

NLWJC- Kagan

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Timber - Other Litigation: Idaho
Conservation v. Thomas
(Thunderbolt) [2]

CONCLUSION

1
2 For the reasons given above and in ICL's memorandum in
3 support of its motion for summary judgment and injunctive relief,
4 plaintiffs respectfully ask the Court to deny the Forest
5 Service's cross-motion for summary judgment and declare that the
6 decision to proceed with the Thunderbolt salvage sale is
7 arbitrary and capricious. ICL also asks the Court to declare
8 that, by proceeding with a salvage sale that violates the forest
9 plans and that will adversely affect threatened species, without
10 a decision to do so by Secretary Glickman, the Forest Service has
11 violated § 2001(c)(1)(A) of the Rescissions Act itself.

12 Because the Thunderbolt salvage sale will cause irreparable
13 harm to the South Fork Salmon River watershed and Snake River
14 spring/summer chinook salmon, see generally McCullough Decl. at
15 ¶¶ 3, 11, 13, 20, ICL asks this Court to permanently enjoin the
16 Forest Service from proceeding with the Thunderbolt salvage sale.

17 DATED this 27th day of November, 1995.

18 Respectfully Submitted,

19 *Kristen L. Boyles*
20 PATTI A. GOLDMAN (WSB# 24426)
21 KRISTEN L. BOYLES (WSB# 23806)
22 Sierra Club Legal Defense Fund
23 705 Second Avenue, Suite 203
24 Seattle, Washington 98104
25 (206) 343-7340

Attorneys for Plaintiffs

24 ///
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26 judicial review. The APA standard, 5 U.S.C. § 701(a)(2), does
27 not apply here. In any event, the Forest Service defends its
actions on the record and does not dispute that federal courts
are well-equipped to review the Forest Service decision under the
arbitrary and capricious standard.

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Local Counsel for Plaintiffs

REPLY.W

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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF IDAHO

1 IDAHO CONSERVATION LEAGUE; and)
 2 THE WILDERNESS SOCIETY,)

3 Plaintiffs,)

4 v.)

5 JACK WARD THOMAS, in his official)
 6 capacity as Chief of the United)
 7 States Forest Service;)
 8 DAN GLICKMAN, in his official)
 9 capacity as Secretary of the U.S.)
 10 Department of Agriculture; and)
 11 UNITED STATES FOREST SERVICE, an)
 12 agency of the U.S. Department of)
 13 Agriculture,)

14 Defendants.)

Civil No. 95-425-S-EJL

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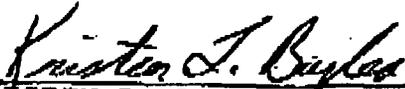
SECOND DECLARATION OF
 KRISTEN L. BOYLES IN
 SUPPORT OF ICL'S MOTION
 FOR SUMMARY JUDGMENT

I, KRISTEN L. BOYLES, state and declare as follows:

1. I am an attorney with the Sierra Club Legal Defense
 Fund, counsel for plaintiffs Idaho Conservation League and The
 Wilderness Society. I make the following statements set forth in
 this declaration on the basis of personal knowledge.

1 2. Attached as Exh. AA is a letter from President Clinton
2 to the Honorable Newt Gingrich (June 29, 1995).

3 I declare under penalty of perjury that the foregoing is
4 true and correct. Executed this 27th day of November, 1995, in
5 Seattle, Washington.

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8 KRISTEN L. BOYLES

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EXHIBIT A

THE WHITE HOUSE
WASHINGTON

Chicago

June 29, 1995

The Honorable Newt Gingrich
Speaker of the
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I am pleased to be able to address myself to the question of the Emergency Salvage Timber Sale Program in H.R. 1944. I want to make it clear that my Administration will carry out this program with its full resources and a strong commitment to achieving the goals of the program.

I do appreciate the changes that the Congress has made to provide the Administration with the flexibility and authority to carry this program out in a manner that conforms to our existing environmental laws and standards. These changes are also important to preserve our ability to implement the current forest plans and their standards and to protect other natural resources.

The agencies responsible for this program will, under my direction, carry the program out to achieve the timber sales volume goals in the legislation to the fullest possible extent. The financial resources to do that are already available through the timber salvage sale fund.

I would hope that by working together we could achieve a full array of forest health, timber salvage and environmental objectives appropriate for such a program.

Sincerely,

Bill Clinton

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DECLARATION OF
DALE A. MCCULLOUGH

I, DALE A. MCCULLOUGH, declare and state as follows:

1. My name is Dale A. McCullough. I have a B.S. in
zoology from Ohio University, an M.S. in Biology from Idaho State
University, and a Ph.D. in Fisheries from Oregon state
University. I am currently employed as a Senior Fishery

1 Scientist for the Columbia River Inter-Tribal Fish Commission
2 (CRITFC). In this capacity, I have studied, written, and
3 presented on U.S. Forest Service management of anadromous fish
4 habitat throughout the Columbia River Basin and have prepared
5 technical analyses for CRITFC on Forest Service land management
6 plans, projects, and timber sales over a 10-year period. I was a
7 member of the technical consensus team that developed the
8 standards and management plan for the South Fork Salmon River
9 that became part of the Payette and Boise National Forests' Land
10 and Resource Management Plans (LRMPs). A true and correct copy
11 of my curriculum vitae is attached as Exhibit A.

12 2. I make the following statements based on my review of
13 the Thunderbolt Wildfire Recovery Project Record of Decision
14 ("ROD"), the September 22, 1995 Biological Opinion [draft] on
15 Thunderbolt from the National Marine Fisheries Service ("NMFS"),
16 comments on the Thunderbolt salvage sale from the Environmental
17 Protection Agency ("EPA"), the Forest Service Science panel
18 report on the Thunderbolt salvage sale, the expert declaration
19 submitted in this case by Cindy Deacon Williams, my knowledge of
20 the scientific literature, and my own professional knowledge and
21 experience. I submit this declaration to further highlight the
22 risk of irreparable harm that the Thunderbolt salvage sale will
23 pose to chinook populations and their habitat in the South Fork
24 Salmon River watershed.

25 3. In my opinion, the Thunderbolt salvage sale will cause
26 irreparable harm to the South Fork Salmon River watershed on the
27 Boise and Payette National Forests. The sale will harm the

1 forests' soils, watersheds, and fisheries by permitting logging,
2 road-building, and landing construction on the delicate, erosive
3 soils of the South Fork Salmon River watershed.

4 4. The Thunderbolt salvage sale, in the South Fork Salmon
5 River and Johnson Creek drainages on the Boise and Payette
6 National Forests, will affect important habitat for populations
7 of Snake River spring and summer chinook salmon. The South Fork
8 Salmon River was once the single largest producer of Snake River
9 chinook salmon in the Columbia River basin. The South Fork still
10 has several important spawning sites for Snake River spring and
11 summer chinook salmon.

12 5. South Fork Salmon River salmon runs have declined
13 significantly since the 1950s, primarily due to habitat
14 degradation from logging and associated road-building. During
15 the mid-1960's, major landslides occurred in the South Fork as a
16 result of past logging and road-building activities. These
17 landslides severely degraded and harmed South Fork spawning and
18 rearing habitat and caused a significant decline in spring and
19 summer Snake River chinook salmon populations in the South Fork.

20 6. Since the landslides, the South Fork Salmon River has
21 been the focus of much scientific research and study. In 1977
22 the Chief of the Forest Service created the South Fork Salmon
23 River Monitoring Committee. This group of scientists was charged
24 with recommending monitoring plans for the South Fork Salmon
25 River and reviewing annual monitoring results. In 1983 the
26 Monitoring Committee concluded that sediment conditions in
27 chinook habitat had not improved over the previous six-year

1 period. This conclusion led to a logging moratorium that has
2 continued to the present. Redd counts (nests in which eggs are
3 deposited in the gravel) in the South Fork declined precipitously
4 from 1957 to the early 1980s and have continued to be very low.
5 The Monitoring Committee emphatically stated that new land
6 disturbances in the South Fork would slow river restoration and
7 would cause additional damage. The Monitoring Committee
8 recommended that "no new sediment producing activity be allowed
9 ... that has the potential to deliver sediment to the SFSR or one
10 of its tributaries. This applies until monitoring data indicate
11 a return to improving conditions." South Fork Salmon River Five-
12 Year Enhancement Plan, FY '90-'94. Special Initiative, USDA-
13 Forest Service, Payette National Forest, Boise National Forest,
14 Intermountain Forest and Range Experiment Station, February 1989.

15 7. In the late 1980s, the Forest Service convened a group
16 of scientists, timber industry representatives, federal and state
17 agency employees, Indian tribal representatives, and conservation
18 groups members, to negotiate a management plan for the South Fork
19 Salmon River. By early 1987 this Technical Consensus Workgroup
20 developed benchmarks and land management guidelines for the South
21 Fork Salmon River that were released as "The South Fork Salmon
22 River -- An Area of Special Concern" ("the South Fork
23 guidelines"). These guidelines are now part of the Payette and
24 Boise National Forest Land and Resource Management Plans. I was
25 an active member of the Technical Consensus Workgroup during this
26 period and was fully informed about the previous work and
27 findings of the Monitoring Committee.

1 8. Under the South Fork guidelines, no new major land-
2 disturbing actions are to be scheduled in the South Fork
3 watershed until interim sediment-reduction and substrate
4 objectives have been achieved and restoration activities have
5 improved in-river conditions.

6 9. The fact that fine sediment in spawning and rearing
7 areas still remains at high levels and does not appear to be
8 improving with time (despite a logging moratorium and attempts to
9 restrict sediment flow to the river from the road system),
10 indicates that the recommendations of the South Fork guidelines
11 are still necessary and must be enforced until habitat objectives
12 are met. Allowing land management actions that increase sediment
13 delivery to the river will increase the background level of
14 sediment delivery; these increases cannot be eliminated via
15 mitigation. Even if the interim benchmarks for substrate
16 sediment could be achieved, the Technical Workgroup understood
17 that the South Fork would not be in a fully restored condition at
18 that point.

19 10. For example, the Technical Workgroup adopted an interim
20 mean cobble embeddedness benchmark of 32%. Data available at
21 that time indicated that streams in undeveloped watersheds had
22 7.5% to 32.5% cobble embeddedness with a mean of approximately
23 20%. Developed watersheds showed cobble embeddedness ranging
24 from 17.5% to 52.5% with a mean of 40%. The 32% benchmark for
25 mean cobble embeddedness in the South Fork represents the high
26 extreme of undeveloped watersheds, and this high benchmark was
27 counter to the recommendation of CRITFC. The interim benchmark,

1 then, does not represent a desired endpoint for restoration; it
2 was considered interim from the start by the Technical Workgroup
3 and, in actuality, represents the worst case found in undeveloped
4 watersheds.

5 11. NMFS issued a draft biological opinion for the
6 Thunderbolt salvage sale, in which NMFS determined that the
7 Thunderbolt Project is likely to jeopardize the continued
8 existence of Snake River spring and summer chinook salmon and is
9 likely to result in the destruction or adverse modification of
10 their critical habitat. This jeopardy opinion is based upon
11 strong evidence that the Thunderbolt salvage sale will cause
12 irreparable ecological harm to the salmon and the South Fork
13 Salmon River watershed.

14 12. For example, the Poverty spawning site has a mean fine
15 sediment level of 31.2% (Newberry, 1992, as cited in NMFS
16 biological opinion). Using the Stowell et al. (1983) model (also
17 cited by NMFS), one would expect an egg-to-emergent fry survival
18 rate of approximately 33% at this fine sediment level. However,
19 NMFS indicated that the USFS measured actual survival rates of
20 1.4% at the Poverty spawning site. This extremely low survival
21 appears to be attributable to a high concentration of fine
22 sediment at depths in the substrate where eggs are deposited
23 relative to the percentage of fines in entire substrate cores
24 (the conventional method applied to monitoring under the
25 technical guidelines). This sampling problem indicates that
26 conditions that may meet interim benchmarks may actually be
27 intolerable in the precise locations where eggs are deposited.

1 In addition, by assuming the average response to fine sediment in
2 spawning gravel that is expressed in the Stowell et al. (1983)
3 model, one would expect approximately 62% survival under interim
4 benchmark conditions (i.e., 27% fines). Under 20% fines,
5 however, which is the average condition for undeveloped batholith
6 streams, expected survival would be as high as 85%. This point
7 highlights the magnitude of the habitat recovery that still must
8 occur and the very poor current survival rates compared to those
9 expected under interim benchmark conditions and also under even
10 more desirable recovery endpoints. Currently, the Glory, Dollar,
11 Oxbow, and Poverty spawning areas are all in poorer condition
12 than given by the benchmark (information presented in NMFS
13 biological opinion). Allowing actions that will increase or
14 prevent reductions in sediment delivery will not lead to the
15 needed decreases in fines in critical spawning areas.

