

**NLWJC - Kagan**

**Counsel - Box 023- Folder 002**

**Headwaters Forest Complex [1]**

# Withdrawal/Redaction Sheet

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	To Elizabeth Blaug from Kathleen McGinty cc Elena Kagan and Shelly Fidler. Subject: headwaters. (1 page)	04/17/1996	P5
002. draft	Draft letter. (4 pages)	04/01/1996	P5

**COLLECTION:**

Clinton Presidential Records  
 Counsel's Office  
 Elena Kagan  
 OA/Box Number: 8289

**FOLDER TITLE:**

Headwaters Forest Complex [1]

2009-1006-F  
vz131

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

14-May-1996 01:11pm

TO:            Kathleen A. McGinty

FROM:         Elisabeth Blaug  
               Council on Environmental Quality

CC:            Shelley N. Fidler  
CC:            Elena Kagan  
CC:            Dawn Chirwa

SUBJECT:      headwaters

FYI, Jennifer Palmieri called to let me know that Leon Panetta is meeting with Lloyd Bentsen tomorrow morning, and one of the issues Bentsen apparently wants to discuss is Headwaters. The only connection I could come up with is Texas. I caught up Jennifer on what's happening, and am preparing talking points for the meeting tomorrow.

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

14-May-1996 01:32pm

TO:            Elisabeth Blaug

FROM:          Kathleen A. McGinty  
                Council on Environmental Quality

CC:            Shelley N. Fidler  
CC:            Elena Kagan  
CC:            Dawn Chirwa

SUBJECT:      RE: headwaters

thx. yuk. what is bentsen doing tangoing with this bum??

Elena:

5/12/56

Here's material from Friday's meeting. The basic thrust of our discussion was Justice's new role in leading negotiations know that we're in litigation. The 3:30 meeting w/ Kate, Elizabeth, Lois + John is still on, for as I know. Talk to you tomorrow.

Dan

Memorandum

May 10, 1996

To: John Garamendi  
Deputy Secretary

From: Allen McReynolds *AM*  
Special Assistant to the Secretary

Subject: Headwaters Appraisal

I spoke with Ed Hasty, BLM California State Director, this morning regarding the status of the appraisal contract to appraise the 3,000 acre Headwaters Grove. The contract with the appraiser has not been finalized, but a mechanism is in place to officially contract with the private firm through an existing contract with the State of California. Mr. Hasty stated that he could have the contract finalized and executed by early next week if the decision was made to follow through on this arrangement.

For the sake of discussion purposes, the various open to the Federal government include:

**Option 1.** BLM and State of California contract with an appraiser.

Product: A range of values (estimated) for Headwaters Grove and one value for State timber rights. Formal appraisals are ordered as a final product.

**Option 2.** BLM contracts through existing State arrangement, but the contract is solely with BLM and does not include estimating value of State timber rights.

Product: one values estimate for Headwaters Grove

**Option 3.** Dept. Of Justice sole-sources an appraisal contract to same appraisal firm.

Product: DOJ/DOI receives a range of values (estimated) for Headwaters Grove. A formal appraisal is ordered as a final product.

**Option 4.** Dept of Justice hires a Review Appraiser to review BLM-ordered appraisal.

Product: An Appraisal Review Report on the validity of the methodology and range of estimates is provided.

The State Director also stated that the estimate of values and formal appraisal phases of the appraisal process were priced at around \$80,000.

Thank you for your attention.

Cc: Bob Baum  
David Watts

## Headwaters Forest

### Estimate of Value Scenarios

1. Determination of "Loggable" Timber Component based on 1996 California Forest Practice Rules, California Endangered Species Act, and Federal Endangered Species Act. Highest and Best Use Timber Management.
2. Determination of "Loggable" Timber Component based on Forest Ecosystem Health and Recovery Criteria. Allow for Sanitation/Salvage harvest; Acceleration of Late Seral Stage tree species for improved wildlife habitats ie, Commercial thinning in young seral stage age classes; and Other Canopy Reduction harvest scenarios to improve overall forest health and provide forest protection from wildfire, insect and disease by reduction of forest fuel loadings.. Limited Timber Management
3. No Timber Harvest Alternative. Mitigation determination of Value for Wildlife Habitat Protection; Old Growth Forest Attributes; and other forest land uses such as Recreation, Old Growth Studies and Watershed Protection and Water Quality Studies.

Finalized: 5/8/96  
Headwaters Forest Acquisition Team  
Jim Francis - BLM State Forester

# DRAFT

2200  
CA-930.4

Mr. Glenn Zane  
Mason, Bruce & Girard, Inc.  
1005 Yuba Street  
Redding, CA 96099-0218

Dear Mr. Zane:

This letter is to provide you the Department of the Interior, Bureau of Land Management, California State Office Statement of Work Specifications for the Headwaters Forest appraisal.

The specifications for the real property appraisal for Headwaters Forest are as follows:

## 1. General Specifications

Mason, Bruce & Girard, Inc. (MBG) will be provided access to the 1991 color aerial photography at a scale of 1:12,000 used by Hammon-Jensen-Wallen & Associates, the USFS contractor, to classify the Headwaters Forest timber stands and prepare the timber cruise map.

MBG will be provided and use the 1992 Timber Cruise Report prepared by Hammon-Jensen-Wallen & Associates (HJW) for the Headwaters Forest in determination of the timber harvest volume values for the scenarios provided. The following associated timber cruise data will also be provided from HJW, if available:

- a. Arc Info files GIS Arc Format
  1. State Plane Coordinates for available corners in ownership
  2. Stream layer
  3. Plot location layer
  4. Road layer
  5. Timber Type Boundary layer
  6. Site boundary layer
  7. Soil type boundary
- b. Hard copy of above map layers
- c. Data Dictionary
- d. Field Data Records
  1. Copies of original cards
  2. Digitized data - comma delimited
- e. Aerial Photos - Best available with timber types

JFRANCIS:te:5/9/96:IMs/96-108

If the information provided is not adequate for MBG to proceed with the appraisal report, the BLM must be notified with 15 days of this Statement of Work Acceptance.

MBG may conduct a sample check cruise of the HJW timber cruise and validate the methodologies used in this report. Any other additional timber cruise work required to complete this appraisal report will be brought to the attention of the Contracting Officer Representative (COR) and BLM immediately.

MBG will provide a range of values based on the following timber harvest scenarios:

1. Determination of "Loggable" Timber Component based on 1996 California Forest Practice Rules, California Endangered Species Act, and Federal Endangered Species Act.  
Highest and Best Use Timber Management.

2. Determination of "Loggable" Timber Component based on Forest Ecosystem Health and Recovery Criteria. Allow for Sanitation/Salvage harvest; Acceleration of Late Seral Stage tree species for improved wildlife habitats; ie, Commercial thinning in young seral stage age classes, and other canopy reduction harvest scenarios to improve overall forest health and provide forest protection from wildfire, insect and disease by reduction of forest fuel loadings.  
Limited Timber Management.

3. Mitigation determination of Value for Wildlife Habitat Protection; Old Growth Forest Attributes; and other forest land uses such as Recreation, Old Growth Studies and Watershed Protection and Water Quality Studies.  
No Timber Harvest Alternative.

## 2. Analysis of Highest and Best Use.

MBG will specifically define, describe, and support the opinion of the highest and best use or combination of uses that can be made of the property (land and improvements) as defined below:

- (a) **Highest and Best Use Timber Management**  
Same description as in Section 1.1.
- (b) **Limited Timber Harvest**  
Same description as in Section 1.2.
- (c) **No Timber Harvest Alternative**  
Same description as in Section 1.3.

### 3. Appraisal Report

MBG shall make a detailed, on-the-ground field inspection and identification of the subject and comparable properties and shall make such investigations and studies as appropriate and necessary to derive sound conclusions, in conformance with the standards established by the "Uniform Appraisal Standards for Federal Land Acquisitions - Interagency Lands Acquisition Conference, 1973" and prepare the appraisal report to be furnished under this contract in conformance with all the terms and conditions contained therein.

MBG shall deliver to the Government a Preliminary Appraisal Report consisting of two originals NLT 6/24/96.

A Final appraisal report consisting of two originals and 8 manually signed copies covering said property incorporating the BLM comments shall be delivered NLT 7/1/96. The two originals shall contain an original set of photographs.

Upon request of the Government, MBG agrees to update the report to show value as of a specified date. The updated report shall be submitted in writing in 5 copies and shall include sales data or other evidence to substantiate the updated conclusion of value when a change in value occurs. The update shall be paid at a rate specified at the time.

Upon request of the United States Attorney or Department of Justice, MBG agrees to testify as to the value of the Headwaters Forest property as of the valuation date in any judicial proceeding involving the property or its value. Payment for such services shall be negotiated at the time.

The BLM contact for this appraisal shall be Ms Nancy Tarshis, BLM State Appraiser at 916-979-2798 or Jim Francis, BLM State Forester at 916-979-2830.

Please feel free to contact BLM if you have any questions on this Statement of Work. Please acknowledge acceptance below.

Sincerely,

Ed Hastey  
State Director

Acceptance: \_\_\_\_\_

Mr. Glenn A. Zane  
Mason, Bruce, Girard, Inc.

Date: \_\_\_\_\_

Author: Geoff Webb at ~IOS  
Date: 5/9/96 11:14 AM  
Priority: Normal  
TO: Jay Ziegler  
TO: Allen McReynolds  
Subject: headwaters

----- Message Contents -----

**\*5 HEADWATERS: NINTH CIRCUIT LIFTS SALVAGE-LOGGING BAN**

The Ninth Circuit Court of Appeals in San Francisco on 5/7 overturned a ban preventing Pacific Lumber Co. from logging dead or diseased trees on 50,000 acres of Humboldt County, CA woodland, including the 3,000-acre Headwaters Forest, "the world's largest stand of old-growth redwoods in private hands."

In 9/95, US District Judge Maxine Chesney instituted the ban, questioning the effects of the logging on the threatened marbled murrelet and other wildlife. She said that earlier consultations between Pacific Lumber and the US Fish and Wildlife Service on how to protect the wildlife had triggered legal requirements for a complete USFWS environmental assessment of the effects of the private logging (GREENWIRE 10/2/95).

