on July 27, 1995, the date the
23 Rescissions Act became law.

24 COUNT TWO

25 SECTION 2001(k)(1) DOES NOT APPLY TO SALES ORIGINALLY
26 OFFERED PRIOR TO ENACTMENT OF SECTION 318

27 37. Section 2001(k)(1) applies to timber sale contracts

1 offered in units of the national forest system and BLM districts
2 subject to Section 318.

3 38. Since Section 318 did not exist prior to October 23,
4 1989, it could not define timber sale contracts or units of the
5 national forest system or BLM districts prior to that date.

6 39. Accordingly, Section 2001(k) (1) applies only to timber
7 sale contracts offered after October 23, 1989.

8 RELIEF

9 WHEREFORE, plaintiffs ask the Court to award the following
10 relief:

11 A. Declare that Section 2001(k) (1) does not apply to timber
12 sale contract offers cancelled or withdrawn prior to July 27,
13 1995;

14 B. Declare that Section 2001(k) (1) applies only to timber
15 sale contracts offered after October 23, 1989;

16 C. Enjoin defendants from awarding, releasing, or
17 permitting completion of any timber sale contract offers that
18 were cancelled or withdrawn prior to July 27, 1995;

19 D. Enjoin defendants from awarding, releasing, or
20 permitting completion of any timber sale contract offers made
21 prior to October 23, 1989;

22 E. Award plaintiffs their attorneys' fees and costs in this
23 action; and

24 F. Grant such other relief as the Court deems proper.

25 //
26 //
27 //

Respectfully submitted this 7th day of November, 1995.

Patti A. Goldman

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FILED

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LOU ALLENBACH, JR. CLERK

BY _____
CLERK

18 IN THE UNITED STATES DISTRICT COURT
 19 FOR THE DISTRICT OF MONTANA, MISSOULA DIVISION

20 INLAND EMPIRE PUBLIC LANDS)
 21 COUNCIL, a non-profit corporation;)
 22 THE ECOLOGY CENTER, a non-profit)
 23 corporation; and ALLIANCE FOR THE)
 24 WILD ROCKIES, a non-profit)
 25 corporation,)

26 Plaintiffs,)

27 v.)

28 DAN GLICKMAN, in his official)
 29 capacity as Secretary of the U.S.)
 30 Department of Agriculture; and)
 31 UNITED STATES FOREST SERVICE, an)
 32 agency of the U.S. Department of)
 33 Agriculture; and UNITED STATES)
 34 FISH AND WILDLIFE SERVICE, an)
 35 agency of the U.S. Department of)
 36 Interior,)

37 Defendants.)

Civil No. **95 183 BLG**

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

INTRODUCTION

1
2 1. This is an action for declaratory judgment and
3 injunctive relief. Plaintiffs Inland Empire Public Lands
4 Council, The Ecology Center and Alliance for the Wild Rockies
5 challenge the actions of Dan Glickman, in his official capacity
6 as Secretary of the United States Department of Agriculture, the
7 United States Forest Service, an agency of the United States
8 Department of Agriculture charged with management of the national
9 forests, and the United States Fish and Wildlife Service, an
10 agency of the United States Department of Interior charged with
11 responsibility for administering the provisions of the Endangered
12 Species Act ("ESA"), 15 U.S.C. §§ 1531 et seq., with regard to
13 the threatened Cabinet/Yaak Ecosystem ("CYE") grizzly bear
14 population, in proceeding with the North Fork Fire Salvage Timber
15 Sales and the South Fork Yaak Fire Salvage Timber Sales on the
16 Kootenai National Forests (collectively "Kootenai Salvage
17 Sales").

18 2. This action arises under and alleges violations of the
19 logging rider to the 1995 Emergency Supplemental Appropriations
20 for Disaster Relief and Rescissions Act ("Rescissions Act"), Pub.
21 L. No. 104-19, § 2001, and the Administrative Procedure Act
22 ("APA"), 5 U.S.C. § 551 et seq.