16 13. EPA reviewed the Thunderbolt salvage sale and found it
17 inconsistent with collective agency decisions and resource
18 protection goals for the South Fork. EPA believed that the sale
19 would further aggravate the already degraded habitat for the
20 threatened chinook salmon in the South Fork. EPA found the
21 USFS's decision to proceed with the Thunderbolt salvage sale to
22 be contrary to the firm guidance established in the Payette and
23 Boise National Forest LRMPs. Under the LRMPs' management
24 prescriptions, cautious introduction of timber harvest would be
25 allowed only after sediment-reducing projects had demonstrated
26 effective improvement to the fish habitat. EPA states that such
27 a demonstration of effectiveness has not been made. Without

1 this, predictions of success in reducing sediment delivery based
2 on heavy reliance on USFS modeling were considered very suspect.
3 EPA judged that the risks involved in attempting to finance
4 watershed restoration via the same kinds of activities that
5 produced these poor habitat conditions were unjustifiable. EPA's
6 comments and concerns mean that the agency believes that the
7 Thunderbolt salvage sale will cause irreparable harm to salmon
8 and water quality in the South Fork Salmon River.

9 14. The USFS Thunderbolt Wildfire Science Panel raised
10 several issues of major importance concerning the risks to
11 threatened chinook in the South Fork Salmon River. They believed
12 that the sediment models that were used were applied properly,
13 given their inherent limitations. However, the models provided
14 only an average sediment delivery for the analysis area. The
15 models were not able to predict impacts to specific critical
16 spawning reaches. The uncertainty in climatic processes was
17 considered to result in an inability to predict the magnitude and
18 timing of fine sediment impacts to critical spawning or rearing
19 areas. Many of the assumptions about sediment delivery were
20 predicated on consistent application of a high level of effective
21 management practices. Given less than the most desirable
22 management scenario, higher than anticipated sediment delivery
23 could be expected. The Science Panel pointed out that
24 reliability of the models may be suspect. The RSPM model has not
25 been validated. The BOISED and M/K models, though they may be
26 the most appropriate models for use in the general geographic
27 area of the South Fork Salmon River, are limited in their ability

1 to reliably answer key management concerns pertinent to chinook
2 salmon habitat condition. For these and other reasons, the
3 Science Panel concluded that the USFS analysis of effects could
4 not support a conclusion that long-term improvement in chinook
5 spawning and rearing habitat would occur.

6 15. Ground disturbance in the South Fork Salmon River
7 watershed will increase erosion and sedimentation rates.
8 Increased erosion and excess sedimentation degrades salmonid
9 habitat and reduces the natural production of chinook in a number
10 of ways. Increases in sediment delivery are known to reduce (1)
11 the success of fry emergence due to increases in percentage
12 sediment in spawning gravel and (2) available rearing space
13 during summer and the especially critical winter rearing periods
14 for juvenile salmonids by increasing cobble embeddedness and
15 reducing pool depth and availability. Increased sedimentation
16 reduces pool volume and creates broader, shallower stream
17 channels, disrupting salmon feeding and rearing behavior and
18 exacerbating stream temperature problems. Excess sedimentation
19 is the single greatest cause of elevated mortality in degraded
20 spawning and rearing habitat of Snake River salmonids in the egg
21 to smolt lifestages.

22 16. Logging and new road and landing construction are
23 sources of increased sediment delivery that cannot be fully
24 mitigated. They result in a heightened level of sediment
25 delivery relative to the existing baseline. Salvage and
26 construction activities planned in the Thunderbolt salvage sale
27 cannot go forward in the sale area without increasing

1 sedimentation, further impairing already-damaged watersheds and
2 fisheries, and risking the extirpation of local endangered
3 chinook populations and those of other salmonid species.

4 17. Given the inherent time lags in the sediment response
5 of watersheds to disturbance (the sediment timing factor); the
6 certainty of an elevated average background sediment delivery
7 with renewed timber harvest; the risk of local mass hillslope
8 failures; the heavy reliance on sediment models that are
9 predicated on consistent application of highly effective
10 mitigation practices; the likelihood of near-term significant
11 increases in spawning area fine sediment and cobble embeddedness;
12 the poor existing habitat condition that severely limits chinook
13 survival-to-emergence; and the long periods required for recovery
14 of degraded chinook habitat, the Thunderbolt salvage sale will
15 likely result in an increase in mortality for the chinook salmon
16 population during the freshwater incubation and rearing phases
17 and a reduction in population productivity. The risk of
18 extirpation increases where, as in the South Fork, depressed
19 populations remain exposed to poor habitat conditions and
20 population productivity is decreased further. The Forest
21 Service's decision to proceed with the Thunderbolt salvage sale
22 heightens the risk of irreparable harm because the South Fork has
23 not yet reached the interim objectives agreed to in the South
24 Fork guidelines and the declining redd count trend reflects the
25 poor existing habitat conditions.

26 18. Additionally, the literature of conservation biology
27 applied to fishery resources of the Pacific Northwest points out

1 clearly the significance of retaining all remaining roadless
2 areas in their current state -- undisturbed by human development,
3 fragmentation, and exploitation -- to help preserve and restore
4 imperiled salmonids and aquatic biodiversity in general (Frissell
5 1992, Henjum et al. 1994, Rhodes et al. 1994, Noss and
6 Cooperrider 1994). Contrary to this advice, the Thunderbolt
7 salvage sale will log in two inventoried roadless areas. The
8 Forest Service's decision to go ahead with the Thunderbolt
9 salvage sale ignores the overwhelming consensus of all recent
10 scientific evidence and is simply inexcusable.

11 19. Roadless areas in today's forest lands act as last
12 refuges for fish species that are sensitive to the effects of
13 land management (i.e., increasing fine sediment deposition in
14 spawning and rearing areas, increasing water temperatures, loss
15 of pool volumes and pool frequency, and other effects). Streams
16 in roadless areas supporting salmonids often act as centers for
17 recolonization of nearby habitats that have been degraded. The
18 ability of a subbasin to support overwintering of juvenile
19 salmonids, including chinook salmon, depends heavily upon the
20 existence of high quality streams in roadless areas. Even when
21 roadless areas do not contain streams supporting salmonids
22 directly, roadless area streams contribute water of the highest
23 quality to downstream fish habitat. Further compromising the
24 water quality of salmon-bearing stream reaches by allowing
25 sediment-producing activities in roadless areas leads to

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1 elimination of essential refuges, reduction in chinook salmon
 2 survival in incubation and rearing life stages, and reduction of
 3 overall smolt production from the entire subbasin.

4 20. Simply put, as stated by the expert federal biological
 5 agencies, the Thunderbolt salvage sale will cause irreparable
 6 harm to the forests' soils, watersheds, and fisheries.

7 DATED this 21 day of November, 1995.

8
 9 *Dale A. McCullough*
 10 DALE A. McCULLOUGH

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~~SECRETARY DEC~~

DECLARATION OF DALE A. McCULLOUGH

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EXHIBIT A

CURRICULUM VITAE

Dale A. McCullough
Senior Fishery Scientist
Columbia River Inter-Tribal Fish Commission

Education

B.S. Zoology, Ohio University, Athens, Ohio, 1970
M.S. Biology, Idaho State University, Pocatello, Idaho, 1975
Ph.D. Fisheries, Oregon State University, Corvallis, Oregon 1988

Memberships

Phi Beta Kappa 1970
Phi Kappa Phi 1970
Sigma Xi 1974
North American Benthological Society
American Fisheries Society

Employment

Teaching assistant, September 1970- June 1972, Idaho State University. Taught introductory labs in biology, ecology. Department Chairman, A.D. Linder.

NORCUS (Northwest College and University Association for Science) scholarship, October 1972-October 1973, Battelle Northwest, Richland, WA. Conducted extended research for M.S. degree on ERDA reserve at Rattlesnake Springs. Project leader, C.E. Cushing.

Research assistant, January 1974- November 1974, Idaho State University, Pocatello, ID. Conducted research under International Biological Program (IBP) on bioenergetics of aquatic insects in Deep Creek, Idaho. Worked with team charting energy flow through the Deep Creek ecosystem as a representative of cold desert streams. Project leader G.W. Minshall.

Research assistant, December 1974- December 1976, Oregon State University, Corvallis, OR. Independent research on bioenergetics of the snail *Juga plicifera* under IBP funding. Also worked with research team on River Continuum project in the H.J. Andrews Experimental Forest. Measurement of primary production, standing crop of benthic organic matter, drift; collection of invertebrate samples; respirometry. Extensive use of SCUBA in sampling large and small streams. Project leader J. Sedell.

Research assistant, January 1977- June 1977, Idaho State University. Worked with large team of scientists from Idaho State University, Michigan State University, Stroud Water Research Center, and Oregon State University on River Continuum project on Salmon River in Idaho. Collection of benthic organic matter, periphyton, and benthic invertebrates using SCUBA. Project leaders G.W. Minshall, K.W. Cummins, R. Vannote, J. Sedell.

Research assistant, March 1978- May 1982, Oregon State University. Development of a system and methodology for classification of watersheds and streams under Environmental Protection Agency funding. Project leader C.E. Warren.

Consultant, May 1-June 15, 1982, Oregon State University, Fisheries Department. Designed equipment and procedures for sampling aquatic invertebrates and sediments from the Willamette River by SCUBA for a U.S. Army Corps of Engineers project. Assisted collection of fish and measurement of physical and chemical water characteristics. Project leader H. Li.

Computer analyst, Anadromous, Inc., Corvallis, OR. September 1984- September

1985. Statistical analysis of coded wire tag data for salmon returns to aquaculture company. Wrote computer programs for data analysis. Supervisor Ronald Gowan.

Research assistant, July 1983- September 1985, College of Oceanography, Oregon State University. Radiochemical analyses of marine and river sediments using solvent extraction, ion exchange, electrodeposition, precipitation. Analysis of alpha, beta, and gamma radiation spectra using multichannel analyzers. Neutron activation. Estimation of sediment budget for McNary Reservoir. Project leader Thomas Reasley.

Fishery Scientist, September 1985- September 1990, Columbia River Inter-Tribal Fish Commission. Technical analysis of land/aquatic management procedures (especially US Forest Service land management plans); review and development of monitoring and cumulative effects analysis procedures; acquisition and interpretation of fish habitat data; evaluation of fish production potential in freshwater environments; technical review and editing of professional journal and public agency publications; represent Commission on technical committees charged with fish habitat protection and monitoring such as Washington's Timber/Fish/Wildlife Program; development of theoretical principles and practical procedures for classification of watersheds and streams. Supervisor Phil Roger.

Managing Scientist, September 1990-January 1994, Columbia River Inter-Tribal Fish Commission. Act as supervisor for fish production team; duties include project planning and coordination, preparation of workplans and budgets, personnel reviews and other assorted personnel matters. Continuation of development of methodology for classification of watersheds and streams for application as a tool in setting fish habitat standards, planning monitoring programs, and assessing fish production potential. Development of rationale for assessment of fish habitat carrying capacity; participate in TFW Ambient Monitoring Committee; Oregon AFS Watershed Classification Committee for maintenance of biodiversity; EPA cumulative effects review committee; Oregon Department of Environmental Quality Temperature Committee; development of steelhead spawning data base for John Day River; development of screening process for potential use on land management actions under Section 7 and 10 consultation by NMFS. Supervisor Phil Mundy.

Senior Fishery Scientist, February 1994-present, Columbia River Inter-Tribal Fish Commission. Oregon Department of Environmental Quality Temperature Committee; development of screening process for potential use on land management actions under Section 7 and 10 consultation by NMFS; monitoring plan for use in federal land management; development of model of fish habitat quality/fish survival. Supervisor Phil Roger. Work in cooperation with other CRITFC/tribal staff and contractors to achieve tribal fish restoration goals. Assist in providing leadership with departmental management staff.

Publications

McCullough, D.A. 1975. Bioenergetics of three aquatic invertebrates determined by radioisotopic analyses. Idaho State University. 326 p.

McCullough, D.A. 1975. Bioenergetics of three aquatic invertebrates determined by radioisotopic analyses. BNWL-1928. U.S. ERDA contract B(45-1):1830, 225 p.

Minshall, G.W., J.T. Brock, D.A. McCullough, R. Dunn, M.R. McSorley, and R. Pace. 1975. Process studies related to the Deep Creek Ecosystem. U.S./IBP Desert Biome, R.M. 75-46.

McCullough, D.A., G.W. Minshall, and C.E. Cushing, 1979. Bioenergetics of lotic filter-feeding insects *Simulium* spp. (Diptera) and *Hydropsyche occidentalis* (Trichoptera) and their function in controlling organic transport in streams. Ecology 60(3):585-596.

McCullough, D.A., G.W. Minshall, and C.E. Cushing. 1979. Bioenergetics of a stream "collector" organism Tricorythodes minutus (Insecta: Ephemeroptera). *Limnol. Oceanogr.* 24(1):45-58.

Beasley, T.M., C.D. Jennings, and D.A. McCullough. 1985. Sediment accumulation rates in the lower Columbia River. *J. Environmental Radioactivity*.

McCullough, D.A. 1987. A systems classification of watersheds and streams. Ph.D. thesis. Oregon State University. 217 p.

McCullough, D.A. 1987. A compilation of habitat/fisheries data for the Clearwater National Forest. Columbia River Inter-Tribal Fish Commission. Unpublished manuscript.

McCullough, D.A., J. Weber, J. Sedell, O. Weller, R. Williams, and J. Wasserman. 1990. A proposal for managing and monitoring streams for fish production in Region 6. Draft manuscript. Columbia River Inter-Tribal Fish Commission and U.S. Forest Service. 37 p.