But the Ninth Circuit ruled Chesney's decision was wrong because the USFWS has no authority over the project (Bob Egelko, AP/Medford [OR] MAIL TRIBUNE, 5/8). The appeals court's decision sent the case back to district court for a trial on the need for more enviro studies (Reynolds Holding, S.F. CHRONICLE, 5/8).

In a 3-0 ruling, the appeals court said the USFWS had merely provided advice on how to avoid harming wildlife and had not taken sufficient control to require a study. The opinion by Judge David Thompson said that requiring a formal study in those circumstances "would be disincentive for the agency to give such advice" and would discourage landowners from seeking federal help. The result, he said, would be less protection for endangered species.

**LOGGING PLANNED, BUT ENVIROS STILL HOPE TO PREVENT IT**

Pacific Lumber plans to begin logging in Headwaters after 9/15, the end of the nesting season for the murrelet, said Jared Carter, a lawyer for the company.

But layers for the Environmental Protection Information Center said they still have hopes of stopping the logging (Egelko, AP/Medford [OR] MAIL TRIBUNE). EPI Attorney Thomas Lippe said the discovery of additional facts will "prove at trial that there was agency action" (Holding, S.F. CHRONICLE).

**NINTH CIRCUIT BLOCKS OLD-GROWTH LOGGING**

In a second ruling, the Ninth Circuit upheld a ban on logging 237 acres of old-growth redwoods and Douglas firs at Owl Creek, also in Humboldt County, that was found to contain murrelet nesting sites. Pacific Lumber had gotten state approval for logging about half the trees in the grove before federal courts intervened (Egelko, AP/Medford [OR] MAIL TRIBUNE).

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**RAWLES, HINKLE, CARTER,  
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P.O. BOX 720  
UKIAH, CA 95482  
TELEPHONE (707) 462-6694  
JARED G. CARTER  
FRANK SHAW BACIK

Attorneys for Plaintiffs

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

THE PACIFIC LUMBER COMPANY, )  
a Delaware corporation; SCOTIA PACIFIC )  
HOLDING COMPANY, a Delaware )  
corporation; and THE SALMON CREEK )  
CORPORATION, a Delaware corporation, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
THE UNITED STATES OF AMERICA, )  
 )  
Defendant. )

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**COMPLAINT FOR INVERSE CONDEMNATION**

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2 Plaintiffs' claims arise under the Fifth Amendment to the United  
3 States Constitution. Jurisdiction of this court is based on 28 U.S.C. § 1491(a)(1).  
4 This is a regulatory takings case.  
5  
6

7 **OVERVIEW AND SUMMARY OF THE CASE**  
8

9  
10 Although the factual background is detailed, the gravamen of this  
11 complaint is straightforward: application of the Federal Endangered Species  
12 Act, 16 U.S.C. § 1531 *et seq.* (Federal ESA) has taken Pacific Lumber's property  
13 for public use without payment of just compensation.  
14  
15

16  
17 The Federal ESA has been applied to Pacific Lumber's property by  
18 the United States Fish and Wildlife Service (USFWS), a part of the United  
19 States Department of the Interior, by the federal judiciary (*Marbled Murrelet*  
20 *v. The Pacific Lumber Company*, N.D. Cal. No. C-93-1400 LCB [1995]), and by  
21 state agencies either acting in concert with USFWS (under a formal  
22 cooperative agreement with the federal government) or applying the Federal  
23 ESA because, as a federal statute, it is the supreme law of the land (U.S. Const.,  
24 Art. VI, cl. 2).  
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1  
2           The formal agreement between California and the United States  
3 (entitled Cooperative Agreement Between The California Department of Fish  
4 And Game And The U.S. Fish And Wildlife Service, and executed by the  
5 United States June 6, 1991 and by California Aug. 28, 1991) recognizes federal  
6 decisions will control respecting federally protected species. It provides  
7 expressly:

8           "The CDFG [California Department of Fish and  
9 Game] agrees not to . . . issue a permit authorizing  
10 the taking of resident federally listed endangered or  
11 threatened fish, wildlife or plants . . . without prior  
12 issuance of a permit to the applicant by the Director,  
13 USFWS, except [in narrowly stated instances not  
14 pertinent here]."

15  
16  
17           Thus, without prior federal approval, California will not permit  
18 any actions that could (among other things) harm or harass a federally listed  
19 species. As alleged hereafter, California has enforced this agreement by  
20 refusing permission to harvest old growth trees unless the federal  
21 government grants its approval in the form of an Incidental Take Permit  
22 under the Federal ESA. An Incidental Take Permit is, in essence, an  
23 exception within the Federal ESA that permits moderate and unintended  
24 harm to a member of a protected species under limited circumstances.

1  
2 Thus, the thread that binds together all of the allegations that  
3 follow is the Federal ESA. Use of that Federal statute to protect a small bird  
4 called the marbled murrelet (*Brachyramphus marmoratus*) (the Murrelet) has  
5 *de facto* condemned Pacific Lumber's old growth redwood forests to public  
6 use as a Murrelet sanctuary. In a nutshell:  
7

- 8 • The Murrelet has been listed as a "threatened"  
9 species under the Federal ESA.  
10
- 11 • The Federal ESA prohibits any actions that  
12 will, among other things, harm or harass a  
13 protected or threatened species.  
14
- 15 • The U.S. District Court has found that  
16 Murrelets can only survive if they are able to  
17 nest in old growth redwood forests on the  
18 northern California coast and that the removal  
19 of any old growth redwoods would "likely"  
20 lead to the bird's extinction.  
21
- 22 • The U.S. District Court made those findings in  
23 litigation against Pacific Lumber and they are  
24 binding on Pacific Lumber in any further  
25 proceedings.  
26
- 27 • The California agencies that control Pacific  
28 Lumber's ability to harvest any of its redwoods

1 have concluded that, because of the impact on  
2 Murrelets, no harvest of old growth redwood  
3 will be permitted without USFWS approval of  
4 a Habitat Conservation Plan (HCP) and  
5 issuance by USFWS of an "Incidental Take  
6 Permit" under the Federal ESA.

- 7
- 8 • California's application of the Federal ESA has  
9 produced a classic "Catch 22" for Pacific  
10 Lumber: it cannot harvest without a federally  
11 approved HCP and a federally issued  
12 Incidental Take Permit; but the facts already  
13 found by the U.S. District Court preclude the  
14 issuance of an Incidental Take Permit. By law,  
15 the Secretary of the Interior can only issue an  
16 Incidental Take Permit if he makes this  
17 statutory finding: "the taking [of the protected  
18 species] will not appreciably reduce the  
19 likelihood of the recovery of the species in the  
20 wild." (16 U.S.C. § 1539[a][2][B][iv].) Because  
21 the U.S. District Court has already found that  
22 harvesting "any one part" of an old growth  
23 stand — a stand is a geographically distinctive  
24 area of trees — "will degrade" the entire stand,  
25 and that the loss of "any" more old growth  
26 redwoods would, at best "retard" the  
27 Murrelet's recovery and would more "likely"  
28 cause the "extinction" of the Murrelet, the

1 Secretary cannot make the required finding.

2 *Catch 22:* Pacific Lumber cannot harvest any of  
3 its virgin old growth redwood without a  
4 Federal Incidental Take Permit, but such a  
5 permit cannot be issued in light of the U.S.  
6 District Court's findings.

- 7
- 8 • The U.S. District Court has confirmed its  
9 intention that its findings will preclude Pacific  
10 Lumber from harvesting its old growth timber.  
11 In an order awarding substantial attorneys'  
12 fees to the environmental organization that  
13 prevailed in the litigation, the court  
14 emphasized that its prior holding had  
15 "ensur[ed] the conservation of one of the few  
16 remaining marbled murrelet nesting habitats  
17 in California" by "permanently enjoin[ing]  
18 logging on private land to conserve the habitat  
19 of a threatened or endangered species."  
20

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23 Thus, regardless of the number of applications for use or  
24 exemption Pacific Lumber may make to either federal or state agencies, the  
25 facts already found by the U.S. District Court and the constraints built into the  
26 Federal ESA will forever prevent Pacific Lumber from using its old growth  
27 timber in any economically beneficial or productive manner.  
28

1  
2 Congress has made a decision that protection of species threatened  
3 with extinction is an important public undertaking. With respect to  
4 protection of the Murrelet in Humboldt County, California, application of  
5 that federal policy has taken Pacific Lumber's property — all of which the  
6 company acquired for the purpose of harvesting — for public use. No  
7 compensation has yet been paid. Hence, this suit.  
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1 **Pacific Lumber's Investments**

2 12

3 Pacific Lumber has a long history of continuous investment in its  
4 property. It began logging operations in Humboldt County in November  
5 1882, and in 1884 built its first employee bunkhouse. In 1885, the company  
6 built its own railway from Alton to Scotia and extended a line along the Eel  
7 River. In 1887, Pacific Lumber completed Mill "A" in Scotia to employ 150  
8 workers; built the first boardinghouse in Scotia; and built a wharf at Fields  
9 Landing to ship loads of lumber.

10  
11  
12 13

13 Early in the 20th century, Pacific Lumber built Mill "B," the  
14 world's largest redwood sawmill. The Scotia Volunteer Fire Department was  
15 established, the First National Bank of Scotia was formed, and a monorail  
16 system was installed in the Scotia mills.

17  
18  
19 14

20 By 1914, Pacific Lumber owned more than 65,000 acres of  
21 timberland, and Scotia had enough families to support a new elementary  
22 school. On October 23, 1914, a golden spike was driven at Cain Rock, and the  
23 first train ran between San Francisco and Eureka. Then, in 1915, after six years  
24 of construction, Pacific Lumber's finished-lumber products factory began  
25 operation, and the first shipment of lumber was made from Scotia to the East  
26 coast.

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In 1920, Mill "A" closed for a short time, but reopened in 1921 as the first all-electric mill in California.

In 1929, Pacific Lumber built a bark recovery plant in Scotia that turned redwood bark into an insulation product. A log peeling plant began operation in Scotia as well, which by then was the second largest town in Humboldt County.