23 3. In this action, plaintiffs seek (1) an order vacating
24 as arbitrary and capricious the Fish and Wildlife Service's
25 concurrences on the proposed Kootenai Salvage Sales and any
26 Forest Service Decision Notices based upon those concurrences;
27

1 (2), a declaration that proceeding with the Kootenai Salvage Sales
2 is arbitrary and capricious and not in accordance with the
3 Rescissions Act; and (3) a permanent injunction barring
4 defendants from permitting logging of, or otherwise proceeding
5 with, these sales.

6 JURISDICTION AND VENUE

7 4. Jurisdiction over this action is conferred by 28 U.S.C.
8 § 1331 (federal question). As required by § 2001(f) (1) of the
9 Rescissions Act, plaintiffs are filing this action within 15 days
10 after the date of initial advertisement of particular sale units
11 within the Kootenai Salvage Sales on October 19, 1995.

12 5. Venue is properly vested in this Court pursuant to §
13 2001(f) (1) of the Rescissions Act and 28 U.S.C. § 1391(a) (2) as
14 the Kootenai Salvage Sales are located within this district.

15 PARTIES

16 6. Plaintiff Inland Empire Public Lands Council
17 ("Council") is a regional non-profit corporation dedicated to
18 promoting the long-term community and biological sustainability
19 of the Greater Columbia River Basin through education and
20 participation in public agency decisionmaking processes. The
21 Council's 850 members and network of Forest Watch activists
22 extensively use and enjoy national forests throughout the Inland
23 Northwest, including the Kootenai National Forest, and share a
24 working commitment to the protection, enhancement, preservation,
25 conservation and restoration of native fish and wildlife
26 populations, intact plant communities and habitat, soil
27

1 productivity, water quality and other natural resources contained
2 within this public forest. The Council's principal place of
3 business is in Spokane, Washington.

4 7. Plaintiff The Ecology Center is a non-profit
5 corporation working to (1) ensure the protection of biological
6 diversity and ecosystem integrity in the Wild Rockies Bioregion,
7 including the Kootenai National Forest, (2) assure agency
8 conformance with environmental laws, and (3) increase citizen
9 participation in public lands management. The Ecology Center and
10 its members use the Kootenai National Forest for recreation,
11 wildlife viewing, hunting, sightseeing, photography, spiritual
12 renewal, fishing, solitude and primitive recreation and
13 education. The Ecology Center's principal place of business is
14 in Missoula, Montana.

15 8. Plaintiff Alliance for the Wild Rockies ("Alliance") is
16 a non-profit corporation dedicated to the protection and
17 preservation of the native biodiversity of the Northern Rockies
18 Bioregion, its native plant, fish and animal life, and its
19 naturally functioning ecosystems. The Alliance has over 5000
20 individual members, some of whom reside in or near the Cabinet-
21 Yaak Grizzly Bear Recovery Area, and over 600 member businesses
22 and organizations. The Alliance's principal place of business is
23 in Missoula, Montana.

24 9. Members of the plaintiff organizations hike, camp,
25 photograph scenery and wildlife, and engage in other vocational,
26 scientific observation, and recreational activities in the
27

1 Kootenai National Forest. Members of the plaintiff organizations
2 also observe, study, photograph, and engage in recreational
3 fishing in the wild. Plaintiffs' members derive recreational,
4 scientific, and aesthetic benefit from these activities. In
5 addition, plaintiffs and their members have actively participated
6 in the Kootenai Salvage Sales planning process.

7 10. The above-described aesthetic, conservational,
8 recreational, scientific and economic interests of plaintiffs and
9 their members will be adversely affected and irreparably injured
10 if defendants proceed with the Kootenai Salvage Sales.