McCullough, D.A. 1990. Classification of streams within a landscape perspective. 158 p. In: Coordinated Information System Project, Annual Progress Report, January 5, 1989- December 31, 1990. Prepared by Columbia River Inter-Tribal Fish Commission for Bonneville Power Commission.

McCullough, D.A. 1991. Problems in the classification of watershed and stream systems: hierarchical classification by physical potential within an ecoregion context. Manuscript in preparation.

McCullough, D.A. 1991. The basis for estimates of carrying capacity. Columbia River Inter-Tribal Fish Commission. Unpublished manuscript. 44 p.

Hawkins, C.Y., J.L. Kerchner, P.A. Bisson, M.D. Bryant, L.M. Decker, S.V. Gregory, D.A. McCullough, C.K. Overton, G.H. Reeves, R.J. Steedman, and M.K. Young. 1992. A hierarchical approach to classifying habitats in small streams. Submitted to *Trans. Am. Fish. Soc.*

McCullough, D.A., F.A. Espinosa, and J.J. Rhodes. 1995. A monitoring strategy for the ESA screening process for application to salmon watersheds. Final draft submitted to National Marine Fisheries Commission.

Rhodes, J.J., D.A. McCullough, and F.A. Espinosa, Jr. 1994. A coarse screening process for evaluation of the effects of land management activities on salmon spawning and rearing habitat in ESA consultations. Tech. Report 94-4. 127 pp. + appendices.

Cuence, M.L. and D.A. McCullough. 1995. Framework for estimating salmon survival as a function of habitat condition. Final draft submitted to National Marine Fisheries Commission.

Research Experience

M.S. Extensive experience in application of radioisotope methodology in determination of energy flow pathways in aquatic invertebrates. Conducted bioenergetics research at Idaho State University, Battelle Northwest, and Oregon State University. This research is important in understanding the role and persistence of invertebrate species in the aquatic community and estimating the impact of invertebrates on food resources.

Ph.D. Development of a system for classification of watersheds and streams through use of a hierarchical system of biophysical capacities. The Tillamook Forest on the north coast of Oregon was used as a prototype area for testing

methodologies. This work is important in understanding the relationship between stream habitat and watershed character, in designing sampling programs, and in effectively managing ecological units.

Presentations

Presentation of bioenergetics research for year 1973 to AEC review panel, Richland, WA.

Bioenergetics of the mayfly Tricorythodes minutus. AAS Meeting. 1978. Corvallis, Oregon.

Principles and methods of determination of energy budgets of aquatic insects. Invited lecture given to class of G.W. Minshall. 1977.

A systems classification of watersheds and streams. Given to Environmental Protection Agency, Corvallis, Oregon, July 1983.

Systematic classification of watersheds and streams of Oregon. Delivered February 1984 to Department of Fisheries and Wildlife, Oregon State University, Corvallis, Oregon.

Forest Service Management of fish habitat in the Columbia River basin. Delivered to Bonneville Power Administration Symposium, Airport Sheraton, Portland, OR. 1986.

The tribal perspective on Forest Service Research and management of anadromous fish in the Pacific Northwest. Delivered to Forest Service Region 6 symposium, Rippling River. 1986.

Effects of forest practices on fish habitat in the Northwest. Delivered to a forestry class at Mt. Hood Community College. 1987.

Washington's TFW Process. Panel discussion on new developments in fisheries management in the Pacific Northwest. Oregon Chapter of the American Fisheries Society. Ashland, OR. 1988.

Principles and methods of stream classification for TFW. TFW sponsored workshop on stream/watershed classification for ambient monitoring programs. Pack Forest, Eatonville, WA. 1988.

Delivered talk to Hancock Field Station OMSI Field Class on "The role of the courts and the Inter-Tribal Fish Commission in restoration of anadromous fish in the Columbia River Basin." Hancock Field Station is near Fossil, OR. 1989. Requested by H. Li.

Presentation to OMSI Field Class at Oregon State University, Corvallis on "Fisheries issues on the Columbia River and the role of the Columbia River Inter-Tribal Fish Commission. 1990. Requested by H. Li.

American Society of Limnology and Oceanography, Edmonton, Canada, July 1993. Towards a science-based management of Columbia basin watersheds for water temperature control and protection of fish production

Department of Fisheries and Wildlife, Oregon State University, Corvallis, Oregon, Stream team, January 24, 1994. The role of temperature in regulating survival of Oregon's freshwater biota.

North Pacific International Chapter, American Fisheries Society, February 9-11, 1994. Wenatchee, Washington. Effects of water temperature on chinook survival and evaluation of evidence from the laboratory and field with management implications.

International River Quality Symposium, Poland-USA Joint Conference. Portland State University, Portland, Oregon, March 21-25, 1994. Technical concerns in selection of temperature criteria to protect Oregon's freshwater biota.

Columbia River Inter-Tribal Fish Commission, Portland, Oregon, April 6, 1994. Technical concerns in selection of temperature criteria to protect Oregon's freshwater biota.

"Carrying capacity of tributaries and mainstem of the Columbia river: concepts and management responses." Workshop on ecological carrying capacity for Columbia Basin salmon habitats. 2-day workshop at Columbia River Red Lion Inn, Portland, OR. September 6-7, 1995. Hosted by Battelle Northwest. Funded by Bonneville Power Administration.

1 PATTI A. GOLDMAN (WSB# 24426)
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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF IDAHO

12 IDAHO CONSERVATION LEAGUE; and)
 13 THE WILDERNESS SOCIETY,)
 14 Plaintiffs,)
 15 v.)
 16 JACK WARD THOMAS, in his official)
 17 capacity as Chief of the United)
 18 States Forest Service;)
 19 DAN GLICKMAN, in his official)
 20 capacity as Secretary of the U.S.)
 21 Department of Agriculture; and)
 22 UNITED STATES FOREST SERVICE, an)
 23 agency of the U.S. Department of)
 24 Agriculture,)
 25 Defendants.)

Civil No. 95-425-S-EJL
 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the State of Washington. I am over 18 years of age and not a party to this action. My business address is 705 Second Avenue, Suite 203, Seattle, Washington 98104.

On November 27, 1995, I served a true and correct copy of

- 1) ICL'S OPPOSITION TO DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT AND REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND INJUNCTIVE RELIEF;
- 2) SECOND DECLARATION OF KRISTEN L. BOYLES IN SUPPORT OF ICL'S MOTION FOR SUMMARY JUDGMENT; and
- 3) DECLARATION OF DALE A. MCCULLOUGH

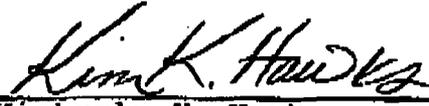
by facsimile and by United States mail, postage prepaid, addressed as follows:

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I, Kimberly K. Hawks, declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of November, 1995 at Seattle, Washington.



 Kimberly K. Hawks
 Assistant to Kristen L. Boyles

U.S. DEPARTMENT OF JUSTICE
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DATE: November 15, 1995

NUMBER OF PAGES TO BE TRANSMITTED (including cover): 31

FROM: Stephanie Parent

MESSAGE: Idaho Conservation League v. Thomas (Thunderbolt salvage). Attached is Plaintiffs' opening brief for summary judgment. We will circulate a draft of Defendants' Memorandum in Opposition to Plaintiffs' Motion and in Support of Defendants' Cross Motion for Summary Judgment COB Monday. We must file it with the Court on Wed. Nov. 22, 1995.

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1 INTRODUCTION

2 By this motion, plaintiffs Idaho Conservation League and The
3 Wilderness Society (collectively "ICL") challenge the decision of
4 the Forest Service to proceed with the Thunderbolt salvage sale
5 on the Boise and Payette National Forests. This case arises
6 under and asserts violations of § 2001 of the 1995 Emergency
7 Supplemental Appropriations for Disaster Relief and Rescissions
8 Act, Pub. L. No. 104-19 ("Rescissions Act") (copy appended).

9 This challenge focus on the Thunderbolt Wildfire Recovery
10 Project ("Thunderbolt salvage sale"), a highly controversial
11 salvage sale in the South Fork Salmon River watershed in the
12 Boise and Payette National Forests. Despite the opinions and
13 suggestions of other federal agencies to the contrary, the Forest
14 Service decided to proceed with the Thunderbolt salvage sale to
15 generate funds for restoration projects in the watershed. This
16 decision not only flies in the face of expert scientific opinions
17 and runs counter to the evidence before the agency, it also runs
18 counter to the Forest Service's own well-established and accepted
19 management decisions for caring for this ecologically fragile
20 watershed.

21 Indeed, the argument in favor of the Thunderbolt salvage
22 sale -- that it will raise money to fund restoration projects in
23 the watershed -- is completely undercut by the economic analysis
24 of the Forest Service itself. In the latest turn in a downward
25 spiral, the Forest Service did not receive a single bid at the
26 auction held one week ago. Under the logging rider to the 1995
27 Rescissions Act, the Forest Service's decision to proceed with
the Thunderbolt salvage sale is arbitrary and capricious and in

1 violation of the rider itself, and ICL asks the Court to
2 permanently enjoin the sale.

3 BACKGROUND

4 I. IDAHO SALMON AND THE SOUTH FORK SALMON RIVER BASIN

5 In every ecosystem there is a species that acts as an
6 indicator of ecological health. For many national forests in
7 Idaho, that indicator species is the Snake River salmon. The
8 salmon's inland journey from the sea has become the stuff of
9 legend: the fish fight current and elevation to return to their
10 natal streams, and on the way feed eagles, bear, and other forest
11 denizens with their abundance. The salmon that once thrived in
12 Idaho, however, are now almost gone. Snake River coho are
13 extinct. Only four Snake River sockeye, a species that once
14 thrived in the Pacific Northwest, passed Lower Granite dam, the
15 last upstream barrier on their migration route to Redfish Lake,
16 in 1995. Fish Passage Center Biweekly Report #95-30 at 10
17 (Combined Ladder Counts Through 11/02/95) (Exh. A).^{1/} Snake
18 River spring/summer chinook, whose populations at one time
19 exceeded 1.5 million adult fish per year, averaged only 9,674
20 wild fish per year from 1980 through 1990. 56 Fed. Reg. 29542,
21 29544 (June 27, 1991). In 1995, fewer than 2,000 spring and
22 summer adults were counted at Lower Granite, including hatchery
23 as well as wild fish. FPR #95-30 at 10.

24 The National Marine Fisheries Service ("NMFS"), the federal
25 natural resource agency with jurisdiction over marine species,
26 added Snake River spring/summer chinook to the list of threatened

27

^{1/} All exhibits are attached to the Declaration of Kristen L. Boyles, filed concurrently.

1 species protected by the Endangered Species Act, 16 U.S.C. § 1531
2 et seq. on April 22, 1992. NMFS identified destruction of the
3 chinook's spawning and rearing habitat by logging, road-building,
4 and other land-altering activities as a significant factor in the
5 species' decline. 56 Fed. Reg. 14653, 14657, 14660. Designation
6 of critical habitat for the species followed. 58 Fed. Reg.
7 68513.

8 The South Fork Salmon River and its major tributary, Johnson
9 Creek, provide critical habitat for distinct subpopulations of
10 Snake River spring/summer chinook salmon. Historically, the
11 South Fork Salmon River was the single largest producer of
12 spring/summer chinook salmon in the Columbia River Basin.
13 Thunderbolt Wildfire Recovery Final Environmental Impact
14 Statement ("FEIS"), at 1-3 (AR 39). Both historically and at
15 present, the South Fork has several important spawning sites for
16 Snake River spring/summer chinook salmon. Biological Opinion,
17 Thunderbolt Wildfire Recovery Project ("Biop.") at 6 (Exh. B).^{2/}
18 The South Fork Salmon River has contributed more to the Snake
19 River spring/summer chinook as an evolutionary significant unit
20 than any other single river system. Biop. at 9. Prime spawning
21 habitat occurs within and adjacent to the Thunderbolt salvage
22 sale.

23 Since the 1950s, South Fork Salmon River salmon have
24

25 ^{2/} NMFS' Biological Opinion dated September 22, 1995 is
26 attached as an exhibit to the Declaration of Kristen L. Boyles.
27 An earlier version of the Biological Opinion, dated August 4,
1995 can be found at AR 25 at 582-612. The two versions are
substantially similar and come to the same "jeopardy"
conclusions. ICL will refer to the most recent version in order
to present the most accurate picture to the Court.

1 declined significantly, primarily due to habitat degradation
2 caused by mining, grazing, logging, and associated road-building
3 that cause sedimentation. FEIS at I-3. By the early 1960s, more
4 than 1,000 miles of roads had been built in the drainage, many
5 across steep, fragile terrain. FEIS at I-10. During the mid-
6 1960's, major landslides occurred in the South Fork as a result
7 of past logging and road-building activities. These massive
8 landslides buried portions of the South Fork under three feet of
9 dirt. The landslides severely degraded South Fork spawning and
10 rearing habitat and precipitated a significant decline in
11 spring/summer Snake River chinook salmon populations in the South
12 Fork. Biop. at 10; FEIS at I-10.