In 1940, Pacific Lumber purchased 22,000 acres of timberland in the Yager-Lawrence Creek Watershed.

In 1950, Pacific Lumber bought Dolbeer and Carson Lumber Company and acquired timberland in the Elk River, Van Duzen, and Root Creek areas. Pacific Lumber then owned 131,000 acres. The Scotia Shopping Center was built and stores were leased to independent companies and individuals.

In 1958, Pacific Lumber bought Holmes-Eureka Lumber Company and its property along the Van Duzen River.

In 1959, Pacific Lumber installed a hydraulic debarker to remove bark from redwood and Douglas fir logs. A log unloading crane and log intake into Mill "B" were also installed.

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In 1965, Pacific Lumber built two lumber drying yards above a flood plain after a flood washed away 20 million board feet of lumber. In 1972, Pacific Lumber built a sawmill in Fortuna to handle young growth logs. In 1981, Mill "B" in Scotia was remodeled with a new head rig, log slip, edgers, and trim saw.

In 1984, Pacific Lumber bought 22,500 acres (the Van Duzen tract) from Louisiana Pacific corporation for over \$20 million. And in 1986, Pacific Lumber bought a sawmill in Carlotta from Louisiana Pacific. In 1987, the company put into operation a \$50-million cogeneration plant to recycle all its wood waste, bark, leaves, and sawdust, creating 25 megawatts of energy per hour to provide the electricity needed to operate its mills, heat homes, and run Scotia.

Pacific Lumber's Property

*The Redwood Region.* The Redwood Region of the western United States encompasses about 1.7 million acres of forest, stretching from Oregon to Monterey County south of San Francisco. Redwood grows largely in the fog belt of coastal California and only within a temperature zone encompassed by a stretch of 300-400 miles along the northern coast.

1  
2 There are two species of redwoods in California. The Sierra  
3 redwoods, also called the Giant Sequoia, are in isolated groves in the Sierra  
4 Nevada and virtually all are being preserved in more than 70 state and  
5 federal reserves. Pacific Lumber does not own any of these trees.

6 The second species is the coastal redwood. These are the  
7 fastest-growing softwood trees in the United States. The coastal redwood casts  
8 seed prolifically and sends up a ring of aggressive sprouts from its roots. It  
9 grows intermixed with Douglas fir and other species.

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12  
13 Pacific Lumber owns about 192,000 acres of timberland. Its prime  
14 timberland is characterized by very favorable soil and climatic conditions,  
15 making it one of the most attractive timber resources in the world. Pacific  
16 Lumber's timber consists of approximately three-quarters redwood and  
17 one-quarter Douglas fir, with small quantities of other whitewoods.

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21 *Old Growth Redwood.* Part of Pacific Lumber's forest consists of  
22 "old growth" coastal redwood and Douglas fir. Old growth means that the  
23 trees are typically over 200 years old. Parts of the acreage are called virgin old  
24 growth, meaning trees growing in stands (geographically distinctive areas of  
25 trees) where no harvest activity has ever occurred. These virgin stands can be  
26 cut selectively so that many trees remain. Those remaining trees are allowed  
27 to grow at an accelerated rate (since they do not have as much competition  
28

1 with neighboring trees for sunlight and nutrients), and what remains in a  
2 stand after selective harvesting is called residual old growth.

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6 In the years before Murrelet restrictions, approximately 70% of  
7 Pacific Lumber's lumber production was redwood, and approximately 50% of  
8 that redwood was in the higher quality "upper grade" category. (Lumber is  
9 classified as "upper" grade if it contains no knots, and as "common" if it does  
10 contain knots.) Due to its unusual qualities, attractive appearance, and  
11 relatively small supply, upper grade redwood lumber has always commanded  
12 a premium price. Because of its higher value, upper grade redwood  
13 historically accounted for 60% or more of Pacific Lumber's total lumber  
14 revenues. The upper grades of redwood lumber are obtained primarily from  
15 old growth trees.

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19 *Forest Management.* Pacific Lumber operates in compliance with  
20 California's strict forest management rules and regulations and in keeping  
21 with sound forest management practices designed to preserve the forests as  
22 valuable economic assets with continual, long-term growth and harvest.  
23 Pacific Lumber manages its forest resources on a sustained cycle of planting,  
24 regrowth, and harvest.

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1  
2 Pacific Lumber harvests its timberland with its own logging crews  
3 and with independent contract loggers. The timber is located in areas served  
4 by private heavy-duty truck roads. On Pacific Lumber's residual timberlands,  
5 older mature trees have for the most part been selectively harvested in the  
6 past, and even then only on a very small percentage of its land in any given  
7 year. On Pacific Lumber's second growth timberlands (areas logged before the  
8 1930s which are now producing stands of trees that are even-aged — i.e., all  
9 the same age), approximately 50% of the trees are normally removed through  
10 thinning operations when these stands reach 60 years of age.  
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13  
14 Pacific Lumber has engaged in responsible forest management  
15 practices over many generations. Unlike some timberland owners who cut  
16 all their old growth trees long ago, Pacific Lumber's conservative forest  
17 management approach has put the company in the position today of having a  
18 substantial supply of old growth trees.  
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21  
22 *Inventory.* In 1985 and 1986, Pacific Lumber employed Hammon,  
23 Jensen, Wallen & Associates (HJW), an independent Forestry consulting firm,  
24 to conduct a detailed inventory of its timberland. HJW concluded that Pacific  
25 Lumber had far more standing timber than previously thought, and could  
26 increase its rate of harvest and production without upsetting the long-term  
27 timber supply. Pacific Lumber calculated that it could sustain this significant  
28

1 increase in harvest for 15 to 20 years, consistent with sound forest  
2 management.

3 Even before the HJW study was completed, however, Pacific  
4 Lumber expected to — and knew it could — cut all its virgin old growth  
5 stands within twenty or thirty years.

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8 29

9 The amount of upper redwood grades in any given stand depends  
10 basically on the age and size of the trees. Redwood is among the most rapidly  
11 growing of North American softwoods in terms of volume of wood grown  
12 per acre per year, and a mature redwood stand will generally contain the  
13 highest volume of wood per acre of any North American forest. Further, as  
14 redwood grows, it drops its lower limbs, and the absence of these lower limbs  
15 produces the clear, straight-grained wood classified as upper grade. The larger  
16 the tree, the more clear wood it contains.

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19 30

20 This is where Pacific Lumber's strength lies. Among lumber  
21 companies, Pacific Lumber owns the largest proportion of redwood forests in  
22 the 200-year plus age bracket. Indeed, Pacific Lumber's inventory of old  
23 growth timber is several times that of any competitor and its lands contain  
24 more old growth redwood than all other private landowners combined.  
25 Mixed in with the redwoods are smaller, but still substantial, numbers of  
26 valuable Douglas fir, whitewood conifers, and hardwoods.

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1  
2           *Harvesting.* Pacific Lumber does not generally clear-cut its trees —  
3 i.e., cutting every tree in a stand. Instead, the oldest trees, which are no longer  
4 growing, are harvested. What's left is smaller, healthy old growth, and some  
5 young growth. These remaining trees, and new trees that grow from seeds  
6 and sprouts, then grow at an accelerated rate. Timber productivity is  
7 maximized if this residual old growth is left 10 to 20 years more before it is  
8 harvested. After the residual old growth is harvested, the remaining stand is  
9 essentially an even-aged stand that should grow another 50 or so years before  
10 it is harvested again. About 10 acres of residual old growth is required to  
11 produce the volume that would be produced from one acre of virgin old  
12 growth.

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16           *Milling.* Pacific Lumber's timber is converted into a wide variety  
17 of lumber products at its four sawmills. The raw materials for all the  
18 company's Humboldt County manufacturing facilities are provided almost  
19 entirely by trees harvested from its timberlands. The wood residues from  
20 lumber manufacturing are fully utilized, either converted to wood chips and  
21 sold to local pulp makers or used as fuel to generate the electricity for the  
22 Scotia facility and town. About half of the energy generated in Scotia is sold  
23 to the local public utility. Logs not suitable for conversion in Pacific Lumber's  
24 mills are sold primarily to local sawmills.

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Within the Humboldt area, lumber is produced by mills specifically designed to handle certain sizes and species of timber; these mills are typically segregated into old growth and young growth mills. The old growth mills are specifically designed to handle larger, higher quality timber (such as that found on the property at issue in this suit). Old growth timber products include interior and exterior siding, trim boards, and other applications where appearance is the primary concern.

Young growth mills, by contrast, are designed to handle the usually smaller young growth logs, which typically do not produce a high proportion of upper grade lumber. This lumber usually contains more knots and is used in general construction applications such as framing, decking, and fencing.

*Uses for Redwood.* Redwood is used in new residential construction, in residential repairs and remodeling, including decks and fences, in light commercial construction and in some industrial applications.

Redwood has unique decorative qualities and is extremely durable. It is largely insensitive to substitution and competition from imports. This has translated into consistently increasing prices for redwood lumber.

1 **Zoning for Timber Production**

2 36

3 Virtually all of Pacific Lumber's land is in timber production  
4 zones (TPZs), areas zoned exclusively for commercial timber production  
5 under California's Timberland Productivity Act (Cal. Gov't Code §§ 51000 et  
6 seq.) (the Productivity Act). The Productivity Act includes policy declarations  
7 and substantive provisions designed to foster commercial timber production  
8 on privately owned timberlands in California. Under the Productivity Act,  
9 property determined by local government to be capable of commercial timber  
10 production must, upon application, be zoned TPZ. (Cal. Gov't Code  
11 §§ 51110-51119.5.)  
12  
13

14 37

15 The only use which may be made of TPZ land is the growing and  
16 harvesting of timber and compatible uses. (Cal. Gov't Code §§ 51104, 51115.)