11 Plaintiffs have no adequate remedy at law.

12 11. Defendant Dan Glickman is Secretary of the United
13 States Department of Agriculture, which oversees management of
14 the National Forest System. Under § 2001(c)(1)(A) of the
15 Rescission Act, he bears the responsibility for deciding the
16 extent to which salvage timber sales will deviate from forest
17 plans and recognized protections for threatened and endangered
18 species.

19 12. Defendant United States Forest Service is an agency of
20 the United States Department of Agriculture charged with
21 management of the Kootenai National Forest.

22 13. Defendant United States Fish and Wildlife Service
23 ("FWS") is an agency of the United States Department of Interior
24 charged with responsibility for administering the provisions of
25 the Endangered Species Act and ensuring the recovery of the
26
27

1 threatened Cabinet Yaak grizzly bear population which inhabits
2 the Kootenai National Forest.

3 STATEMENT OF FACTS

4 A. Grizzly Bear Management on the Kootenai National Forest

5 14. The Kootenai Salvage Sales are located within the
6 designated Big Creek grizzly bear management unit ("BMU #17"),
7 which spans the Three Rivers and Rexford Ranger Districts on the
8 Kootenai National Forest. This BMU, which covers approximately
9 139 square miles, was established as part of the Cabinet/Yaak
10 Recovery Zone in accordance with the Grizzly Bear Recovery Plan
11 developed by FWS to conserve and recover threatened grizzly bear
12 populations, including the small population that occupies the
13 Cabinet/Yaak Ecosystem ("CYE").

14 15. Grizzly bears (*Ursus arctos horribilis*) are wide-
15 ranging animals which were listed as "threatened" under the
16 Endangered Species Act ("ESA") in 1975 and require large areas of
17 habitat away from human activities to satisfy seasonal food,
18 cover and denning requirements. The distribution of this species
19 has been reduced by human activities to less than 2 percent of
20 its historical range in the lower 48 states.

21 16. The Cabinet Yaak population that occupies western
22 Montana, northeastern Idaho and portions of British Columbia is
23 believed to contain no more than 18 individuals. The Grizzly
24 Bear Recovery Plan provides for a minimum viable population of
25 100 individuals in this recovery zone. Given its small size, the
26 CYE population cannot sustain additional human-caused mortality.

1 17. Grizzly bear studies have repeatedly demonstrated that
2 the greatest barrier to recovering bear populations is human-
3 caused mortality and that, in particular, motorized human access
4 to grizzly habitat on open roads and trails is directly and
5 adversely correlated with bear mortality and survival.
6 Accordingly, there is widespread consensus among grizzly bear
7 experts and agencies charged with grizzly bear protection that
8 the strict regulation of road density and the provision of secure
9 (i.e., unroaded) habitat is the best management tool available to
10 protect and conserve this species.

11 18. For this reason, the Kootenai National Forest has
12 adopted a number of standards, guidelines, policies and
13 strategies to maintain unroaded grizzly habitat in the
14 Cabinet/Yaak Recovery Zone, including in BMU #17. These
15 standards, guidelines, policies and strategies are based upon the
16 Interagency Grizzly Bear Committee ("IGBC") Guidelines and other
17 scientific studies and are incorporated into the Kootenai
18 National Forest Plan, the Amended Biological Opinion and
19 Incidental Take Statement issued by FWS for that plan, and
20 various other binding interagency agreements between the Forest
21 Service and FWS. They govern all timber harvest and other human
22 management activities within BMU #17.

23 19. To satisfy these standards, guidelines, policies and
24 strategies, the Kootenai National Forest must ensure, among other
25 things, that: (1) each BMU contains 70 percent habitat
26 effectiveness; (2) the open road density of each sub-unit within
27

1 the BMU does not exceed 0.75 linear miles per square mile of
2 habitat; (3) clearcut opening sizes in BMUs do not exceed 40
3 acres; and (4) BMUs contain movement corridors of at least 600
4 feet between openings. Additionally, in authorizing timber sales
5 in BMUs, the Forest Service must provide adequate displacement
6 habitat adjacent to the logged area to satisfy grizzly bear
7 seasonal and spatial needs.