13 Geologically speaking, the landslides were easy to predict.
14 The South Fork lies within a geological formation known as the
15 Idaho Batholith, which is characterized by steep, highly
16 dissected topography and shallow soils. Once the shallow soils
17 are displaced, exposed granitic material begins to oxidize and
18 decompose, making it highly erodible. Erosion is accelerated by
19 high-intensity, short duration rainstorms that can result in four
20 inches of rain in a 24-hour period. Past timber harvest and
21 road-building, coupled with storms, have accelerated erosion and
22 sediment deposition in key South Fork spawning reaches. Biop. at
23 9. This habitat degradation has been recognized by NMFS as a
24 primary factor limiting salmonid production in the South Fork.

25 Years of sedimentation have caused the South Fork Salmon
26 River and the East Fork South Fork Salmon River (to which Johnson
27 Creek is a major tributary) to be identified as a Stream Segments
of Concern by the Idaho Division of Environmental Quality. FEIS

1 at I-12. As NMFS noted in its Biological Opinion for nearby
2 Stibnite Mine:

3 [o]ne reason that the East Fork South Fork Salmon River
4 is designated as a Special Resource Water is that it
5 contains spawning and rearing habitat for chinook
6 salmon, steelhead, bull trout, and westslope cutthroat
7 trout.

8 Biop. at 11.

9 The South Fork Salmon River has also been identified as a
10 Water Quality Limited Segment under § 303(d) of the Clean Water
11 Act, which means that it fails to comply with pertinent water
12 quality standards. Accordingly, the Idaho Department of
13 Environmental Quality prepared, and the U.S. Environmental
14 Protection Agency approved, a Total Maximum Daily Load ("TMDL")
15 to bring the upper South Fork Salmon River into compliance with
16 water quality standards. FEIS at I-12; see generally TMDL
17 Approval Letter, Jan. 31, 1992 (AR 130 at 4945); TMDL Problem
18 Assessment (AR 137 at 4999-5013). The TMDL aims to improve fish
19 spawning and rearing habitat by reducing sediment load caused by
20 human activities, and sets a goal of 25% reduction in the
21 sediment load attributable to human activities. FEIS at I-12.
22 This TMDL was the first sediment TMDL developed in the United
23 States.

24 Since the landslides in the 1960s, the need for restoration
25 of the South Fork watershed has been widely recognized by the
26 Forest Service and other federal agencies. Biop. at 13. In the
27 late 1980s, the Forest Service convened a group consisting of
representatives of scientists, the timber industry, federal and
state agencies, Indian tribes, and conservation groups, to
negotiate a management plan for the South Fork. After years of

1 meetings and dialogue, this group developed "The South Fork
2 Salmon River -- An Area of Special Concern" guidelines ("the
3 South Fork guidelines"). The Forest Service amended the Payette
4 and Boise National Forest Land Resource Management Plans in 1988
5 and 1990, respectively, to incorporate these guidelines. Biop.
6 at 13.

7 Under the South Fork guidelines, no new major land-
8 disturbing actions are to be scheduled in the South Fork
9 watershed until interim sediment-reduction objectives have been
10 achieved and restoration activities have improved in-river
11 conditions. Specifically,

12 [t]he LRMP South Fork guidelines established an interim
13 fine sediment objective with a goal of improving
14 habitat to support fishable populations by 1997. The
15 LRMP also planned an aggressive restoration and
16 monitoring program, and prohibited major land
17 disturbing actions until restoration actions were
18 demonstratively effective at improving in-river
19 conditions. The guidelines also adopt a series of
20 other risk-averse actions intended to promote in-
21 river restoration. The guidelines adopt biologically
22 sound and scientifically reviewed protocol to ensure
23 that future human-induced land disturbances are highly
24 unlikely to further impact the South Fork. The
25 sensitivity of the watershed to land disturbance is so
26 extreme and the historical value of the fishery so
27 high, that even short-term impacts from restoration
activities were spread out over a 10-year time frame.

21 Biop. at 13.

22 The negotiations leading to the guidelines addressed fire
23 and salvage logging, but concluded that salvage logging would not
24 be appropriate in the South Fork until interim fish population
25 and habitat objectives have been achieved.

26 The LRMP consensus group considered the potential for
27 large-scale disturbances as they crafted the cautious
step-wise management approach, purposefully spreading
the risk of human induced impacts over a decadal
timeframe. Impacts from a fire or other natural events

1 may be unavoidable; furthermore, stabilizing the source
2 of natural disturbance is not always biologically
3 desirable for aquatic ecosystems. Maintaining natural
4 stream dynamics is more important.

5 Biop. at 15.

6 II. THE THUNDERBOLT SALVAGE SALE

7 In the summer of 1994, wildfires burned approximately
8 150,000 acres in the South Fork Salmon River basin. The
9 Thunderbolt portion of the fires burned close to 19,000 acres of
10 the Boise and Payette National Forests. FEIS at I-3. Within the
11 Thunderbolt area, approximately 5,935 acres burned at high
12 intensity, 8,886 acres burned at moderate intensity, and 4,006
13 acres burned at low intensity. FEIS at I-3.

14 The Thunderbolt salvage sale would log approximately 14
15 million board feet of timber on 3,237 acres, including in
16 landslide prone areas and in two inventoried roadless areas --
17 Caton Lake and Meadow Creek. Biop. at 5; Forest Service Record
18 of Decision ("ROD") at 1 (AR 40).

19 The Forest Service has decided to proceed with the
20 Thunderbolt salvage sale in order to generate revenues for
21 restoration projects. FEIS at I-6. However, the Forest Service
22 does not contend that the logging itself will have any positive
23 restoration effects.

24 In the early planning stages, the Forest Service put forward
25 a long list of restoration and reforestation projects that would
26 be funded by the Thunderbolt salvage sale. See List of
27 Restoration Projects (AR 24 at 524); Non-Essential KV Projects,
Oct. 4, 1995 (Exh. C). The Forest Service analyzed a number of
alternatives, but favored the alternative that would raise the

1 most money. ROD at 2. Alternative D was predicted to generate
2 2.8 million dollars as originally proposed with the net receipts
3 used for sediment-reduction projects to improve fisheries habitat
4 and for reforestation of burned areas. Since that time, the sale
5 has been reduced in scope. As modified and finally adopted to
6 reflect current merchantable timber volumes, the Forest Service
7 estimated that Alternative D would generate about 1 million
8 dollars. ROD at 5; but see Sale Area Improvement & KV Collection
9 Plan/Salvage Sale Fund Plan (Exh. D). The Forest Service
10 admitted that the net proceeds would not allow for any
11 reforestation or for many other desired restoration projects.

12 On November 9, 1995, the Forest Service received no bids on
13 its auction of the Thunderbolt salvage sale. Now that not a
14 single timber company has bid on the sale at the indicated price,
15 the Thunderbolt salvage sale will generate far less than the \$1
16 million estimated by the Forest Service, if the sale sells at
17 all. Ultimately, this means that even fewer restoration projects
18 -- the avowed purpose of the sale -- will be completed.

19 Indisputably, the South Fork has not achieved the sediment-
20 reduction objective set forth in the guidelines and the forest
21 plans. The Thunderbolt salvage sale could not normally go
22 forward under the South Fork guidelines and the Boise and Payette
23 forest plans; however, the Forest Service amended the Boise and
24 Payette forest plans to allow the Thunderbolt salvage sale to
25 proceed. ROD at 4.

26 The Thunderbolt salvage sale is also inconsistent with
27 PACFISH, an interim set of habitat protections adopted by the
Forest Service for land management activities on the Payette and

1 Boise National Forests, among others. Biop. at 3. The
2 Thunderbolt salvage sale authorizes timber removal from Resource
3 Habitat Conservation Areas which include landslide prone areas.
4 Id. at 20. "An increased potential for landslides and
5 sedimentation from this project deter progress toward the goal of
6 PACFISH to 'arrest the decline and promote the recovery of
7 anadromous fishes.'" Id. In addition, in PACFISH, the Forest
8 Service expressly endorsed the South Fork guidelines and provided
9 that more protective directions in forest plans, like the South
10 Fork guidelines, would supersede less stringent protections
11 required by PACFISH.^{3/}

12 Upon reviewing the Forest Service documents pursuant to its
13 consultation duties under the Endangered Species Act, NMFS issued
14 a draft biological opinion for the Thunderbolt salvage sale, in
15 which NMFS determined that the Thunderbolt Project is likely to
16 jeopardize the continued existence of Snake River spring/summer
17 chinook salmon and likely to result in the destruction or adverse
18 modification of their critical habitat. Biop. at 31-32.

19 Earlier this year, NMFS issued a biological opinion on the
20 Boise, Payette and other National Forests' forest plans. That
21 biological opinion spelled out protections that are required in
22 order to ensure that land management activities under the forest
23

24 ^{3/} The Thunderbolt salvage sale is also inconsistent with the
25 ecological goals of NMFS' Proposed Recovery Plan for Snake River
26 salmon because (1) the removal of trees, particularly from
27 landslide prone sites, could alter wood recruitment and sediment
cycling processes; (2) the Forest Service acknowledges a 2%
sediment increase but relies on sediment-reducing actions to
offset the predicted increase, and (3) removal of trees will
exacerbate fire-induced effects and increase the likelihood of
landslides. Biop. at 30-31.

1 plans will not jeopardize the survival of threatened salmon.
2 Land & Resource Management Plan ("LRMP") Biological Opinion,
3 March 1, 1995 (AR 200). The Thunderbolt salvage sale provides
4 less habitat protection than what NMFS has determined is
5 necessary and it risks increasing sedimentation into stream
6 segments that are already highly impaired.⁹ Biop. at 3-4, 19-
7 20.

8 The Environmental Protection Agency ("EPA") also reviewed
9 the Thunderbolt salvage sale and found it inconsistent with
10 collective agency decisions and resource protection goals for the
11 South Fork. EPA recommended strongly against amending the Boise
12 and Payette forest plans because the sale would further aggravate
13 the already critically degraded habitat for the threatened
14 chinook salmon in the South Fork. Letter from Chuck Clarke, EPA,
15 to David Rittenhouse, Boise National Forest ("EPA Comments"),
16 July 7, 1995, at 1-4 (AR 24 at 509-520).

17 Anticipating controversy, the Forest Service established its
18 own Science Panel to review the scientific merit of the Forest
19 Service's assessment of the Thunderbolt salvage sale's effects on
20 sedimentation and fisheries habitat. The Science Panel did not
21 give the ringing endorsement of Thunderbolt that the Forest
22 Service undoubtedly desired. The science Panel was "unable to
23 conclude that the analysis performed could support the conclusion
24 of long term improvement in the spawning and rearing habitat of
25

26 ^{4/} NMFS' March 1, 1995 LRMP Biological Opinion supported the
27 Riparian Management Objective on the Boise and Payette National
Forests for fine sediment. NMFS established an objective of <20%
for low gradient spawning areas. Fine sediment in the South Fork
and Johnson Creek averages approximately 36% and 49%.

1 anadromous fish" Final Report, Thunderbolt Wildfire Science
2 Panel at 2 (AR 27).

3 Nonetheless, on October 5, 1995, the Forest Service issued
4 its record of decision indicating that it planned to go forward
5 with the Thunderbolt salvage sale under a modified version of
6 Alternative D. On October 13, 1995, the Forest Service
7 advertised the Thunderbolt salvage sale. As required by the
8 logging rider, ICL filed this legal challenge within 15 days of
9 initial advertisement. The Forest Service held an auction on
10 Thunderbolt on November 9, 1995, in Boise, Idaho, to identify the
11 high bidder, but no bids were received.

12 ARGUMENT

13 I. STANDARD OF REVIEW

14 A. Appropriateness of Summary Judgment

15 Summary judgment is appropriate where the record shows "that
16 there is no genuine issue as to any material fact and that the
17 moving party is entitled to a judgment as a matter of law." Fed.
18 R. Civ. P. 56(c).

19 B. Review of Agency Action

20 Under § 2001(f)(4), this Court reviews the decision "to
21 prepare, advertise, offer, award, or operate such sale was
22 arbitrary and capricious or otherwise not in accordance with
23 applicable law (other than those laws specified in
24 subsection(i))." This standard echoes the arbitrary, capricious,
25 or contrary to law standard of the Administrative Procedure Act
26 ("APA"), 5 U.S.C. § 551 et seq. Under the APA, agency action is
27 unlawful if the agency has failed to consider all relevant
factors, has "offered an explanation for its decision that runs

1 counter to the evidence before the agency," or has not
2 articulated "a rational connection between the facts found and
3 the choice made." Motor Vehicle Mfr. Ass'n v. State Farm Mut.
4 Auto. Ins. Co., 463 U.S. 29, 43 (1983).

5 The APA standard "does not shield agency action from a
6 'thorough, probing, in-depth review.'" Northern Spotted Owl v.
7 Hodel, 716 F. Supp. 479, 482 (W.D. Wash. 1988) (citation
8 omitted).

9 Courts must not "rubber-stamp the agency decision as
10 correct.... Rather, the reviewing court ... must
11 engage in a 'substantial inquiry' into the facts, one
12 that is 'searching and careful.' This is particularly
13 true in highly technical cases...."