17 Compatible use includes management for wildlife habitat, but  
18 only provided it "does not significantly detract from the use of the property  
19 for, or inhibit, growing and harvesting timber." (Cal. Gov't Code  
20 § 51104(h)(2).)  
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24 There is a presumption that TPZ land will be harvested. (Cal.  
25 Gov't Code § 51115.1.) State policy says that harvesting "shall not be or  
26 become restricted or prohibited due to any land use in or around" the area of  
27 harvesting. (Cal. Gov't Code § 51102(b).)  
28

1  
2 The primary goal of both the Z'Berg-Nejedly Forest Practices Act  
3 of 1973 (Cal. Public Resources Code §§ 4511, et seq.) (the Forest Practices Act or  
4 FPA) and the Productivity Act is the "maximum sustained productivity" of  
5 California timberlands. California Public Resources Code § 4513(b) states that  
6 the intent of these acts is to assure that:

7 "The goal of *maximum* sustained production of  
8 high-quality timber products is achieved while  
9 giving consideration to values relating to recreation,  
10 watershed, wildlife, range and forage, fisheries, and  
11 aesthetic enjoyment." (Emphasis added.)  
12  
13

14 "While giving consideration to" is defined in 14 California Code  
15 of Regulations (CCR) § 895.1 as:

16 "The selection of those feasible silvicultural systems,  
17 operating methods and procedures which  
18 substantially lessen significant adverse impact on the  
19 environment and which best achieve *long-term*,  
20 *maximum* sustained production of forest  
21 products. . . ." (Emphasis added.)  
22  
23

24  
25 Moreover, under the Productivity Act, TPZ property can be  
26 managed for fish or wildlife habitat only if such use "does not significantly  
27 detract from the use of the property for, or inhibit, growing and harvesting  
28 timber . . . ." (Cal. Gov't Code § 51104(h)(2).)

1  
2           The Humboldt County zoning ordinance provides for TPZs which  
3 are "intended to provide standards and restrictions for the preservation of  
4 timberlands for growing and harvesting timber." (Humboldt County Zoning  
5 Ordinance § 314-10.)

6           Under the zoning ordinance, the principal permitted uses of TPZ  
7 lands are "[g]rowing and harvesting of timber and accessory uses compatible  
8 thereto as defined in Section 314-11."

9           Section 314-11 defines "accessory uses" to include things such as  
10 management for watershed and "[a] use integrally related to the growing,  
11 harvesting and processing of forest products, including but not limited to  
12 roads, log landings, and log storage areas (portable chippers and portable  
13 sawmills are considered part of 'processing')." Accessory uses, however, must  
14 "not significantly detract from the use of the property for, or inhibit, growing  
15 and harvesting of timber."

16           The zoning ordinance also provides that conditional use permits  
17 for other uses "cannot be approved if such use will significantly detract from  
18 the use of the property for, or inhibit, growing and harvesting of timber."  
19  
20

### 21 Forest Management Rules

23           Pacific Lumber's operations are subject to detailed requirements of  
24 the Forest Practice Act, which also subjects timber harvesting to regulations  
25 promulgated by the California Board of Forestry (the Board). The Board's  
26 regulations require compliance with certain long-term sustained yield  
27 objectives.  
28

1  
2 In California, the regulatory process works like this.

3 The owner applies for a Timber Harvesting Plan (THP) to cut a  
4 stand of trees. (14 CCR §§ 1037, et seq.) Each THP is identified by a number,  
5 such as 1-93-513HUM.

6 A timber owner and its registered professional forester — a highly  
7 trained professional, licensed under California law and responsible for  
8 stewardship of the land — submit a THP application to the California  
9 Department of Forestry and Fire Protection (Forestry), which approves or  
10 denies the application. In deciding to approve or deny, Forestry consults with  
11 other State agencies, particularly the Department of Water Quality, the  
12 Department of Mines and Geology, and the California Department of Fish  
13 and Game (CDFG). Each agency gives Forestry an opinion in its respective  
14 area of responsibility about each THP's projected effects on resources. The  
15 agencies comprise the Review Team, chaired by Forestry. Among the  
16 agencies, CDFG gives Forestry an opinion about each THP's projected effects  
17 on wildlife. The agencies conduct an on-site pre-harvest inspection and  
18 complete a thorough public environmental review of each THP.

19 The registered professional forester responds to questions,  
20 comments, and recommendations from the agencies, and then the Review  
21 Team conducts a Second Review of the THP. Following Second Review, the  
22 THP is approved or denied.

23 Under the California Forest Practice Rules, the THP application  
24 review process is supposed to take no more than 45 days.  
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2 If the THP is denied, the owner can appeal to the Board. If the  
3 Board denies the THP, the owner's only remedy is judicial review.  
4

## 5 6 GOVERNMENT'S DESIRE TO OBTAIN REDWOOD LANDS

### 7 8 9 Historical Acquisitions by the Government

10  
11 State and federal government have persistently acquired old  
12 growth redwood lands for preservation. Over the century, government has  
13 steadily acquired old growth redwood stands to the point where there are very  
14 few left in private hands. Approximately 90% of the existing virgin old  
15 growth coastal redwoods are permanently preserved within over 350,000 acres  
16 of park land in the Redwood Region. By contrast, Pacific Lumber's land —  
17 the largest private holding — has only about 5% of total existing virgin  
18 redwood acreage.  
19  
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21  
22 Government acquisition began as early as 1902, with 18,132 acres  
23 comprising the California Redwood Park, later renamed the Big Basin  
24 Redwoods State Park. In 1907, Congressman William Kent donated the  
25 Muir Woods National Monument to the United States, and in 1916, the  
26 National Park Service was established, followed in 1918 by the  
27 Save-the-Redwoods League.  
28

In 1920, Congress directed the Secretary of the Interior to investigate suitable areas for a Redwood National Park and, at the state level, in 1928, the voters approved funds to establish a state park system. Humboldt Redwoods State Park alone comprised 52,246 acres. Other redwood parks acquired during the 1920s added another 39,986 acres.

In 1928, Pacific Lumber and the Save-the-Redwoods League made a "handshake agreement" for the protection of old growth forests. Pacific Lumber earmarked a prize stand, "Avenue of the Giants," for the public preserve. Since then, Pacific Lumber has provided the State of California (at a very low price without court action or condemnation threats) with about 20,000 acres of redwood groves, including some of the finest examples of virgin old growth that exist or ever existed.

In 1931, the state acquired from Pacific Lumber some 9,400 acres of what is now Humboldt Redwoods State Park.

In 1936, Congress authorized funds for the acquisition of rural land. Two purchase units totalling 941,660 acres of redwood in Del Norte and Mendocino (the two counties neighboring Humboldt) were designated. Of this area, however, only 14,492 acres were acquired.

In the 1940s, the interest in acquiring redwood continued. In 1946 and 1949, Congresswoman Helen Gahagan Douglas introduced bills to acquire 2,385,000 acres of redwood in Humboldt, Del Norte, and Mendocino Counties. The bills were never reported out of committee, but some 6,884 acres were acquired nonetheless.

In the 1950s, government acquired an additional 8,840 acres of redwood.

Between 1961 and 1967, government acquired another 22,995 acres. The creation of the Redwood National Park in 1968 removed a substantial amount of existing redwood from commercial timberland owners. Congress passed, and the President signed, a bill authorizing the condemnation of 28,000 acres of private timber for the Redwood National Park. The final cost was over \$170 million.

In 1975 and 1976, government acquired another 8,163 acres, and in 1978, Congress and the President expanded the Redwood National Park by acquiring an additional 48,000 acres for over \$1.4 billion. This major expansion resulted in Louisiana-Pacific, Simpson Timber, and Arcata Redwood Company losing the vast majority of their old growth redwood timber bases.

55

In the 1980s, government took another 14,749 acres, and in 1989, 43 Congressmen sent a letter to the California State Board of Forestry asking for a ban on all further timber cutting on 20,000 acres of privately owned redwood forests, including Pacific Lumber timberland, with trees at least 200 years old.

56

Today in California alone, there are at least 335,333 acres of redwood forest in federal and state government hands, and at least 106,436 acres of this is old growth redwood.

The next property in this progression of land acquisition is Pacific Lumber's remaining old growth timberland.

### Attempts To Acquire Pacific Lumber's Property

57

There have been repeated efforts to authorize state and federal funds to buy Pacific Lumber's old growth for preservation as parkland or to ensure Pacific Lumber cannot harvest the trees on its own property.

So far, however, the people and legislatures have not been willing to pay for this preservation. For example:

- In 1989 a bill was introduced in the California State Assembly that called for a multi-year ban on logging in all the state's old growth redwood forests. The bill did not pass.

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- In 1990, Pacific Lumber adopted a voluntary two-year moratorium on harvesting in the Headwaters, pending three ballot initiatives for state purchases of timberland, which were defeated by California voters. This moratorium was at the request of state and federal officials and in the hopes of negotiating an agreement to sell the area to the public under terms to satisfy all parties' interests. Pacific Lumber continued to refrain from harvesting in Headwaters even after the moratorium expired in 1992.

- In summer 1990, anti-lumber activists began a series of almost daily protests against Pacific Lumber and other California forestland owners. This was known locally as Redwood Summer.

- In 1991, during the 102d Congress, Congressman Pete Stark introduced a bill to enact the National Forest Redwoods Act of 1991. It contained findings that "Redwoods are a significant national symbol and a defining symbol of the State of California" and that "Old growth redwood trees are a unique and irreplaceable natural resource." This bill targeted 210,000 acres — essentially all of

1 Pacific Lumber's land plus a few acres of some  
2 surrounding land. Congressman Stark's bill  
3 did not pass.

- 4
- 5 • In 1992, California voters rejected another  
6 initiative to provide money for the public  
7 purchase of old growth forests, including  
8 Headwaters.
- 9
- 10 • Also in 1992, President Bush proposed  
11 including funds in the federal budget to be  
12 used toward an eventual purchase of  
13 Headwaters. The funds were deleted during  
14 later budget hearings.
- 15
- 16 • In late 1992 and early 1993, Pacific Lumber  
17 cooperated with the United States Forest  
18 Service's request to conduct an appraisal of  
19 Headwaters. That appraisal was completed in  
20 January 1993 and placed the value of 3,000  
21 acres comprising Headwaters, plus a 1,500-acre  
22 buffer, at about \$500 million.
- 23
- 24 • In 1993, during the 103d Congress,  
25 then-Congressman Daniel Hamburg  
26 introduced a bill to enact the Headwaters  
27 Forest Act, which proposed that 44,000 acres of  
28 almost entirely Pacific Lumber land, including

1 the Headwaters forest, be acquired. Congress  
2 did not pass this bill.