8 20. In specific recognition of the slow progress toward
9 recovery for the CYE grizzly bear population, the IGBC adopted
10 new motorized access management guidelines in July 1994. These
11 guidelines call for the Forest Service to utilize certain state-
12 of-the-art computer methodologies for assessing road density
13 impacts and to adopt stable "core areas" for each BMU which will
14 not be entered or roaded for a period of at least 10 years. The
15 Kootenai National Forest has not yet formally incorporated these
16 guidelines into its management practices.

17 21. On July 27, 1995, FWS issued an Amended Biological
18 Opinion and Incidental Take Statement for the Kootenai National
19 Forest Plan that is designed to incorporate the new IGBC access
20 management guidelines. That document states that "it is the
21 biological judgement of the Service that existing high road
22 densities [in the Cabinet/Yaak Recovery Zone] . . . result in
23 significant habitat modification or degradation which results in
24 actual injury to grizzly bears by significantly impairing normal
25 behavioral patterns, including breeding, feeding or sheltering."
26 Based on these concerns and the extremely small size of the CYE
27

1 grizzly population, the Amended Biological Opinion and Incidental
2 Take Statement concludes that "the Service believes that
3 incidental taking of grizzly bears is occurring on the Kootenai
4 National Forest."

5 22. For this reason, the Incidental Take Statement contains
6 various terms and conditions that require the Kootenai National
7 Forest to participate in the development of ecosystem-specific
8 access management standards for the CYE grizzly populations and
9 thereafter to adopt and implement such standards. During the
10 interim before these standards are developed and adopted, the
11 Kootenai National Forest is directed to administer BMUs within
12 its jurisdiction in a manner that conforms with existing Forest
13 Plan grizzly bear management standards.

14 B. The North Fork and South Fork Salvage Timber Sales

15 23. During the summer of 1994, a lightning storm ignited
16 over 200 fires on the Kootenai National Forest. Among these
17 fires were several that occurred in the South Fork Yaak River
18 drainage and the adjacent North Fork Big Creek drainage. The
19 Fowler Fire burned across both areas and salvage operations in
20 connection with this fire will occur as part of both the North
21 Fork Salvage Timber Sales and the South Fork Salvage Timber
22 sales. Additionally, the South Fork Salvage Timber Sales
23 Decision Notice includes salvage operations related to the Pink
24 Mountain Fire, and the North Fork Salvage Timber Sales Decision
25 Notice includes salvage operations related to the North Fork
26 Fire, the 336 Fire and the Maxine Fire.

1 24. All told, these salvage sales will log approximately 54
2 million board feet of timber on 3,227 acres of forest land
3 through the heart of BMU #17 and in three roadless areas. During
4 the course of these projects, over eight miles of new roads will
5 be constructed and 72 miles of old roads will be reconstructed.

6 25. Presently, BMU #17 violates existing Forest Plan
7 standards, interagency agreements and the FWS Incidental Take
8 Statement for grizzly bear habitat effectiveness because only 68
9 percent of the BMU, rather than the required minimum 70 percent,
10 is considered to be in a secure condition. The Kootenai Salvage
11 Sales would halt recent improving trends in this BMU and reverse
12 the Forest Service's earlier firm commitment to bring this BMU
13 into compliance with habitat effectiveness standards by April 1,
14 1995. Because the Kootenai Salvage Sales would perpetuate and
15 extend ongoing violations of Forest Plan standards in this BMU,
16 they are in direct contradiction to the terms and conditions
17 contained in the FWS Incidental Take Statement and the prior
18 commitments, management direction and policies of the Forest
19 Service.