14 Id. (quoting Ethyl Corp. v. EPA, 541 F.2d 1, 34-35 (D.C. Cir.),
15 cert. denied, 426 U.S. 941 (1976)).

16 ICL acknowledges that the Forest Service has a great deal of
17 discretion in the administrative process. However, the Forest
18 Service cannot exercise this discretion irrationally.

19 Expert discretion is the lifeblood of the
20 administrative process, but unless we make the
21 requirements for administrative action strict and
22 demanding, expertise, the strength of modern
23 government, can become a monster which rules with no
24 practical limits on its discretion.

25 Burlington Truck Lines, Inc. v. United States, 371 U.S. 168, 167
26 (1962) (quotation omitted).

27 II. THE FOREST SERVICE DECISION TO PROCEED WITH THUNDERBOLT GOES
AGAINST NEARLY UNANIMOUS SCIENTIFIC OPINION.

The decision to proceed with the Thunderbolt salvage sale is
arbitrary and capricious because it is contrary to the well-
reasoned views of scientific experts. During the decision-making
process, NMFS, EPA, the U.S. Fish and Wildlife Service ("FWS"),
the Forest Service's own Science Panel, and Idaho Fish and Game

1 reviewed the scientific merits of the Thunderbolt salvage sale.
2 These expert bodies concluded that the Forest Service should not
3 proceed with the Thunderbolt salvage sale in defiance of the
4 scientific consensus and longstanding agency and interagency
5 policies. Despite this overwhelming support for dropping the
6 project and finding funding for restoration through a source
7 other than salvage sale receipts, the Forest Service decided to
8 proceed with the sale, and never adequately confronted or
9 addressed the contrary views of the expert agencies.

10 A. The Expert Agencies All Concluded that the Thunderbolt
11 Salvage Sale Would Cause Irreparable Harm.

- 12 1. *The National Marine Fisheries Service issued a*
13 *jeopardy biological opinion.*

14 After many months of review, NMFS continued to disagree with
15 the Forest Service about the effects of the sale on Snake River
16 salmon. While NMFS ultimately elected to defer to the Forest
17 Service's decision in the face of the rider, Letter from Rolland
18 A. Schmitten, NMFS, to Jack Ward Thomas, Forest Service, Sept.
19 29, 1995 (AR 25 at 647), that deferral did not change the
20 agencies' underlying biological concerns and conclusions about
21 the Thunderbolt salvage sale:

22 NMFS has determined that, based on the available
23 information, the Thunderbolt Project is likely to
24 jeopardize the continued existence of Snake River
25 spring/summer chinook salmon and result in the
26 destruction or adverse modification of their critical
27 habitat.

Biop. at 31-32 (emphasis added).

NMFS expressed specific concerns about any land-disturbing
activities, even restoration projects, in the South Fork, because
of the increased risk to salmon and their habitat relative to the

1 already degraded environmental baseline conditions. Thunderbolt
2 Wildfire Recovery Project Memorandum, July 24, 1995 (AR 25 at
3 576-79); Biop. Introductory Letter from William Stelle, Jr. to
4 Dale N. Bosworth. The Thunderbolt salvage sale raised many red
5 flags. NMFS was deeply concerned about risk of increased
6 sedimentation, Biop. at 17, landslides, *id.* at 18-22, increased
7 risk of a hazardous fuel spill, *id.* at 23-25, and impairment of
8 ecosystems processes, *id.* at 22-23, 26-27. NMFS also voiced
9 concern about the cumulative effects of Thunderbolt when added to
10 other proposed projects in the watershed. *Id.* at 28.

11 Although intensive interagency discussions resulted in
12 the narrowing of the issues, biologists from NMFS, FWS,
13 and EPA were unable to accept the level of risk posed
14 to listed chinook salmon and their critical habitat by
15 the FS preferred alternative.

16 NMFS Interagency Agreement, Sept. 1, 1995, at 3 (Exh. E).

17 After reaching its jeopardy conclusion, NMFS was unable to
18 suggest a reasonable and prudent alternative that involved any
19 salvage logging.

20 The NMFS believes the only scientifically defensible
21 approach to avoid jeopardizing listed salmon in the
22 South Fork is close adherence to the risk-averse
23 approaches and measures contained in the LRMPs for the
24 South Fork, PACFISH, and NMFS' related biological
25 opinions, and NMFS' Proposed Recovery Plan. Because
26 the Thunderbolt Project (Modified Alternative D) is not
27 consistent with these programmatic and watershed-
specific documents, and because NMFS and the USFS are
unable to identify an alternative approach to the
action that affords listed salmon an equal or greater
likelihood of ensuring salmon survival and recovery,
the USFS included Alternative F, in the Draft EIS.

Biop. at 33.

ii. *The Environmental Protection Agency advised the
Forest Service not to proceed with Thunderbolt.*

As early as January 1995, EPA informed the Forest Service

1 that it had "serious concerns with both the potential adverse
2 sediment effects to anadromous fish habitat and the precedent
3 setting nature of this project to the whole watershed." EPA
4 Letter from Joan Cabreza, EPA, to Cathy Barbouletos, Boise
5 National Forest, Jan. 12, 1995 (Exh. F). EPA considered the
6 historic trends and effects from previous management activities,
7 as well as the sensitivity of the watershed. Id.

8 EPA presented its opinions in an informal manner at an
9 interagency meeting. Again, EPA stressed the risks associated
10 with the Thunderbolt salvage sale.

11 Continued, increased, and prolonged exceedences of
12 Idaho's EPA-approved water quality standards in an area
13 with an established TMDL: The action alternatives will
14 increase the risk of additional sediment loading as a
15 result of spur roads, helicopter landings, salvage
16 logging, and sediment-reducing project construction.

17 Watershed sensitivity: The action alternatives will
18 increase the risk of additional landslides and erosion
19 in the watershed just when the watershed is recovering
20 from the major effects of the fire. The concern is
21 closely related to EPA's concerns about exceedences of
22 Idaho's water quality standards and further aggravation
23 of the already critically degraded habitat for
24 endangered Snake River spring/summer chinook salmon in
25 the SFSR and Johnson Creek.

26 EPA Issues/Concerns, May 11, 1995 (AR 24 at 489).

27 In the agencies' formal review of the Thunderbolt salvage
sale, EPA strengthened its objections to the project.

Our review of the draft EIS had identified
potential adverse environmental impacts of the
Preferred Alternative which are of a sufficient
magnitude and risk that we believe it should not
proceed as proposed. Our primary issues with the
salvage alternatives are impairment of water quality
and fish habitat, and initial sediment loading
resulting from sediment reducing projects. These
potential impacts were anticipated in the Boise and
Payette Forest Plans which limit land disturbing
activities within the SFSR watershed until in-stream
sediment levels decrease and salmon spawning and

1 rearing habitat conditions improve.

2 The Thunderbolt Wildfire Recovery Project is not
3 consistent with collective agency decisions and
4 resource protection goals in the SFSR watershed as
5 identified in the Forest Plans.

6 EPA Comments at 2.

7 The day after the Forest Service released the ROD for
8 Thunderbolt, EPA again reiterated its belief that the Thunderbolt
9 salvage sale simply did not make ecological sense.

10 We understand the USFS has decided to proceed on this
11 sale. We do not agree with that decision....
12 Alternative F (sediment reduction projects only) is the
13 best and least risk approach for achieving water
14 quality objectives and protecting severely degraded
15 spawning and rearing habitat for the federally
16 endangered Snake River spring/summer Chinook salmon in
17 the South Fork Salmon River. It is the only
18 alternative that is consistent with the Boise and
19 Payette Forest Plans and the Total Maximum Daily Load
20 developed pursuant to Section 303(d) of the Clean Water
21 Act.

22 Letter from Chuck Clarke, EPA, to David D. Rittenhouse, Boise
23 National Forest, Oct. 6, 1995 (AR 24 at 541-43).

24 *iii. The Fish and Wildlife Service echoed the concerns
25 about adverse habitat impacts.*

26 The U.S. Fish and Wildlife Service ("FWS"), charged with the
27 conservation and protection of non-marine species, also addressed
28 the impacts from the Thunderbolt salvage sale -- paying
29 particular attention to risks posed to bull trout, a fish species
30 that is warranted but precluded from listing under the Endangered
31 Species Act.

32 We conclude from the preponderance of scientific
33 evidence that the action proposed is likely to have
34 detrimental impacts to fish and wildlife resources.

35 FWS Memorandum Re: FEIS for Thunderbolt, Sept. 26, 1995 (Exh. G).

36 Our interpretation of the Science Panel Review, shared
37 by NMFS and EPA is that the Panel found the Analysis

1 seriously flawed and that the analysis did not support
2 the conclusion the Thunderbolt action would benefit the
watershed.

* * *

3 The proposed salvage actions will generate additional
4 sediment in this already impacted watershed, which
5 would negate or delay the benefits from most
6 restoration actions that may be implemented. There is
7 a high probability that not all mitigation can be
accomplished with the funds generated by the salvage
sales. In addition, the proposals are not consistent
with existing Forest management plans, which call for
an improving trend in the watershed before additional
management actions are permitted.

8 FWS Briefing Statement, May 15, 1995 (Exh. H).

9 In the South Fork Salmon River Drainage, the Land and
10 Resource Management Plan for the Boise National Forest
11 (LRMP) provides excellent protection for fish and
12 wildlife species, including bull trout. However, the
objective in this proposal to recover the economic
value of burned trees is inconsistent with the LRMP and
will likely have detrimental impacts on bull trout.

13 Letter from Charles Lobdell, FWS, to Ronnie Julian, Boise
14 National Forest, Jan. 11, 1995 (Exh. I).

15 iv. *The Department of the Interior also advised the*
16 *Forest Service not to proceed with Thunderbolt.*

17 Even though the FWS had expressed its concerns, the
18 Department of the Interior also sent critical comments to the
19 Forest Service.

20 The Department is concerned that the preferred
21 alternative described in the DEIS would have
22 irreversible, detrimental impacts to fish and wildlife
23 resources in the South Fork of the Salmon River. Based
24 on the scientific literature (see Attachment B)
25 available and the analysis presented in the DEIS, we
26 believe the DEIS has not adequately assessed all risks
the proposed action poses to fish and wildlife
resources. It also has not addressed many important
ecological processes and functions that would likely be
altered by the action alternatives. The Department
believes the no action alternative provides the most
protection for fish and wildlife resources.

27 Letter from Charles S. Polityka, U.S. Department of the Interior,
to Cathy Barbouletos, Boise National Forest, May 5, 1995 (AR 31

1 at 833-57).

2 v. Even the Forest Service Science Panel could not
3 support the decision to proceed with Thunderbolt.

4 In response to the controversy brewing over the Thunderbolt
5 salvage sale, the Forest Service gathered its own science panel
6 to review the Final Environmental Impact Statement. The Forest
7 Service Science Panel, although more equivocal than outside
8 agencies, could not endorse Thunderbolt.

9 The Thunderbolt Wildfire Recovery Project Science Panel
10 was unable to conclude that the analyses performed
11 could support the conclusion of long-term improvement
12 in spawning and rearing habitat of anadromous fish....

13 Final Report, Thunderbolt Wildfire Science Panel, June 23, 1995
14 (AR 27 at 656). This Science Panel was actually the second
15 scientific panel to look at the Thunderbolt salvage sale. The
16 Forest Service first convened an interagency "Blue Ribbon Panel"
17 to evaluate the sale. This first panel could not reach a
18 consensus because "the action was not consistent with the LRMPs
19 and would increase short-term risks of sediment and fuel spills
20 in trade-off for unproven long-term benefits." Thunderbolt
21 Wildfire Recovery Project Memorandum, July 24, 1995 (AR 25 at
22 577). The "Blue Ribbon Panel" was also beset by outside policy
23 and technical differences. *Id.* The Forest Service then convened
24 a second panel of Forest Service employees with a narrow charter
25 to "'evaluate the science' used in the EIS and to develop a
26 report of their findings." *Id.*^{5/}

26 ^{5/} The make-up of the second science panel came as a surprise
27 to EPA. "...no university scientists should be on the panel or
otherwise involved. I asked about our suggested panel members
and did not get a firm rejection, but was told that they might
need to be Forest Service employees only. I asked about prior
invitation that EPA co-lead the panel and was told that they

1 vi. An internal Forest Service review pointed to
2 several major flaws in the Forest Service
3 scientific methodology.

4 An internal Forest Service review by Dr. David C. Burns of
5 the Payette National Forest, undertaken after a formal request
6 from another Forest Service scientist, was highly critical of the
7 Thunderbolt biological assessment prepared by the Forest Service.

8 The documents are flawed to such an extent than (sic) I
9 could not concur with the conclusions in the BA unless
10 it was extensively revised. Major flaws occur in
11 several areas. These include:

- 12 •The documents recommend policy changes without
13 demonstrating new scientific information.
- 14 •Natural processes are not clearly related to the long
15 term stability and integrity of the ecosystem.
- 16 •The use of value laden terminology is so extensive and
17 pervasive that it obscures scientific reasoning.
- 18 •Reasoning is circular regarding reduction of sediment
19 and the effects of fire.
- 20 •There are numerous implicit assumptions which affect
21 the analysis and result in type 2 [a conclusion that
22 things are not different or do not exist when it is
23 logical that they are really different or do exist]
24 errors.
- 25 •Some scientific statements are incorrect or illogical
26 based on known facts and research.