3  
4 • In the 1994 session of Congress, federal  
5 legislation was introduced providing for  
6 federal acquisition of Headwaters and a buffer  
7 zone (roughly the same 4,500 acres in the 1992-  
8 1993 appraisal.) To resolve the regulatory  
9 problems it was facing, Pacific Lumber  
10 supported the bill. The bill did not pass.

11  
12 • Also in 1994, California voters rejected another  
13 initiative to provide money for the public  
14 purchase of old growth forests, including  
15 Headwaters.

16  
17 • On September 7, 1995, two members of  
18 Congress, Reps. Pete Stark and (D-Hayward,  
19 Cal.) and George E. Brown, Jr. (D-Colton, Cal.),  
20 published an article in The Los Angeles Times.  
21 In a novel (if not extortionate) effort to obtain  
22 Pacific Lumber's land, they proposed that the  
23 company give up Headwaters in exchange for  
24 the United States dropping an unrelated  
25 lawsuit against Charles Hurwitz, the chairman  
26 of MAXXAM, which now owns Pacific  
27 Lumber.  
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- In the current 104th Congress, Congressman Frank Riggs has introduced a bill that would authorize the Secretary of the Interior to acquire 3,000 acres of Headwaters from Pacific Lumber plus a 1,700-acre buffer zone to be designated as Wilderness and a National Biological Diversity Reserve. The bill also authorized the Secretary to offer other timberland, timber rights on Bureau of Land Management land, or other suitable U.S. assets in exchange for Headwaters and the buffer zone, in accordance with a fair-market appraisal. The bill is currently being reviewed by Congress.

Acquiring Pacific Lumber's Land Without Paying For It:

The Marbled Murrelet

58

While the government has not been willing to pay for Pacific Lumber's old growth, it has prevented the land from being harvested. Specifically, the land has been preserved because the Federal ESA has been applied, in the name of the Murrelet, to ensure that the land will be preserved as a *de facto* national park, unavailable for any reasonable private use.

1  
2           The Murrelet is a small seabird of the Alcidae family that,  
3 according to studies accepted and applied by USFWS, forages in the  
4 near-shore marine environment and nests in large trees in coniferous forests  
5 along the coast, typically in large-diameter old growth trees with  
6 multi-layered canopies. Also, according to those studies, nesting occurs over  
7 an extended period from late March to late September. During the breeding  
8 period, the female Murrelet lays a single egg in a tree containing a suitable  
9 nesting platform. Forested areas with conditions capable of supporting  
10 nesting Murrelets are referred to as "suitable nesting habitat."  
11  
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13  
14           USFWS has determined that the Murrelet population in  
15 Washington, Oregon, and California nests in most of the major types of  
16 coniferous forests in the western portions of these states.  
17  
18

19  
20           According to USFWS's findings, Northwestern forests and trees  
21 typically require 200 to 250 years to attain the attributes necessary to support  
22 Murrelet nesting.  
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1  
2 On January 15, 1988, USFWS received a petition to list the  
3 Murrelet as a threatened species under the Federal ESA. On October 17, 1988,  
4 USFWS found that there was substantial information to indicate that the  
5 petition's request may be warranted.  
6  
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8  
9 On June 20, 1991, USFWS published a proposal to list the Murrelet  
10 in Washington, Oregon, and California as a threatened species.  
11  
12

13  
14 Following an order by the United States District Court for the  
15 Western District of Washington denying a six-month extension, USFWS  
16 published, on or about October 1, 1992, the final rule listing the Murrelet in  
17 Washington, Oregon, and California as a threatened species. (57 FR 45328.) In  
18 February 1993, USFWS appointed a Recovery Team to develop a recovery  
19 plan for the Murrelet.  
20  
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22  
23 On November 2, 1993, the U.S. District Court ordered the Secretary  
24 of the Interior to propose designating critical habitat for the Murrelet no later  
25 than January 21, 1994, and to make a final designation of critical habitat as  
26 soon as reasonably possible under applicable law. Final designation is now  
27 required May 15, 1996.  
28



1 even-aged management. Forest lands that are  
2 intensively managed for wood fiber production are  
3 generally prevented from developing the  
4 characteristics required for marbled murrelet nesting.  
5 Suitable nesting habitat that remains under these  
6 harvest patterns is highly fragmented." (Emphasis  
7 added.)  
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10 68

11 Section 4 of the Federal ESA requires USFWS to designate critical  
12 habitat for listed species based on the best scientific information available.  
13 The area of this critical habitat virtually overlaps with the area of  
14 Congressman Hamburg's earlier bill to acquire Pacific Lumber land. (See ¶ 57,  
15 above.) Under the Federal ESA, Pacific Lumber would be unable to obtain an  
16 Incidental Take Permit to harvest any virgin old growth timber, and likely no  
17 timber at all, in the critical habitat area.

18 Critical habitat is defined by the Federal ESA as:  
19 "(i) the specific areas within the geographical area  
20 occupied by the species, at the time it is listed . . . on  
21 which are found those physical or biological features  
22 (I) essential to the conservation of the species and (II)  
23 which may require special management  
24 considerations or protection; and (ii) specific areas  
25 outside the geographical area occupied by a species at  
26 the time it is listed . . . upon determination . . . that  
27 such areas are essential for the conservation of the  
28 species." (16 U.S.C. § 1532(5)(A).)

1           The term "conservation" means:

2           "... to use and the use of all methods and procedures  
3           which are necessary to bring any endangered species  
4           or threatened species to the point at which the  
5           measures provided pursuant to this (Act) are no  
6           longer necessary ...." (16 U.S.C. § 1532(3).)

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9           No Incidental Take Permit (nor any federal permit) may be  
10          approved if it would result in destruction or adverse modification of habitat  
11          designated critical. (16 U.S.C. § 1536(a)(2).)

12                 Where federal lands provide insufficient nesting habitat for the  
13          recovery of the species, USFWS has proposed to designate critical habitat in  
14          non-federal lands — including the heart of Pacific Lumber's holdings —  
15          which meet the Criteria for Identifying Critical Habitat:

16                 "... critical habitat provides a regulatory mechanism  
17                 when a Federal nexus is present to increase  
18                 immediate protection of these primary constituent  
19                 elements and essential areas and preserve options for  
20                 the long-term conservation of the species."

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23                 The Murrelet is the only species for which designation of privately  
24          owned critical habitat is planned. Privately owned property was originally  
25          designated for the spotted owl but then withdrawn; and no private  
26          landowner other than Pacific Lumber has more than 1,000 to 2,000 acres of its  
27          property designated as Murrelet habitat; whereas, Pacific Lumber will be  
28          required to suffer the loss of tens of thousands of acres.

1  
2 USFWS hired ECONorthwest, a consulting firm in Eugene,  
3 Oregon, to analyze the potential economic effects of designating Murrelet  
4 critical habitat. USFWS concluded, based on this study, that the Murrelet  
5 critical habitat proposal would "reduce the amount of certain types of forested  
6 habitat available to firms, such as firms in the timber industry, that benefit  
7 from conventional logging practices that degrade critical habitat."  
8  
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10 **PACIFIC LUMBER'S INABILITY TO USE ITS PROPERTY:**  
11 **OWL CREEK AND BOOT JACK PRAIRIE**  
12  
13

14  
15 Pacific Lumber acquired the Owl Creek timber stand (including  
16 just to the north, an area known as Boot Jack Prairie) in 1940, 1943, and 1945  
17 from Dessert Redwood Co., I.D. Allard, et al., and Van Duzen River Redwood  
18 Co., and has maintained these tracts and paid property taxes on them ever  
19 since. Pacific Lumber always expected it would be able to harvest this land.

20 However, a recent decision of the U.S. District Court for the  
21 Northern District of California, which applied the Federal ESA to prevent  
22 Pacific Lumber from harvesting Owl Creek, has prevented Pacific Lumber  
23 from making any economically beneficial or productive use of Owl Creek and  
24 Boot Jack Prairie.  
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Owl Creek and Boot Jack Prairie are legally described as the following parts of Township 2 North, Range 3 West of Humboldt County:

A portion of E1/2 of NE1/4 of Section 10,

W1/2 of Section 11,

A portion of NW1/4 of NE1/4, and the W1/2 of Section 14,

A portion of E1/2 of Section 15, and

A portion of N1/2 of NE 1/4 Section 22.

**THP 1-90-237 HUM**

On April 11, 1990, Pacific Lumber submitted to Forestry THP 1-90-237 HUM (THP 237), a timber harvest plan for a portion of Owl Creek. Under the plan, Pacific Lumber proposed to cut, within three years after plan approval, 137 acres of timber in a 237-acre portion of Owl Creek.

Owl Creek is a stand of mature virgin old growth redwood and Douglas fir timber. It has all the characteristics of an old growth stand and contains all tree sizes. The harvest area is in the Yager Creek drainage, a large watershed containing nearly 90,000 acres, of which Pacific Lumber had harvested about 1,500 acres per year over the past several years.

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2 When it filed THP 237, Pacific Lumber's planned rate of harvest  
3 from 1990 through 2000 was expected to remain about the same as it had been  
4 for the prior ten years in the area. Pacific Lumber planned to build  
5 approximately five miles of new road each year to access the timber for  
6 harvest, and for future harvests as new crops matured and became available.  
7 The virgin old growth stands and the oldest residual growth stands were  
8 scheduled for the earliest harvest, while the residual stands developed during  
9 recent harvest would be logged later. The entire harvest would take place  
10 over 15 to 20 years.  
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14 After receiving the THP, Forestry requested that Pacific Lumber  
15 prepare additional extensive surveys for the Murrelet, which the Review  
16 Team believed might exist in Owl Creek.  
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20 On January 30, 1991, Forestry formally denied THP 237, stating that  
21 the plan area "may contain marbled murrelets [and] the proposed harvesting  
22 could adversely affect one of the three remaining populations in California."  
23 (Emphasis added.) Forestry stated that Pacific Lumber's survey information  
24 was not adequate.  
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2 Pacific Lumber appealed the decision to the Board. On March 6,  
3 1991, the Board overturned Forestry's denial and approved the THP.