20 26. Presently, three of the eight administrative subunits
21 of BMU #17 remain out of compliance with the 0.75 miles per
22 square mile open road density standard. The Kootenai Salvage
23 sales will expand and extend these violations to five of the
24 eight subunits and will ensure that open road density standards
25 are not achieved in any of these five subunits until at least the
26 year 2000.

1 27. Additionally, the Kootenai Salvage Sales include
2 numerous logging units that exceed the 40-acre opening standard
3 contained in the Forest Plan, as well many smaller units located
4 directly adjacent to each other or to previous harvest areas
5 that, collectively, will result in massive clearcuts across much
6 of the North Fork Big Creek and South Fork Yaak River drainages
7 and through inventoried roadless areas. This violation of Forest
8 Plan standards and interagency agreements is facilitated and
9 exacerbated by the Kootenai National Forest's decision to ignore
10 entirely existing Forest Plan standards for wildlife movement
11 corridors between logging units.

12 C. The FWS Letters of Concurrence

13 28. In connection with the Kootenai Salvage Sales, the
14 Forest Service prepared and submitted to FWS two nearly identical
15 biological assessments for the North Fork Big Creek and South
16 Fork Yaak River drainages. These biological assessments concede
17 that the Kootenai Salvage Sales will violate Forest Plan
18 standards and interagency guidelines for habitat effectiveness,
19 open road density, clearcut opening size, movement corridors and
20 grizzly bear displacement areas. Nevertheless, they conclude
21 that the projects will not have adverse impacts on grizzly bears
22 because an alternative "core area methodology" will be used.

23 29. In essence, this alternative methodology provides only
24 that (1) the Forest Service will identify existing "core" areas
25 (areas of at least 2,500 acres which are unroaded or contain only
26 permanently closed roads) equal to the amount of area proposed
27

1 for logging and will refrain from further management activity in
2 such identified core areas during the life of the projects; and
3 (2) the project areas themselves may be considered "core" areas
4 after logging is completed. However, there is no requirement
5 that these pre- and post-project core areas remain fixed or
6 unentered after completion of the salvage projects.

7 30. This methodology neither meets IGBC access management
8 guidelines nor provides any new protection or habitat for grizzly
9 bears. It merely allows the Forest Service to proceed with the
10 Kootenai Salvage Sales in violation of all existing Forest Plan
11 bear management standards by simply identifying existing unroaded
12 area within BMU #17 that will not be simultaneously roaded or
13 logged. There is no scientific support in the literature or
14 record of decision for the Forest Service's conclusion that this
15 methodology will provide an adequate level of protection for the
16 highly imperiled CYE grizzly bear population or will approximate
17 the protections currently provided by existing Forest Plan
18 standards. In fact, the scientific evidence is overwhelmingly to
19 the contrary.

20 31. From the outset in December 1994 of informal
21 consultation under the ESA for the Kootenai Salvage Sales to the
22 present, FWS has expressed serious reservations about the Forest
23 Service's proposed alternative "core area methodology." For
24 instance, in its September 29, 1995 and October 12, 1995
25 concurrence letters for these projects, FWS noted that the
26 Kootenai National Forest has not yet adopted recommended methods
27

1 for measuring road density nor has it implemented a road
2 reclamation program or any special management measures to
3 increase core area. FWS concluded that "existing quantity of
4 core habitat (26%) in BMU 17 is likely to be well below what will
5 be required for recovery of the [CWE] grizzly bear [population]."

6 32. Despite these stated concerns and the conclusions and
7 terms and conditions contained in the July 27 Amended Biological
8 Opinion and Incidental Take Statement, FWS ultimately concurred
9 in the Kootenai Salvage Sales based solely on the fact that BMU
10 #17 will remain "close" to Forest Plan standards even if these
11 projects are implemented. These concurrences fail to use the
12 best scientific data available to analyze project impacts; they
13 fail to provide a rational explanation connecting the
14 acknowledged potential risks and concerns to the "no adverse
15 impact" conclusion; and they fail to connect the analysis of
16 project impacts with the terms and conditions of the applicable
17 Incidental Take Statement or the agency's own standards for
18 determining jeopardy under the ESA.