27 A Review of the Thunderbolt Post 1994 Fire Proposed Project
Documents on the Payette and Boise National Forests, May 10,
1995, at 2 (Exh. K).

28 B. While the Expert Agencies Approved of Restoration, the
29 Agencies Objected to Proceeding with Thunderbolt as a
30 Funding Mechanism.

31 On one point all agencies could agree: restoration projects
32 in the South Fork Salmon River should proceed. However, the
33 Forest Service faced strong opposition from NMFS, EPA, FWS, and
34 Idaho Fish and Game about the idea to use the Thunderbolt salvage

35 _____
36 might have been mistaken in extending that invitation. ...
37 Frankly, I am very concerned by the apparent turn this process
has taken." EPA Phone Notes, conversation with Jack Blackwell and
Dale Bosworth, Forest Service, June 9, 1995 (Exh. J).

1 sale to finance restoration. For the other agencies, the risk
2 involved in salvage logging -- even to "save the watershed" --
3 was too great.

4 i. National Marine Fisheries Service

5 The agencies jointly supported the goal of improving
6 long term fish habitat conditions in the South Fork
7 Salmon River and its tributary Johnson Creek, but
8 disagreed on the level of risk associated with the FS
9 preferred alternative and how the restoration should be
10 funded. NMFS, FWS, and EPA opposed the salvage sale
11 method of generating funds necessary for mitigation and
12 restoration....

13 NMFS Letter, Sept. 1, 1995.

14 The option of using salvage timber sales to fund
15 restoration actions was an option considered and
16 rejected [in the South Fork guidelines] because that
17 alternative presents too much risks to the anadromous
18 fish. The Thunderbolt Project identifies an
19 opportunity to fund sediment reducing action using
20 timber generated dollars. This opportunity is the same
21 failed policy of old South Fork Planning Unit that
22 resulted in the current baseline jeopardy in the South
23 Fork Salmon River.

24 Letter from Jacqueline Wyland, NMFS, to Payette/Boise National
25 Forest Supervisors, August 14, 1995 (Exh. L) (emphasis added).

26 ii. Environmental Protection Agency

27 We do not believe the potential benefits of funding
sediment reduction through salvage sales are worth the
risks to the SFSR. We recommend instead that no
salvage activities be allowed and that the Forest
Service, EPA, and the other agencies seek funding for
the highest priority sediment reducing projects for the
SFSR. EPA will assist the Forest Service in pursuing
other funds for restoration projects....

EPA Comments at 4.

Since the stream of benefits associated with the
fishery is very long compared to that associated with
the value of the harvest, the cost of losing the
fishery is essentially infinitely greater than that of
losing the value of the fire-damaged timber.
Furthermore, the value of the timber and the cost of
harvesting and restoration are probably approximately
equal and, therefore, offsetting.

1 EPA Memorandum, May 23, 1995 (Exh. M) (emphasis added).

2 iii. Department of Interior

3 The Service asked that the Forests study methods for
4 funding this restoration that did not involve timber
5 harvest in this sensitive area. The Service is
6 interested in the funding mechanisms because the DEIS
7 proposes to generate funding for habitat restoration
8 through actions that would likely result in adverse
9 impacts to fish and wildlife.

7 Polityka Letter, May 5, 1995.

8 iv. Idaho Fish and Game

9 The Idaho Department of Fish and Game expressed concerns
10 about the funding justification for the Thunderbolt salvage sale.

11 The Forest Service responded:

12 While there was an understanding as to what the Forest
13 Service's intent is by financing the individual
14 sediment reducing projects through the clauses in the
15 purchaser contract and the KV plan, they [Idaho Fish
16 and Game] were concerned that the sediment reduction
17 portion of the wildfire recovery would not be
18 implemented. Their basic concern is that financing and
19 implementation must be assured by the Forest Service.
20 Again, our track record on financing and implementation
21 of other projects to reduce sediment has not been very
22 good i.e., Goat Creek fill, Kline Mtn, and
23 implementation of projects identified in the Forest
24 Plans.

19 Memo: Response to Idaho Fish & Game Concerns, Forest Service,
20 Jan. 27, 1995 (AR 26A at 649-50).

21 Apparently, the Forest Service response did not assuage
22 Idaho Fish and Game's concerns.

23 We supported the LRMP goals, management direction, and
24 activities schedule for the SFSR in our reviews of the
25 LRMP. We continue to support the concept developed in
26 the LRMP that future land-disturbing activities are
27 predicated on measured improvement in the fish habitat
28 and progress toward the interim goal. We believe it is
29 a major change in management direction if future fish
30 habitat improvements are dependent on receipts from
31 timber sales, and the standard for achievement is
32 reduced to merely a modeled net improvement.

1 Efforts should be made to implement fish habitat
2 restoration activities identified as needed in the
3 LRMP, the South Fork Restoration Strategy, and the
4 South Fork Road EIS regardless of timber sale receipts.

5 Letter from Tracy Trent, Idaho Fish and Game to Ronnie P. Julian,
6 Boise National Forest, May 3, 1995 (AR 31 at 750-52).

7 As in Northern Spotted Owl v. Hodel, 716 F. Supp. 479, 482
8 (W.D. Wash. 1988), the agency documents "offer little insight"
9 into how the Forest Service reached the decision that the
10 Thunderbolt salvage sale does not pose an enormous risk to salmon
11 and their habitat. The Forest Service's decision to proceed with
12 Thunderbolt "also lack[s] any expert analysis supporting its
13 conclusions. Rather, the expert opinion is entirely to the
14 contrary." Id. Accordingly, it is arbitrary and capricious and
15 should be set aside.

16 III. THE FOREST SERVICE DECISION TO PROCEED WITH THUNDERBOLT GOES
17 AGAINST THE CAREFULLY CRAFTED POLICIES AND STANDARDS
18 PREVIOUSLY SET FOR MANAGING THE SOUTH FORK SALMON RIVER
19 WATERSHED WITH NO RATIONAL EXPLANATION.

20 The Forest Service's decision to proceed with the
21 Thunderbolt salvage sale is arbitrary and capricious because it
22 deviates from longstanding and carefully crafted agency and
23 inter-agency policies and standards for managing the South Fork
24 Salmon River watershed. See American Tunaboat Ass'n v.
25 Baldrige, 738 F.2d 1013 (9th Cir. 1984) (decision of agency
26 arbitrary and capricious where it ignored comprehensive database
27 that was the product of many years of effort by trained
professionals). The decision to proceed with Thunderbolt
reflects an inexplicable return to discredited practices which
had severely degraded the South Fork Salmon River watershed;
those past practices had -- until now -- been replaced by the

1 Forest Service with carefully crafted policies. See NMFS Letter,
2 Aug. 14, 1995.

3 By its own account, the Forest Service has invested several
4 million dollars to control and monitor erosion and sedimentation
5 in the South Fork drainage. FEIS at I-10. The Forest Service
6 spent years developing the South Fork guidelines, and also
7 developed the "South Fork Salmon River Restoration Strategy" to
8 identify and prioritize restoration projects in the watershed.
9 Id. at I-11; South Fork Salmon River Restoration Strategy (AR
10 138). The Thunderbolt salvage sale violates the South Fork
11 guidelines, which were carefully crafted over a period of many
12 years by representatives of all the stakeholders in the South
13 Fork watershed.

14 The Thunderbolt Salvage Project runs directly counter
15 to literally years of effort on the part of the
16 consensus group. ... The Thunderbolt salvage proposal
17 should be immediately tabled as inconsistent with the
18 sound solution to the problem already developed by the
19 Forest Service and this nation's citizens.

20 Letter from Columbia River Inter-Tribal Fish Commission to Boise
21 National Forest, May 1, 1995 (AR 31 at 753-70).^{6/}

22 The Forest Service has incorporated these guidelines into
23 the Boise and Payette forest plans and indicated earlier this
24 year that it would abide by them in order to protect salmon
25 habitat. Biop. at 14. NMFS has endorsed the South Fork
26 guidelines and their scientific methodology and rationale. LRMP

27 6/ The management direction for the South Fork Salmon River
requires the Forest Service to consult with a specific list of
organizations prior to making a decision to implement any timber
sale in the South Fork watershed. See, e.g., Payette National
Forest Plan at TV-235. The Forest Service made no effort to
convene the consensus group, even before the enactment of the
logging rider.

1 Biological opinion. While the Forest Service has amended the
2 Boise and Payette forest plans, it has not provided an adequate
3 explanation of why it is necessary or justifiable to deviate from
4 longstanding agency and inter-agency guidelines for managing the
5 South Fork watershed.

6 The fires that prompted this project did not come as a
7 surprise. Large stand-replacing fires were anticipated by the
8 forest plans themselves. See, e.g., Payette National Forest Plan
9 at II-42, 94 (AR 202). As NMFS notes, "events in recent years
10 such as the Savage, Chicken, Warm Lake, and Thunderbolt Fires are
11 not outside the range of disturbances envisioned in the existing
12 LRMP EISS." Biop. at 15. The Forest Service cannot claim that
13 the fire justifies ignoring the standards and guidelines for this
14 watershed.

15 What does it mean to the future of resource management
16 in the Pacific Northwest when the federal government
17 suddenly and unilaterally decides to ignore an
18 agreement it made with the state of Idaho,
19 environmentalists, the timber industry, and Indian
20 tribes? By ignoring this agreement, the Forest Service
21 and this Administration are sending the unmistakable
22 message that there is no point in trying to negotiate
23 with the federal government because the government will
24 renege on its agreements when the whim strikes. This
25 is the worst possible message to send to a region that
26 it attempting to grapple with extremely difficult
27 natural resource issues.

22 Letter from Ted Strong, Columbia River Inter-Tribal Fish
23 Commission to Jim Lyons, Department of Agriculture, October 11,
24 1995 (Exh. N).

25 As the Supreme Court has stated, "[a]n agency's view of what
26 is in the public interest may change, either with or without a
27 change in circumstances. But an agency changing its course must
supply a reasoned analysis." Motor Vehicle Mfr. Ass'n, 463 U.S.

1 at 47 (quotations omitted). Here, the Forest Service deviated
 2 from longstanding policies in defiance of overwhelming scientific
 3 evidence. As such, the decision to proceed with the sale is
 4 arbitrary and capricious and should be set aside.

5 IV. THUNDERBOLT WILL NOT RAISE ENOUGH REVENUE TO FUND
 6 RESTORATION PROJECTS -- THE SOLE REASON GIVEN BY THE FOREST
 SERVICE FOR THE SALVAGE SALE.

7 The decision to proceed with the Thunderbolt salvage sale in
 8 order to fund restoration projects is itself arbitrary and
 9 capricious. The record reveals that the sale cannot fund the
 10 projects deemed critical by the Forest Service or required by §
 11 2001(c)(8) of the Rescissions Act.

12 The Forest Service is proceeding with the sale in order to
 13 obtain revenues for restoration projects that it deems critical
 14 and to fund reforestation of burned areas. FEIS Summary; ROD at
 15 2-4. However, the Forest Service has already dropped its
 16 projections of the revenue that will be obtained from the project
 17 to less than half what it had originally projected in the FEIS,
 18 see ROD at 1, 5, and concedes that it will be unable to finance
 19 all the restoration projects that it has identified as critical
 20 with the currently projected sale revenues. ROD at 5.

21 These calculations have already proven to be wrong. On
 22 November 9, 1995, the Forest Service received no bids on the
 23 Thunderbolt salvage sale. If the Forest Service elects to go
 24 forward with the sale, it must do so at a lower price -- a price
 25 that will reduce the number of restoration projects funded by the
 26 sale even further.

27 It is also possible that use of the net proceeds from the
 sale may be limited in ways that prevent their use for

1 restoration projects. "In addition to the risks that those
2 activities will exacerbate the problem, there are legal
3 restrictions on the use of the funds. In the SFSR those
4 restrictions would prevent the highest priority sediment reducing
5 projects in the SFSR watershed from being funded." EPA Comments
6 at 3-4. Idaho Fish and Game expressed similarly concerns about
7 funding restrictions.

8 The LRMP and SFSR Restoration Strategy identified
9 sediment mitigation activities with the greatest
10 benefit for fish and should be used as a guide to
11 prioritize projects. Unfortunately, the use of
12 Knudsen-Vandenberg (KV) funds restricts the geographic
13 area in which these funds can be used to the general
14 sale area.

15 Idaho Fish and Game Letter, May 3, 1995 (AR 31 at 750). It is
16 arbitrary and capricious for the Forest Service to proceed with a
17 sale that will further degrade the watershed for the sole purpose
18 of obtaining restoration funds when the revenues will be
19 inadequate to finance the restoration projects that the agency
20 has determined are essential.

21 Additionally, the logging rider itself mandates that the
22 Secretary "plan and implement reforestation of each parcel of
23 land harvested under a salvage timber sale ... as expeditiously
24 as possible after completion of harvest on the parcel." §
25 2001(c)(8). However, the Forest Service has already conceded
26 that it will not have sufficient funds to reforest burned areas.
27 ROD at 5.