4 The Board stated that it had evaluated the information provided  
5 in the THP record and at the March 6, 1991 hearing, and found that there  
6 would be no significant impacts to the Murrelet.  
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9  
10 In or about March 1991, the Sierra Club filed *Sierra Club v. Board*  
11 *of Forestry* in Humboldt County Superior Court over THP 237. The court  
12 ordered the Board of Forestry to reconsider THP 237.  
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16 After a second hearing, on March 13, 1992, the Board issued its  
17 Findings for Approval of THP 237. In those Findings, the Board again  
18 approved the THP, but this time on the condition that Pacific Lumber  
19 complete certain additional Murrelet surveys before and after harvest.  
20 Notwithstanding the Board's second approval of THP 237, on March 16, 1992,  
21 CDFG determined that:

22 "the Plan as approved would likely result in the  
23 destruction or adverse modification of habitat  
24 essential to the continued existence of . . . the  
25 marbled murrelet."  
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Pacific Lumber started logging Owl Creek in June 1992 but stopped after a few days at Forestry's request, in order to consider if Murrelet mitigation measures should be adjusted.

On September 18, 1992, the Environmental Protection Information Center (EPIC), a non-profit environmental group, filed suit in the Humboldt County Superior Court and obtained a temporary restraining order against logging under THP 237. Subsequently, the Superior Court dismissed the lawsuit, and EPIC filed an appeal.

On September 20, 1992, CDFG determined that timber harvesting in Owl Creek did not violate the California Endangered Species Act. On September 28, 1992, however, USFWS listed the marbled murrelet as a threatened species under the Federal ESA.

On November 25, 1992, Pacific Lumber and Forestry made a mitigation agreement so that Pacific Lumber could resume harvesting Owl Creek. A few days later, however, on December 1, 1992, Pacific Lumber's Owl Creek logging was halted by the California Court of Appeal, First District, which issued a temporary stay pending further review of the EPIC state lawsuit.





1 that they had "ensur[ed] the conservation of one of the few remaining  
2 marbled murrelet nesting habitats in California." Moreover, the Court noted,  
3 "[T]his is the first case where a federal court has applied the 'harm' and  
4 'harass' provision of the ESA to permanently enjoin logging on private land  
5 to conserve the habitat of a threatened or endangered species." (Emphasis  
6 added.)

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10 On July 19, 1995, Pacific Lumber filed its appeal of *Marbled*  
11 *Murrelet* with the Ninth Circuit Court of Appeals. That appeal is now  
12 pending.

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15 Boot Jack Prairie

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17 The U.S. District Court's *Marbled Murrelet* decision explicitly  
18 includes not just THP 237, but also the tract of land directly north, known as  
19 Boot Jack Prairie.

20 Although foresters consider Boot Jack Prairie a separate stand  
21 from Owl Creek proper, the District Court's Order defines Owl Creek as a  
22 440-acre stand, which would include not just the 237 acres of THP 237, but also  
23 the acreage that comprises Boot Jack Prairie. (Order, p. 1; see also, Order, ¶¶ 18  
24 and 19.)

25 Pacific Lumber's forester's believe the Order encompasses some  
26 519 acres.

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2 Having defined Owl Creek more broadly than just THP 237, to  
3 include Boot Jack Prairie, the Court found "that there have been sufficient  
4 observations of 'occupied behavior' in and around THP-237 for the court to  
5 conclude that the Owl Creek stand is 'occupied' by the marbled murrelet."  
6 (Order, ¶ 90; emphasis added.) The Court also found that "harvesting in Owl  
7 Creek at any time of the year will 'harm' the marbled murrelet . . . ." (Order,  
8 ¶ 102.)  
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11  
12 The *Marbled Murrelet* findings make it impossible for Pacific  
13 Lumber to prove its land is not "occupied" by Murrelets. The findings hold,  
14 for example, that occupation can be determined without ever actually seeing  
15 either a bird or a nest. (Findings 27, 28.)

16 Indeed, if a surveyor thinks he may have heard the "whoosh" of a  
17 single Murrelet somewhere in the forest, then the entire stand will be shut  
18 down. (Findings 27, 28, 30, 32, 33, 34, 36, 75.)

19 If the presence of Murrelets can be determined even though none  
20 are ever seen, no amount of further studies by Pacific Lumber could ever  
21 disprove their presence.  
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24  
25 Based on the findings in *Marbled Murrelet*, it is futile for Pacific  
26 Lumber to pursue further efforts to harvest Owl Creek, as well as two other  
27 stands (Allen Creek and Headwaters) that contain old growth redwood and  
28 Murrelets, because:

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- The findings of *Marbled Murrelet* make it impossible for Pacific Lumber to prove its land is not occupied by Murrelets.
  
- Moreover, Pacific Lumber cannot obtain a final determination of what the government will permit. Even if Pacific Lumber takes additional steps to obtain permission to harvest its timber in the old growth stands inhabited by Murrelets, that effort will be fruitless and wasteful, because the outcome of such measures is foreknown from the history of government action with respect to such property. Pacific Lumber has, at great expense, already made multiple and meaningful harvest applications for the lands at issue in this lawsuit.
  
- Finally, state regulators have stated that, because these stands are occupied by Murrelets, Pacific Lumber needs to get an Incidental Take Permit (a permit that allows the incidental "taking" of an endangered or threatened species) and a Habitat Conservation Plan — both under the Federal ESA — but USFWS has told Pacific Lumber, in no uncertain terms, that neither of these things will be available

1 under any terms which provide economic use  
2 of the property.  
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6 The basis for the ruling in *Marbled Murrelet* — that Murrelets are  
7 inhabiting the subject property — would not change regardless of variations  
8 in Pacific Lumber's applications to harvest its timber. Based on the ruling, no  
9 applications would have a less adverse impact on the Murrelet habitat than  
10 the impact the U.S. District Court found in *Marbled Murrelet*. If the Murrelet  
11 habitat will be irreversibly damaged by any harvest of Pacific Lumber's old  
12 growth stands, it would be useless and futile for Pacific Lumber to submit any  
13 more alternative harvest proposals.  
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16 93

17 United States Supreme Court decisions enforce the Federal ESA as  
18 broadly as it is written, making preservation of Murrelet habitat of  
19 paramount importance. (See e.g., *Tennessee Valley Authority v. Hill*, 437  
20 U.S. 153, 184 [1978] and *Babbitt v. Sweet Home Chapter Communities for Ore.*,  
21 \_\_ U.S. \_\_, 115 S.Ct. 2407 [1995].) According to the U.S. District Court's  
22 findings in *Marbled Murrelet*, old growth is the Murrelet's only known  
23 habitat (Finding 7), most of that habitat has already been eliminated (Finding  
24 14), and the reason the Murrelet's population is declining rapidly is the loss of  
25 old growth habitat (Finding 14). The findings show that the species is not  
26 only threatened, but in serious danger of becoming extinct. With any  
27 additional loss of habitat, extinction becomes "very likely" (Finding 16) and,  
28 indeed, is a "high probability" (Finding 95). Because of that, loss of "any" part

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1 of the existing old growth will at least "retard" the Murrelet's recovery  
2 (Finding 16) and would more likely lead to its extinction (Findings 16, 95).  
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6 As a result of *Marbled Murrelet*, the only use of Pacific Lumber's  
7 property allowed by state law — the harvesting of timber — is precluded.  
8 Consequently, there is no economically beneficial or productive use left to  
9 which Pacific Lumber's property may be put.  
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12 **PACIFIC LUMBER WILL NEVER BE GRANTED AN**  
13 **INCIDENTAL TAKE PERMIT**  
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17 Pacific Lumber has made exhaustive efforts to obtain an Incidental  
18 Take Permit from USFWS under the Federal ESA. Due to the presumed  
19 presence of Murrelets on its timberland, Pacific Lumber cannot make any  
20 productive use of its property without such a permit.  
21

22 96

23 USFWS has consistently shown that it will never grant an  
24 Incidental Take Permit for commercial harvesting on Pacific Lumber's  
25 timberland. If any doubt remained, the U.S. District Court's decision in  
26 *Murrelet* erased it.  
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1 **After the Marbled Murrelet Was Federally "Listed."**

2 **Pacific Lumber Tried To Find a Way To Harvest**

3 **Without Harm to the Species**

4 97

5 After the Murrelet was federally "listed" in 1992, Pacific Lumber  
6 met with USFWS officials about its harvesting operations. Pacific Lumber  
7 believed that it could selectively harvest in a manner that would not cause  
8 any harm to the Murrelet.

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12 USFWS officials, however, refused to believe that any harvesting  
13 could be done without harm to the Murrelet. USFWS told Pacific Lumber  
14 that it had to obtain an Incidental Take Permit to harvest its property. An  
15 Incidental Take Permit would allow Pacific Lumber to harvest its trees even if  
16 some "incidental" impact resulted to the Murrelet, as long as Pacific Lumber  
17 took steps to mitigate this impact.

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21 To explain the steps it would take to mitigate any impact on the  
22 Murrelet, Pacific Lumber drafted an elaborate harvesting plan designed to  
23 avoid harming the Murrelet. This "no take" plan involved much scientific  
24 research and study, and was submitted to USFWS in October 1993.

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2 USFWS rejected Pacific Lumber's "no take" plan, concluding that  
3 it could not allow harvesting because "all existing nesting habitat may be  
4 important in stabilizing the species' population," and there must be no risk  
5 that mitigation would fail.  
6  
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8  
9 Pacific Lumber tried to learn from USFWS whether there was any  
10 way to revise its "no take" plan and turn it into a Habitat Conservation Plan  
11 that would be acceptable. Pacific Lumber met with USFWS to discuss the  
12 alleged defects in the October 1993 draft.  
13

14 USFWS refused to give Pacific Lumber sufficient guidance to  
15 allow it to revise its plan, except to say that Pacific Lumber needed more  
16 information about "nest site locations and success." This put Pacific Lumber  
17 to an impossible task. After spending three years and more than \$2.5 million  
18 in research, Pacific Lumber was unable to locate enough nests on its  
19 timberland to gather any meaningful information about either the locations  
20 or success of nests. Pacific Lumber was able to confirm only three nest sites.  
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1 USFWS Designated Pacific Lumber's Land Proposed "Critical Habitat"

2 102

3 Just in case Pacific Lumber could ever submit an HCP that  
4 contained more information about things that might not exist — like  
5 Murrelet nests on its property — USFWS took an additional step to thwart all  
6 commercial harvesting on Pacific Lumber's timberland. On August 10, 1995,  
7 USFWS published in the Federal Register a proposed designation of certain  
8 lands as "critical habitat" for the Murrelet. The designation covered  
9 approximately 33,000 acres of Pacific Lumber's timberland.