19 33. Decision Notices for the Kootenai Salvage Sales were
20 signed on October 4, 1995 (North Fork Fire Salvage Timber Sales)
21 and October 12, 1995 (South Fork Yaak Fire Salvage Timber Sales).

22 34. The North Fork West portion of the North Fork Fire
23 Salvage Timber Sales was advertised for sale on October 19, 1995.
24 The advertisement indicates that the Forest Service will receive
25 sealed bids and conduct an oral auction on November 21, 1995.
26 Plaintiffs are informed and believe and on that basis allege that
27

1 portions of the South Fork Yaak Fire Salvage Timber Sales have
2 been advertised but were subsequently and temporarily withdrawn
3 and will be reissued within the next week to two weeks.

4 CLAIMS FOR RELIEF

5 I. First Claim for Relief

6 FWS's Concurrences on the Kootenai Salvage Sales Are 7 Arbitrary and Capricious.

8 35. Plaintiffs hereby incorporate paragraphs 1 through 34
9 herein as if set forth in full.

10 36. The existing Amended Biological Opinion and Incidental
11 Take Statement for grizzly bear management on the Kootenai
12 National Forest concludes that a taking of grizzly bears is
13 currently occurring in the Cabinet/Yaak Ecosystem and that the
14 Forest Service must comply with all Forest Plan standards pending
15 adoption and implementation of new IGBC access management
16 guidelines for the CYE grizzly bear population to avoid adversely
17 affecting this population.

18 37. The Kootenai Salvage Sales violate all or nearly all
19 grizzly bear management standards and guidelines incorporated
20 into the Kootenai National Forest Plan, the Amended Biological
21 Opinion and Incidental Take Statement, and various interagency
22 agreements. Nevertheless, FWS concurred with the Forest Service
23 that these sales will have no adverse impacts on the highly
24 imperiled CYE grizzly bear population.

25 38. FWS offers no rational explanation or supporting
26 scientific evidence for its conclusions, which are contrary to
27 its own prior and contemporaneous statements, that the Kootenai

1 Salvage Sales will not appreciably diminish the value of
2 important grizzly bear recovery habitat within BMU #17 or
3 adversely impact the survival of the grizzly bear population that
4 occupies BMU #17 and the Cabinet/Yaak Recovery Zone.

5 39. There is no scientific evidence to support the FWS
6 concurrences.

7 40. FWS's actions and omissions are arbitrary, capricious,
8 an abuse of discretion, and otherwise not in accordance with law
9 and are subject to judicial review under the APA, 5 U.S.C. §§
10 701-706.

11 II. Second Claim for Relief

12 The Forest Service's Decisions to Proceed with the 13 Kootenai Salvage Sales Are Arbitrary and Capricious.

14 41. Plaintiffs hereby incorporate paragraphs 1 through 34
15 herein as if set forth in full.

16 42. The Kootenai Salvage Sales violate the Kootenai
17 National Forest Plan standards, the terms and conditions of the
18 FWS Amended Biological Opinion and Incidental Take Statement, the
19 IGBC Guidelines and other carefully crafted interagency policies
20 and strategies for managing and recovering the precarious CYE
21 grizzly bear population.

22 43. The Forest Service has provided no scientific support
23 or biological explanation for its decision to abandon entirely
24 these agreed-upon policies and strategies in favor of a make-
25 shift "core area methodology" which the expert agency, FWS, has
26 concluded cannot provide an adequate or effective substitute for
27 existing Forest Plan standards.