28 The Secretaries' duties include reforestation. See H. Rep.
29 104-71, 104th Cong., 1st Sess. 22 (1995). The logging rider
30 directs Secretaries to perform appropriate revegetation and tree
31 planting operations. See S. Rep. 104-17, 104th Cong., 1st Sess.

1 122 (1995); H. Conf. Rep. 104-124, 104th Cong., 1st Sess. 134
2 (1995). The Forest Service cannot ignore this duty under the
3 logging rider, and yet the agency has already admitted that the
4 funds for this reforestation are unavailable. This admission not
5 only undercuts the rationale for proceeding with Thunderbolt, it
6 also thwarts the intent of Congress.

7 The Secretaries' duties do not stop after the salvage
8 timber sales are sold; they are directed to complete
9 reforestation of the lands as expeditiously as possible
10 This last requirement is every bit as important as
11 the rest of the section because it completes the forest
12 restoration process and highlights the authors'
13 commitment to sound forest stewardship.

14 141 Cong. Rec. H3233 (March 15, 1995) (remarks of Rep. Taylor).

15 The decision to proceed with Thunderbolt is even more
16 inexplicable because it appears that the agencies were close to
17 coming to an agreement for alternate funding for the restoration
18 projects. On September 1, 1995, regional directors of the Forest
19 Service, NMFS, EPA, and FWS prepared a draft letter to the
20 respective directors of those agencies outlining an interagency
21 agreement that would fund restoration projects without
22 Thunderbolt. See Draft Interagency Letter, September 1, 1995
23 (Exh. O). On September 11, 1995, the regional director for NMFS
24 indicated that there remained only "some relatively minor editing
25 on the issue of funding." Letter from William Stelle, Jr., NMFS,
26 to Dale Bosworth, Regional Forester, Sept. 11, 1995 (Exh. P).
27 However, on the same day, Regional Forester Dale N. Bosworth
unilaterally cut off interagency negotiations and requested a
decision from the Chief of the Forest Service allowing
Thunderbolt to proceed. Letter from Dale Bosworth to Chief,
Sept. 11, 1995 (AR 28 at 705). Although effectively shut out of

1 the process, the regional directors of NMFS, EPA, and FWS
 2 continued to press for a solution that would not involve the
 3 Thunderbolt salvage sale. See Agency Letter, September 19, 1995
 4 (Exh. Q).

5 Proceeding with this sale, while acknowledging that
 6 reforestation will not occur and that only a portion of needed
 7 restoration projects will be funded is arbitrary and capricious
 8 and contrary to the logging rider.

9 V. SECRETARY GLICKMAN DID NOT AUTHORIZE THE THUNDERBOLT SALVAGE
 SALE.

10 Section 2001(c)(1)(A) provides, in pertinent part:

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

18 Section 2001(c)(1)(A) makes the Secretary personally accountable
 19 for such weighty decisions such as jeopardizing threatened or
 20 endangered species, and deviating from forest plans, standards,
 21 and guidelines.

22 Comments on the Senate floor underscore the importance of
 23 having Secretary Glickman personally take responsibility for
 24 salvage sales, like Thunderbolt, that violate applicable forest
 25 plans or that adversely affect threatened or endangered species.

26 The timber provision that finally passed contains a
 27 change over previous language to expand the role of the
Secretary of Agriculture to require his signature in
order to implement new sales. Although I do not think

1 this is a sufficient fix to this legislation, I do
2 think it is essential for the administration to
3 faithfully execute this authority in order to prevent
4 serious abuse of the legal exemptions in this
5 provision.

6 141 Cong. Rec. S10465 (July 21, 1995) (remarks of Senator
7 Lieberman) (emphasis added). Since Secretary Glickman did not
8 make this decision -- a decision that violates the forest plans
9 and that will adversely affect threatened species, see Biop. at
10 31-32; see generally Declaration of Cindy Deacon Williams, filed
11 separately -- the decision to proceed with Thunderbolt lacks
12 accountability, and the Forest Service has violated §
13 2001(c)(1)(A) of the Rescissions Act.

14 CONCLUSION

15 For the reasons given above, plaintiffs respectfully ask the
16 Court to declare that the decision to proceed with the
17 Thunderbolt salvage sale is arbitrary and capricious because it
18 is at odds with the expert input obtained from NMFS, EPA, FWS and
19 other biological agencies; it is at odds with the South Fork
20 guidelines and the Boise and Payette forest plans; and the
21 rational connection is tenuous, at best, between the Forest
22 Service's desire to proceed with the sale to obtain money for
23 restoration and the evidence in the record. The Forest Service
24 decision to proceed with the Thunderbolt salvage sale is
25 quintessentially arbitrary and capricious.

26 ICL also asks the Court to declare that, by proceeding with
27 a salvage sale that violates the forest plans and that will
adversely affect threatened species, without a decision to do so
by Secretary Glickman, the Forest Service has violated §
2001(c)(1)(A) of the Rescissions Act itself.

1 ICL asks this Court to set aside the decision to proceed
2 with the Thunderbolt salvage sale, and to permanently enjoin the
3 Forest Service from proceeding with the Thunderbolt salvage sale.

4 DATED this 14th day of November, 1995.

5 Respectfully Submitted,

6 *Kristen L. Boyles*
7

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

12 IDAHO CONSERVATION LEAGUE; and)
 13 THE WILDERNESS SOCIETY,)

Plaintiffs,)

v.)

15 JACK WARD THOMAS, in his official)
 16 capacity as Chief of the United)
 17 States Forest Service;)
 18 DAN GLICKMAN, in his official)
 19 capacity as Secretary of the U.S.)
 20 Department of Agriculture; and)
 21 UNITED STATES FOREST SERVICE, an)
 22 agency of the U.S. Department of)
 23 Agriculture,)

Defendants.)

Civil No. 95-425-S-EJL

MEMORANDUM IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 SUMMARY JUDGMENT AND
 INJUNCTIVE RELIEF

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

16 IDAHO CONSERVATION LEAGUE; and
17 THE WILDERNESS SOCIETY,

18 Plaintiffs,

19 v.

20 JACK WARD THOMAS, in his official
21 capacity as Chief of the United
22 States Forest Service;
23 DAN GLICKMAN, in his official
24 capacity as Secretary of the U.S.
25 Department of Agriculture; and
26 UNITED STATES FOREST SERVICE, an
27 agency of the U.S. Department of
Agriculture,

Defendants.

Civil No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. This is an action for declaratory judgment and
injunctive relief. Plaintiffs Idaho Conservation League and The
Wilderness Society challenge the actions of Jack Ward Thomas, in
his official capacity as Chief of the Forest Service, Dan

1 Glickman, in his official capacity as Secretary of the United
2 States Department of Agriculture, and the United States Forest
3 Service, an agency of the United States Department of Agriculture
4 charged with management of the national forests, in proceeding
5 with the Thunderbolt Wildfire Recovery Project ("Thunderbolt
6 salvage sale") on the Boise and Payette National Forests.

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

12 3. In this action, plaintiffs seek (1) a declaration that
13 proceeding with the Thunderbolt salvage sale is arbitrary and
14 capricious and not in accordance with the Rescissions Act; and
15 (2) a permanent injunction barring defendants from permitting
16 logging of, or otherwise proceeding with, the Thunderbolt salvage
17 sale.

18 JURISDICTION AND VENUE

19 4. Jurisdiction over this action is conferred by 28 U.S.C.
20 § 1331 (federal question). As required by § 2001(f)(1) of the
21 Rescissions Act, plaintiffs are filing this action within 15 days
22 after the date of initial advertisement of the Thunderbolt
23 salvage sale on October 13, 1995.

24 5. Venue is properly vested in this Court pursuant to §
25 2001(f)(1) of the Rescissions Act as the Thunderbolt salvage sale
26 is located within this district.
27

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

- 2 -

PARTIES

1
2 6. Plaintiff Idaho Conservation League ("ICL") is a
3 statewide non-profit organization dedicated to protecting and
4 conserving Idaho's natural resources. ICL and its members
5 advocate for strong laws and policies for conserving Idaho's
6 natural resources and assist in ensuring that Idaho's public
7 lands are managed effectively. The organization's approximately
8 2600 members live primarily in the state of Idaho. ICL's
9 principal place of business is in Boise, Idaho.

10 7. Plaintiff The Wilderness Society ("TWS") is a national
11 conservation organization devoted to the preservation and proper
12 management of America's public lands. Founded in 1935, TWS is a
13 non-profit organization with approximately 300,000 members,
14 approximately 1500 of whom live in Idaho. TWS has its national
15 headquarters in Washington, D.C. and a regional office in Boise,
16 Idaho. In each region, TWS staff and members, along with local
17 citizens and conservation groups, seek to ensure that government
18 officials make sound and effective policy decisions governing
19 public land use. TWS also monitors federal actions affecting
20 public land management, and staff members present information to
21 federal agencies and Congress on a wide range of land
22 conservation issues.

23 8. Members of the plaintiff organizations hike, camp,
24 photograph scenery and wildlife, and engage in other vocational,
25 scientific observation, and recreational activities in the Boise
26 and Fayette National Forests. Members of the plaintiff
27 organizations also observe, study, photograph, and engage in

1 recreational fishing of salmon in the wild. Plaintiffs' members
 2 derive recreational, scientific, and aesthetic benefit from these
 3 activities. In addition, plaintiffs and their members have
 4 actively participated in the Thunderbolt salvage sale planning
 5 process and in the development of a sound watershed-wide approach
 6 for restoring the South Fork Salmon River.

7 9. The above-described aesthetic, conservational,
 8 recreational, and scientific interests of plaintiffs and their
 9 members will be adversely affected and irreparably injured if
 10 defendants proceed with the Thunderbolt salvage sale. Plaintiffs
 11 have no adequate remedy at law.

12 10. Defendant Jack Ward Thomas is Chief of the United
 13 States Forest Service. In that capacity, he oversees the U.S.
 14 Forest Service and is responsible for ensuring sound and lawful
 15 management of the Boise and Payette National Forests.

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

22 12. Defendant United States Forest Service is an agency of
 23 the United States Department of Agriculture charged with
 24 management of the Boise and Payette National Forests.

25 ///

26 ///

27 ///

STATEMENT OF FACTS

1
2 13. The Thunderbolt salvage sale is located in the South
3 Fork Salmon River and Johnson Creek drainages on the Boise and
4 Payette National Forests.

5 A. The South Fork Salmon River Watershed

6 14. The South Fork Salmon River and its major tributary,
7 Johnson Creek, provide important habitat for distinct
8 subpopulations of Snake River spring/summer chinook salmon.
9 Historically, the South Fork was the single largest producer of
10 Snake River chinook salmon in the Columbia River Basin. Both
11 historically and at present, the South Fork has several important
12 spawning sites for Snake River spring/summer chinook salmon.
13 Prime spawning habitat occurs within and adjacent to the area
14 covered by the Thunderbolt salvage sale.

15 15. The Snake River spring/summer chinook salmon are listed
16 as threatened under the Endangered Species Act.

17 16. The National Marine Fisheries Service ("NMFS") is the
18 federal natural resource agency with jurisdiction over marine
19 species. It has stated that the South Fork historically
20 contributed more to the Snake River spring/summer chinook as an
21 evolutionary significant unit than any other single river system.

22 17. Since the 1950's, South Fork salmon runs have declined
23 significantly, due, in large part, to habitat degradation from
24 land-management activities, namely logging and associated road-
25 building, that cause sedimentation.

26 18. During the mid-1960's, major landslides occurred in the
27 South Fork as a result of past logging and road-building

1 activities. These landslides severely degraded South Fork
2 spawning and rearing habitat and precipitated a significant
3 decline in spring/summer Snake River chinook salmon populations
4 in the South Fork.

5 19. The South Fork lies within a geological formation known
6 as the Idaho Batholith, which is characterized by steep, highly
7 dissected topography and shallow soils. Once the shallow soils
8 are displaced, exposed granitic material begins to oxidize and
9 decompose. Decomposed granitic rock, like coarse sand, is highly
10 erodible. Erosion is accelerated by high-intensity, short
11 duration rainstorms that can result in four inches of rain in a
12 24-hour period. Past timber harvest and road-building, coupled
13 with storms, have accelerated erosion and sediment deposition in
14 key South Fork spawning reaches. This habitat degradation has
15 been recognized by NMFS as a primary factor limiting salmonid
16 production in the South Fork.

17 20. Years of sedimentation have caused the entire South
18 Fork to be identified as a Water Quality Limited Segment under §
19 303(d) of the Clean Water Act. The Idaho Department of
20 Environmental Quality has established a Total Maximum Daily Load
21 ("TMDL") for sediment for the upper South Fork. This TMDL was
22 the first sediment TMDL developed in the United States.

23 21. Since the landslides in the 1960s, the need for
24 restoration of the South Fork has been widely recognized by the
25 Forest Service and other federal agencies.

26 22. In the late 1980s, the Forest Service convened a group
27 consisting of representatives of scientists, the timber industry,

1 federal and state agencies, Indian tribes, and conservation
2 groups, to negotiate a management plan for the South Fork. After
3 years of meetings and dialogue, this group developed "The South
4 Fork Salmon River -- An Area of Special Concern" guidelines ("the
5 South Fork guidelines"). The Forest Service amended the Payette
6 and Boise National Forest Land Resource Management Plans in 1988
7 and 1990, respectively, to incorporate these guidelines.