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12 103

13 This designation would effectively foreclose any possibility of  
14 Pacific Lumber obtaining an Incidental Take Permit for commercial  
15 harvesting on its designated timberland. According to the Endangered  
16 Species Act, no Incidental Take Permit can be granted for activity that would  
17 cause any "adverse modification" of critical habitat (16 U.S.C. § 1536(a)(2)), and  
18 the USFWS has opined that commercial harvesting of trees is "adverse  
19 modification."

20 The only exception to this ban on permits would be if the  
21 "Endangered Species Committee" intervened and declared that a permit  
22 should be granted. This committee has seven members, including the  
23 President and Cabinet-level officials. Plaintiffs are informed and believe and  
24 thereon allege that this committee has only intervened once in its 18-year  
25 history to override denial of a permit, and even then did so by setting the type  
26 of conditions — avoiding jeopardy to the threatened species — that, according  
27 to the *Marbled Murrelet* findings, could not be met here.

1  
2 USFWS's lengthy critical-habitat designation notice says many  
3 things about the agency's view of Pacific Lumber's timberland. The obvious  
4 conclusion is that Pacific Lumber will never be allowed to commercially  
5 harvest its trees.

6 One reason for establishing the critical habitat area is USFWS's  
7 finding that the Murrelet population has been declining 4-6 percent per year  
8 even with no logging.

9 USFWS concludes that the only kinds of activities that would be  
10 acceptable on Pacific Lumber's designated timberland are "noncommercial  
11 mushroom picking, Christmas tree cutting, rock collecting, [and] recreational  
12 fishing along inland rivers."

13 These are not economically reasonable, beneficial, or productive  
14 uses of this valuable property.

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18 USFWS officials recognize that they already have "acquired"  
19 Pacific Lumber's land for all practical purposes. At one of several meetings  
20 between Pacific Lumber officials and USFWS officials, one USFWS official  
21 said that Pacific Lumber's trees are so important that "the government can't  
22 just give them away."  
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1 As a Matter of Law, No Incidental Take Permit Can Be Issued  
2 To Cut the Old Growth Trees on Pacific Lumber's Property

3 106

4 The idea of obtaining an Incidental Take Permit is chimerical  
5 under these circumstances. Given the statutory requirements for issuance of  
6 such a permit and the findings made by the U.S. District Court in *Marbled*  
7 *Murrelet*, it is not legally possible to obtain an Incidental Take Permit for this  
8 land.

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11 107

12 1 U.S.C. § 1539(a)(2)(B)(iv) requires as a condition to the issuance  
13 of an Incidental Take Permit that the Secretary of the Interior make a finding  
14 that:

15 "the taking will not appreciably reduce the likelihood  
16 of the recovery of the species in the wild."

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19 108

20 Such a finding by the Secretary would have to be made in light of  
21 the findings already made in *Marbled Murrelet*. In *Marbled Murrelet*,  
22 however, the court found that harvesting "any one part" of an old growth  
23 stand "will degrade" the entire stand, endangering the Murrelets. (Finding  
24 96.) The court found that harvesting "any" significant amount of old growth  
25 would likely cause the extinction of the Murrelet. (Findings 16, 95.)  
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2 The "possibility" of obtaining an Incidental Take Permit so that  
3 Pacific Lumber could harvest some of its old growth trees has no basis in  
4 reality. It is merely a ruse by which the government strives to make it appear  
5 that it has not prohibited all economically beneficial or productive use of this  
6 land. But it is no more than that. And it merits no legal significance.  
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9 **PACIFIC LUMBER'S INABILITY TO USE ITS PROPERTY:**

10 **ALLEN CREEK**  
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14 Allen Creek, a part of the Yager Creek drainage, occupies portions  
15 of Sections 1, 2, 11, and 12 of Township 2N, Range 1E in Humboldt County.  
16 The findings in *Marbled Murrelet*, and the history of two THP applications —  
17 1-91-430HUM and 1-93-513HUM — demonstrate that the Federal ESA and its  
18 protective shield for Murrelets preclude Pacific Lumber from making any  
19 economically beneficial or productive use of Allen Creek.  
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22  
23 Allen Creek is legally described as the following parts of Township  
24 2 North, Range 1 East of Humboldt County:

25 A portion of S1/2 of SW1/4 Section 1,

26 A portion of S1/2 of Section 2,

27 N1/2, and N1/2 of the SE1/4 of Section 11, and

28 A portion of W1/2 Section 12.

1 THP 1-91-430 HUM

2 112

3 THP 1-91-430HUM (THP 430) was composed of five harvest units  
4 in an area totalling about 471 acres. At that time Pacific Lumber's forester  
5 estimated that approximately 350 acres of the area was primarily virgin coastal  
6 redwood, grand fir, and Douglas fir old growth.

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10 Pacific Lumber acquired Allen Creek in 1940 from Holmes Eureka  
11 Lumber Co., Dessert Redwood Co., Hicks Vaughan Redwood Co., and  
12 Hammond Redwood Co., and has consistently maintained and paid property  
13 taxes on it. Pacific Lumber has always expected it would be able to harvest  
14 Allen Creek.

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17 114

18 Even before THP 430 was filed in November 1991, CDFG and  
19 Forestry indicated that they had concerns about the potential impact on  
20 Murrelets and the type of surveys that had been conducted for Murrelets.

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23 115

24 On June 13, 1991, Pacific Lumber's registered professional forester  
25 Robert Stephens met with CDFG Associate Wildlife Biologist Ken Moore and  
26 others in order to initiate consultation on the proposed THP. The main topic  
27 discussed was the Murrelet's use of the drainage area.

1 Several questions were raised at the meeting, including:  
2

- 3 • Whether areas not defined as Murrelet habitat  
4 by the emergency rule needed to be surveyed if  
5 such areas were surrounded by areas that were  
6 within Murrelet habitat. (In this case, this  
7 meant the interior young growth 100 acres of  
8 the THP 430 stand.)  
9
- 10 • Whether a small adjacent stand of old growth  
11 without Murrelets could be harvested next to a  
12 larger stand of old growth that did have  
13 murrelets. (In this case, the area without  
14 murrelets was approximately 100 acres of the  
15 stand that separated a 30-acre old growth block  
16 from another 320 acres of old growth.)  
17  
18

19 During the meeting, the THP area was examined and access and  
20 protocol were discussed. Shortly thereafter, Pacific Lumber, working with two  
21 biologists, developed a survey protocol as required by the Rules of the Board.  
22 CDFG agreed that this survey would satisfy the rules.  
23  
24

25 116

26 Based on this agreement, Pacific Lumber did an intensive survey  
27 of the proposed THP area, as well as 235 additional acres of virgin old growth  
28

1 timber adjacent to it. The survey required trail construction and contract  
2 personnel.

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6 On or about October 15, 1991, Pacific Lumber met with CDFG and  
7 Forestry to review the Murrelet surveys done during the 1991 field season  
8 and to discuss strategies to retain Murrelet habitat while conducting timber  
9 harvesting operations.

10 Surveys showed two Murrelet detections (but no actual nests) at  
11 Allen Creek and six at nearby Elkhead Springs. Pacific Lumber showed a plan  
12 for mitigation of possible effects on the Murrelet. CDFG decided there was  
13 not enough information available to allow harvesting in these areas and that  
14 more surveys were necessary. CDFG stated that, in light of Pacific Lumber's  
15 findings of Murrelet activity, it did not see how it could at that time  
16 recommend any mitigation. CDFG also said it would "nonconcur" with the  
17 Murrelet management concepts Pacific Lumber was proposing.

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20 118

21 On November 1, 1991, Pacific Lumber filed THP 430 with Forestry,  
22 to harvest over three years. (Each THP covers a three-year period.) The  
23 application attached all the information required of a THP and described two  
24 stands to be harvested, in part as follows:

25 "The east part is a typical stand of redwood - Douglas  
26 fir timber with a scattered number of grand fir trees.

27 There is little midstory with a dense stand of low  
28 brush covering the forest floor. The slopes are

1 moderate to steep in places. This is murrelet habitat  
2 as described by the Board of Forestry in their  
3 emergency rules, June 27, 1991.  
4

5 "The west part is a Douglas fir - redwood stand with  
6 little or no grand fir. The Douglas fir trees are  
7 dominant and generally larger. The redwood trees  
8 are much smaller and shorter than those in the east  
9 portion. The ground is steep with occasional rock  
10 outcrops. There a few large hardwood trees with a  
11 dense stand of short brush throughout the area.  
12 Because of tree size and crown closure, I do not  
13 believe it is murrelet habitat as described by the Board  
14 of Forestry in their emergency rules, June 27, 1991."  
15  
16

17 119

18 The THP application stated that in summer 1989, Murrelets were  
19 detected near virgin old growth stands. It also stated that Pacific Lumber  
20 planned to harvest an average of 1,500 acres per year in the Yager Creek  
21 drainage for a ten-year period. Harvesting would entail constructing about  
22 five miles of road per year.  
23  
24

25 120

26 On December 4, 1991, Pacific Lumber's biologists took Forestry on a  
27 tour of Allen Creek, and asked Forestry if it felt the type of stand it saw  
28 constituted Murrelet habitat. Forestry replied that maybe it was habitat but

1 that there was not enough information to say definitively. They were asked,  
2 if this *type* of stand is habitat, how much of the THP area is habitat? Forestry  
3 responded that probably *all merchantable timber* would be considered habitat.