1 44. The Forest Service's decisions to proceed with these
2 salvage sales are arbitrary and capricious because they are at
3 odds with carefully crafted agency and interagency standards,
4 guidelines, policies and strategies for managing and recovering
5 the critically compromised CYE grizzly bear population, the
6 Amended Biological Opinion and Incidental Take Statement, and the
7 overwhelming scientific evidence on this issue. Accordingly, the
8 decisions to proceed with these sales should be set aside, and
9 the sales should be permanently enjoined under § 2001(F)(4).

10 III. Third Claim for Relief

11 Secretary Glickman Has Not Expressly Authorized the
12 Forest Service to Deviate from the Forest Plan and to
13 Permit Salvage Sales that Adversely Affect Threatened
14 Species as Required By § 2001(c)(1)(A).

15 45. Plaintiffs hereby incorporate paragraphs 1 through 34
16 herein as if set forth in full.

17 46. Under the logging rider, the Secretary of Agriculture
18 must make the decision to permit the Forest Service to proceed
19 with a salvage sale that violates applicable forest plans or that
20 adversely affects threatened or endangered species. Rescissions
21 Act, § 2001(c)(1)(A).

22 47. The Kootenai Salvage Sales violate Kootenai National
23 Forest Plan standards and will adversely affect the threatened
24 CYE grizzly bear population.

25 48. Secretary Glickman has not made the decision to permit
26 the Kootenai Salvage Sales to go forward despite their violation
27 of forest plan standards and their adverse effects on threatened
species.

1 49. By proceeding with salvage sales that violate the
2 Kootenai National Forest Plan and that will adversely affect
3 threatened species, without a decision to do so by Secretary
4 Glickman, the Forest Service has violated § 2001(c)(1)(A) of the
5 Rescissions Act.

6 PRAYER FOR RELIEF

7 WHEREFORE, the plaintiffs respectfully request that the Court:

8 A. Expedite the proceedings in this case and assign the
9 case for a hearing at the earliest possible date, as required by
10 § 2001(f)(5) of the Rescissions Act.

11 B. Declare that FWS's concurrences in the Kootenai Salvage
12 Sales are arbitrary and capricious because they are inconsistent
13 with prior and contemporaneous agency statements and existing
14 scientific evidence and because there is no rational explanation
15 or supporting scientific evidence for the agency's conclusions,
16 which are contrary to its own prior and contemporaneous
17 statements, that the Kootenai Salvage Sales will not appreciably
18 diminish the value of important grizzly bear recovery habitat
19 within EMU #17 or adversely impact the survival of the CYE
20 grizzly bear population.

21 C. Order that these FWS concurrences shall be set aside.

22 D. Declare that the decisions to proceed with the Kootenai
23 Salvage Sale are arbitrary and capricious because (1) they are
24 contrary to the well-reasoned views of scientific experts; (2)
25 they are at odds with Kootenai National Forest Plan standards,
26 the Amended Biological Opinion and Incidental Take Statement for
27



1 the Forest Plan, the IGBC Guidelines and other interagency
 2 agreements for managing and recovering the CYE grizzly bear
 3 population; and (3) there is no scientific support for the
 4 abandonment of these carefully crafted interagency standards,
 5 guidelines, policies and strategies in favor of the inadequate
 6 "core area methodology."

7 E. Declare that, by proceeding with salvage sales that
 8 violate forest plans standards and that will adversely affect
 9 threatened species, without a decision to do so by Secretary
 10 Glickman, the Forest Service has violated § 2001(c)(1)(A) of the
 11 Rescissions Act.

12 F. Order that the decisions to proceed with these sales
 13 shall be set aside.

14 G. Permanently enjoin the Forest Service from proceeding
 15 with the Kootenai Salvage Sales.

16 H. Award plaintiffs their reasonable fees, costs,
 17 expenses, and disbursements, including attorneys' fees,
 18 associated with this litigation.

19 I. Grant plaintiffs such additional and further relief as
 20 the Court may deem just and proper.

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DATED this 2nd day of November, 1995.

Respectfully Submitted,

Patti A. Goldman

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