8 23. Under the South Fork guidelines, no new major land-
9 disturbing actions are to be scheduled in the South Fork
10 watershed until interim sediment-reduction objectives have been
11 are achieved and restoration activities have improved in-river
12 conditions. The negotiations leading to the guidelines addressed
13 fire and salvage logging, but concluded that salvage logging
14 would not be appropriate in the South Fork until interim fish
15 population and habitat objectives have been achieved.

16 24. NMFS has concluded that the guidelines are biologically
17 sound and use a scientifically reviewed protocol. NMFS has
18 applauded the guidelines for ensuring that future human-induced
19 land disturbances will be unlikely to further impact the South
20 Fork. According to NMFS, the sensitivity of the watershed to
21 land disturbance is so extreme and the historical value of the
22 fishery so high, that the guidelines appropriately spread out
23 even short-term impacts from restoration activities over a 10-
24 year time frame.

25 B. The Thunderbolt Salvage Sale

26 25. In the summer of 1994, wildfires burned approximately
27 150,000 acres in the South Fork Salmon River drainage of the

1 Boise and Payette National Forests. The Thunderbolt portion of
2 the fires burned close to 19,000 acres of the Boise and Payette
3 National Forests.

4 26. The Thunderbolt salvage sale would log approximately 14
5 million board feet of timber on 3,237 acres, including in
6 landslide prone areas and in two inventoried roadless areas.

7 27. The Forest Service has decided to proceed with the
8 Thunderbolt salvage sale in order to generate revenues for
9 restoration projects. The Forest Service does not contend that
10 the logging of the sale area will have any positive restoration
11 effects.

12 28. In the early planning stages, the Forest Service put
13 forward a long list of restoration and reforestation projects
14 that would be funded by the Thunderbolt salvage sale. The Forest
15 Service analyzed a number of alternatives, but favored the
16 alternative that would raise the most money. Alternative D in
17 the Environmental Impact Statement would have generated 2.8
18 million dollars as originally proposed with the net receipts used
19 for sediment-reduction projects to improve fisheries habitat and
20 for reforestation of burned areas. Since that time, the sale has
21 been reduced in scope. As a result, it will generate far less
22 money. As modified to reflect current merchantable timber
23 volumes and finally adopted, Alternative D will generate a total
24 of about 1 million dollars. The Forest Service concedes that the
25 net proceeds will be inadequate to reforest burned areas and that
26 only some of the planned sediment-reduction projects can be
27 funded by the sale revenues.

1 29. Many salvage sales in the Northwest region have
2 received no bids at the original asking price. As a result, some
3 salvage sales are being purchased for less than the price
4 envisioned by the Forest Service in its planning documents. The
5 Thunderbolt salvage sale may sell for less than the \$1 million
6 estimated by the Forest Service.

7 30. The South Fork has not achieved the sediment-reduction
8 objective set forth in the guidelines and the forest plans. As
9 such, the Thunderbolt salvage sale could not go forward under the
10 South Fork guidelines and the Boise and Payette forest plans.

11 31. The Forest Service amended the Boise and Payette forest
12 plans to allow the Thunderbolt salvage sale to proceed.

13 32. The Thunderbolt salvage sale is inconsistent with
14 PACFISH, an interim set of habitat protections adopted by the
15 Forest Service for land management activities on the Payette and
16 Boise National Forests, among others. In addition, in PACFISH,
17 the Forest Service expressly endorsed the South Fork guidelines
18 and provided that more protective directions in forest plans,
19 like the South Fork guidelines, would supersede less stringent
20 protections required by PACFISH.

21 33. Other federal agencies and the Forest Service's own
22 science panel have concluded that the Thunderbolt salvage sale
23 will harm water quality and salmon habitat in the South Fork.

24 34. NMFS issued a draft biological opinion for the
25 Thunderbolt salvage sale, in which NMFS determined that the
26 Thunderbolt Project is likely to jeopardize the continued
27 existence of Snake River spring/summer chinook salmon and likely

1 to result in the destruction or adverse modification of their
2 critical habitat.

3 35. Earlier this year, NMFS issued a biological opinion on
4 the Boise and Payette and other National Forests' forest plans.
5 That biological opinion spelled out protections that are required
6 in order to ensure that land management activities under the
7 forest plans will not jeopardize the survival of threatened
8 salmon. The Thunderbolt salvage sale provides less habitat
9 protection than what NMFS has determined is necessary.

10 36. The Environmental Protection Agency ("EPA") reviewed
11 the Thunderbolt salvage sale and found it inconsistent with
12 collective agency decisions and resource protection goals for the
13 South Fork. EPA recommended strongly against amending the Boise
14 and Payette forest plans. EPA believed that the sale would
15 further aggravate the already critically degraded habitat for the
16 threatened chinook salmon in the South Fork.

17 37. While EPA indicated that restoration of the South Fork
18 is very important, it stated that the Forest Service should not
19 use management activities to fund restoration. EPA pointed out
20 that there may be legal restrictions on the use of funds from the
21 salvage sale, which might prevent their use for the highest
22 priority sediment reducing projects in the South Fork watershed.

23 38. The Forest Service established a Science Panel to
24 review the scientific merit of the Forest Service's assessment of
25 the Thunderbolt salvage sale's effects on sedimentation and
26 fisheries habitat. The science Panel criticized the Forest
27 Service's predictions and assessment of impacts on the fishery.

1 The Science Panel was "unable to conclude that the analysis
2 performed could support the conclusion of long term improvement
3 in the spawning and rearing habitat of anadromous fish"

4 39. On October 5, 1995, the Forest Service issued its
5 record of decision indicating that it planned to go forward with
6 the Thunderbolt salvage sale.

7 40. On October 13, 1995, the Forest Service advertised the
8 Thunderbolt salvage sale. The advertisement indicates that the
9 Forest Service will receive initial and oral bids on the sale on
10 November 9, 1995.

11 CLAIMS FOR RELIEF

12 First Claim for Relief

13 The Decision to Proceed with the Thunderbolt Salvage
14 Sale Is Arbitrary and Capricious Because It Is Contrary
15 to the Well-Reasoned Views of Scientific Experts.

16 41. Plaintiffs incorporate by reference all preceding
17 paragraphs.

18 42. In deciding whether to proceed with the Thunderbolt
19 salvage sale, the Forest Service consulted NMFS, EPA, and the
20 Science Panel that it established to review the scientific merits
21 of the sale. NMFS, EPA, and the Science Panel concluded that the
22 sale would further degrade the South Fork watershed. EPA
23 concluded that the desire to generate revenue for restoration
24 projects does not justify salvage logging that will further
25 degrade the watershed. NMFS concluded that the Thunderbolt
26 salvage sale was likely to jeopardize Snake River spring/summer
27 chinook salmon and destroy or adversely modify their critical
habitat. NMFS and EPA recommended that the Forest Service not

1 proceed with the Thunderbolt salvage sale.

2 43. The Forest Service's decision to proceed with the
3 salvage sale is arbitrary and capricious because it is at odds
4 with the expert input obtained by the Forest Service from NMFS,
5 EPA, and the Science Panel. Accordingly, the decision to proceed
6 with the sale should be set aside, and the sale should be
7 permanently enjoined under § 2001(f)(4).

8 Second Claim for Relief

9 The Forest Service's Decision to Proceed with the
10 Thunderbolt Salvage Sale is Arbitrary and Capricious
11 Because It Deviates from Longstanding and Carefully
12 Crafted Agency and Inter-Agency Policies and Standards
13 for Managing the South Fork Watershed.

14 44. Plaintiffs incorporate by reference all preceding
15 paragraphs.

16 45. The Thunderbolt salvage sale violates the South Fork
17 guidelines, which were carefully crafted over a period of many
18 years by representatives of all the stakeholders in the South
19 Fork watershed. The Forest Service has incorporated these
20 guidelines into the Boise and Payette forest plans and indicated
21 earlier this year that it would abide by them in order to protect
22 salmon habitat. NMFS has endorsed the South Fork guidelines and
23 their scientific methodology and rationale.

24 46. The Thunderbolt salvage sale violates the South Fork
25 guidelines.

26 47. While the Forest Service has amended the Boise and
27 Payette forest plans, it has not provided an adequate explanation
of why it is necessary or justifiable to deviate from
longstanding agency and inter-agency guidelines for managing the

1 South Fork watershed.

2 48. The Forest Service's decision to proceed with the
3 salvage sale is arbitrary and capricious because it is at odds
4 with carefully crafted and longstanding agency and inter-agency
5 guidelines for managing and restoring this valuable, yet
6 compromised, watershed. Accordingly, the decision to proceed
7 with the sale should be set aside, and the sale should be
8 permanently enjoined under § 2001(f)(4).

9 Third Claim for Relief

10 The Decision to Proceed with the Thunderbolt Salvage
11 Sale in Order to Fund Restoration Funds Is Arbitrary
12 and Capricious Because the Record Reveals that It Will
13 Not Fund the Projects Deemed Critical by the Forest
14 Service or Required by Section 2001(c)(8).

15 49. Plaintiffs incorporate by reference all preceding
16 paragraphs.

17 50. The Forest Service is proceeding with the sale in order
18 to obtain revenues for restoration projects that it deems
19 critical and to fund reforestation of burned areas.

20 51. The Forest Service has dropped its projections of the
21 revenue that will be obtained from the project to less than half
22 what it had originally projected.

23 52. There is a significant likelihood that the sale will
24 bring in even less revenue than the Forest Service has projected.
25 It is also possible that use of the net proceeds from the sale
26 may be limited in ways that prevent their use for restoration
27 projects.

53. The Forest Service concedes that it will be unable to
finance all the restoration projects that it has identified as

1 critical with the currently projected sale revenues.

2 54. It is arbitrary and capricious for the Forest Service
3 to proceed with a sale that will further degrade the watershed
4 for the sole purpose of obtaining restoration funds when the
5 revenues will be inadequate to finance the restoration projects
6 that the agency has determined are essential.

7 55. The logging rider mandates that the Secretary "plan and
8 implement reforestation of each parcel of land harvested under a
9 salvage timber sale ... as expeditiously as possible after
10 completion of harvest on the parcel." Rescissions Act, §
11 2001(c)(8).

12 56. The Forest Service concedes that it will not have
13 sufficient funds to reforest burned areas.

14 57. Proceeding with a sale without planning for
15 reforestation and while acknowledging that reforestation will not
16 occur is arbitrary and capricious and contrary to the logging
17 rider.

18 58. Accordingly, the decision to proceed with the sale
19 should be set aside, and the sale should be permanently enjoined
20 under § 2001(f)(4).

21 Fourth Claim for Relief

22 Secretary Glickman Has Not Expressly Authorized the
23 Forest Service to Deviate from the Forest Plans and to
24 Permit a Salvage Sale that Adversely Affects Threatened
25 Species as Required By § 2001(c)(1)(A).

26 59. Plaintiffs incorporate by reference all preceding
27 paragraphs.

60. Under the logging rider, the Secretary of Agriculture
must make the decision to permit the Forest Service to proceed

1 with a salvage sale that violates applicable forest plans or that
2 adversely affects threatened or endangered species. Rescissions
3 Act, § 2001(c)(1)(A).

4 61. The Thunderbolt salvage sale violates the South Fork
5 guidelines and Boise and Payette forest plans. The Thunderbolt
6 salvage sale will also adversely affect threatened spring/summer
7 Snake River chinook salmon.

8 62. Secretary Glickman has not made the decision to permit
9 the Thunderbolt salvage sale to go forward despite its violation
10 of forest plans and its adverse effects on threatened species.

11 63. By proceeding with a salvage sale that violates the
12 forest plans and that will adversely affect threatened species,
13 without a decision to do so by Secretary Glickman, the Forest
14 Service has violated § 2001(c)(1)(A) of the Rescissions Act.

15 PRAYER FOR RELIEF

16 WHEREFORE, the plaintiffs respectfully request that the Court:

17 A. Expedite the proceedings in this case and assign the
18 case for a hearing at the earliest possible date, as required by
19 § 2001(f)(5) of the Rescissions Act.

20 B. Declare that the decision to proceed with the
21 Thunderbolt salvage sale is arbitrary and capricious because it
22 is at odds with the expert input obtained by the Forest Service
23 from NMFS, EPA, and the Science Panel; it is at odds with the
24 South Fork guidelines and the Boise and Payette forest plans; and
25 the rational connection is tenuous between the Forest Service's
26 desire to proceed with the sale to obtain moneys for restoration
27 and the evidence in the record.

1 C. Declare that, by proceeding with a salvage sale that
 2 violates the forest plans 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 Resciations Act.

6 D. Order that the decision to proceed with the sale shall
 7 be set aside.

8 E. Permanently enjoin the Forest Service from proceeding
 9 with the Thunderbolt salvage sale.

10 F. Award plaintiffs their reasonable fees, costs,
 11 expenses, and disbursements, including attorneys' fees,
 12 associated with this litigation.

13 G. Grant plaintiffs such additional and further relief as
 14 the Court may deem just and proper.

15 DATED this 26th day of October, 1995.

16 Respectfully Submitted,

17
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