4 Forestry also said that additional surveys would probably be  
5 required.  
6  
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8 121

9 In response to Forestry's requests for additional Murrelet  
10 information, Pacific Lumber conducted more surveys, which were provided  
11 to Forestry in the form of a new THP, a portion of which covered the area of  
12 THP 430. The new THP, 513, requested the withdrawal of THP 430.  
13  
14

15 THP 1-93-513 HUM

16 122

17 On or about November 30, 1993, Pacific Lumber submitted THP  
18 1-93-513HUM (THP 513). This plan, the successor to THP 430, proposed the  
19 harvesting of logs in approximately 471 acres in Sections 1, 2, 11, and 12 of  
20 Township 2N, Range 1E, in Humboldt County, of which approximately 391  
21 acres are virgin old growth stands.  
22  
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24 123

25 THP 513 noted that Pacific Lumber had made *extensive* Murrelet  
26 studies for *three years* — 1991, 1992, and 1993. Some areas of the stand  
27 showed evidence of Murrelet habitation and, as a result, Pacific Lumber  
28 proposed a harvesting system which had as its goal "to generate forest

1 products while maintaining functional marbled murrelet . . . nesting habitat  
2 post treatment."  
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5 124

6 Although old THP 430 included substantial mitigation measures  
7 for the Murrelet, new THP 513 included even more features to ensure  
8 maximum Murrelet preservation. For example:  
9

- 10 • After harvesting, the forest would maintain  
11 Murrelet nesting habitat. Each potential  
12 Murrelet nest tree would not be cut and would  
13 have a 40 to 60-foot radius no-cut buffer  
14 surrounding it.
- 15
- 16 • Even outside the no-cut radius plots only 30 to  
17 40% of the trees would be harvested.
- 18
- 19 • The areas with Murrelets would be managed  
20 to retain Murrelet habitat, with little effect on  
21 the structure, micro habitat, and overall  
22 condition of the forest.
- 23
- 24 • Only trees that do not contribute to the  
25 supporting structure of nest buffer sites would  
26 be harvested.
- 27
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2 Further, Pacific Lumber proposed the following additional  
3 mitigation measures to address the Murrelet issue:  
4

- 5 • To ensure that direct take (i.e., harming or  
6 harassing the birds) did not occur, timbering  
7 operations would be restricted to the period  
8 from September 15 to April 1, when Murrelets  
9 are not using inland sites.
- 10  
11 • To mitigate harm or harassment, a 137-acre  
12 unit, showing evidence of Murrelet nesting,  
13 would be maintained in its current state.  
14 Moreover, a 34-acre, 300 foot no-activity buffer  
15 would be maintained adjacent to that unit to  
16 additionally reduce impacts.
- 17  
18 • A special silviculture harvesting system would  
19 be applied to additional units of the forest to  
20 maintain functional Murrelet nesting habitat  
21 post-harvest.
- 22  
23 • Murrelet monitoring and research would  
24 occur throughout the life of the project and  
25 post-harvest.  
26  
27  
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2 In response to THP 513, Forestry set forth the following comments  
3 from CDFG:

4 "The potential exists for the proposed plan to result  
5 in adverse impact or 'take' to marbled murrelets,  
6 Brachyramphus marmoratus, a State and Federal  
7 listed endangered species. . . . The determination as  
8 to whether a proposed project will adversely effect  
9 [sic] the marbled murrelet is entrusted to [C]DFG. . . .

10  
11 "The U.S. Fish and Wildlife Service (USFWS) also  
12 has jurisdiction pursuant to the Federal agencies and  
13 development of a biological opinion and written  
14 findings. [C]DFG will request USFWS to initiate  
15 consultation pursuant to FESA [Federal Endangered  
16 Species Act] for matters relating to the marbled  
17 murrelet."  
18  
19

20  
21 On April 8, 1994, USFWS told Pacific Lumber that, based on the  
22 available biological information, THP 513 would be likely to significantly  
23 impair breeding behavior, resulting in a prohibited taking of the Murrelet  
24 under the Federal ESA. USFWS advised Pacific Lumber that it would need to  
25 obtain an Incidental Take Permit in order to harvest any timber within the  
26 THP area.  
27  
28

1  
2           Shortly thereafter, on April 27, 1994, CDFG, based on its  
3 consultation with USFWS, issued a memorandum to Forestry, stating that  
4 the pre-harvest inspection report established obstacles to harvesting Allen  
5 Creek, including the status of the Murrelet. Among other things, the report  
6 identified several perceived deficiencies in the THP's mitigation proposal for  
7 Murrelets:

- 8
- 9           • The likelihood of maintaining functional  
10            habitat for murrelets was very low;
  - 11
  - 12           • the impacts of predator relationships were  
13            unknown and needed to be monitored;
  - 14
  - 15           • the proposed mitigation would not likely  
16            produce scientifically valid results which could  
17            be used in future management scenarios; and
  - 18
  - 19           • the proposed mitigation might not maintain  
20            sufficient habitat because only potential nest  
21            trees were to be identified and retained.
- 22

23

24           CDFG stated that THP 513 should not be approved "without  
25 mitigating to a nonsignificant level, all potential significant impacts which  
26 may occur to fish and wildlife resources."  
27

1 **PACIFIC LUMBER'S INABILITY TO USE ITS PROPERTY:**

2 **HEADWATERS**

3  
4  
5 129

6 Pacific Lumber owns approximately 3,000 acres in fee simple in a  
7 remote section of Humboldt County, not accessible by public road. That area  
8 is called the Salmon Creek drainage or the Headwaters Forest (Headwaters).  
9 The area contains a mix of mature and old growth redwood, Douglas fir, and  
10 various hardwoods.

11 Harvesting had been ongoing and continuous in the Salmon  
12 Creek drainage for more than 100 years. The early logging was done with  
13 animals and later with steam engines and railroads.

14  
15  
16 130

17 Headwaters is legally described as the following parts of Township  
18 3 North, Range 1 East of Humboldt County:

19 SW1/4 of SE1/4, S1/2 of SW1/4, and the NW1/4 of

20 SW1/4 of Section 8,

21 SW1/4 of Section 15,

22 All of Section 16,

23 The N1/2, the SE1/4, and a portion of the SW1/4 of

24 Section 17,

25 A portion of Section 20,

26 A portion of Section 21,

27 A portion of Section 22,

28 A portion of the SW1/4 of Section 23,

1 A portion of the W1/2 of NW1/4, Section 26,  
2 A portion of the E1/2 of NE1/4, Section 27,  
3 A portion of N1/2 of NW1/4 Section 28, and  
4 A portion of the NE1/4 of NE1/4 Section 29.

7 131

8 Pacific Lumber acquired Headwaters in 1944 and 1950, from  
9 Mitchel Dorr Realty Co., the University of California, the Arcata Redwood  
10 Co., and Dolbeer and Carson Lumber Co., and has consistently maintained  
11 and paid property taxes on it. Pacific Lumber has always expected it would be  
12 able to harvest Headwaters.

15 132

16 The *Marbled Murrelet* decision prevents Headwaters from being  
17 harvested; the State's determination has been that Headwaters has more  
18 Murrelets than Owl Creek. Pacific Lumber has been deprived of all  
19 economically beneficial and productive use of Headwaters.

22 133

23 When the Board of Forestry approved THP 237 for Owl Creek  
24 (which approval, as shown above, was later nullified by *Marbled Murrelet*), it  
25 said it would not have approved harvesting in Headwaters, because  
26 Headwaters is a large, contiguous block of undisturbed old growth that  
27 Murrelets were more likely to inhabit. Indeed, in approving THP 237, the  
28 Board went out of its way to make clear that it was not approving harvesting

1 in Headwaters, even noting that Owl Creek was "approximately seven air  
2 miles southeast from the Headwaters Area."  
3  
4

5 **THP 1-95-099 HUM (The Road Only Plan)**

6 134

7 On or about March 1, 1995, Lumber filed THP 1-95-099 HUM,  
8 known as the Road Only Plan (THP 099). The rejection of the Road Only Plan  
9 — which concerns a mere eight acres of the approximately 2,900-acre  
10 Headwaters forest — due to the Murrelet, demonstrates that Pacific Lumber  
11 has been and will continue to be prevented from making any economically  
12 beneficial or productive use of Headwaters.

13 THP 099 was for Humboldt County Section 16, Township 3N,  
14 Range 1E. The plan was to clear cut approximately eight acres of late  
15 successional Redwood/Douglas-fir forest to create a single lane road that  
16 would be used to provide access for future timber harvesting operations and  
17 for wildlife studies.  
18  
19

20 135

21 The application for THP 099 points out that the area is part of an  
22 old growth forest, and as such contains trees of almost all ages. This was  
23 described as an overmature forest, with some individual trees more than 300  
24 feet tall.  
25  
26  
27  
28

1  
2 The THP application acknowledged:

3  
4 "Marbled murrelet intensive type surveys per the  
5 Pacific Seabird Group protocol . . . have been  
6 conducted along the existing road in Sections 22, 21,  
7 and 16 leading to the proposed project area, and on  
8 the foot trail through the proposed project area in  
9 1992, 1993, and 1994. Survey results include the  
10 detection of marbled murrelet presence as well as  
11 occupied behaviors per protocol. This project  
12 proposes the harvesting of trees and building of a  
13 road on approximately eight acres of land to provide  
14 improved access to the area for further study of the  
15 marbled murrelet, other wildlife and fisheries, and  
16 for future project access."  
17  
18

20 The application noted how Pacific Lumber would ensure there  
21 would be no significant adverse impact to the Murrelet resulting from the  
22 Road Only Plan. Among other things:

23 "A very narrow (80' to 100') right of way is proposed  
24 to minimize potential impacts. Roads within or  
25 adjacent to suitable habitat on other areas of this  
26 ownership have not prevented nesting by this  
27 species. To further minimize potential impacts to  
28 marbled murrelets, timber harvesting and road

1 construction will not take place during the murrelet  
2 nesting season (currently defined as 1 April to 15  
3 September). The eight acres of this proposed project  
4 is minimal in the context of the approximately 2,900  
5 acres of potentially suitable habitat which are  
6 contiguous with the project area."  
7  
8

9 138

10 On or about March 13, 1995, the agencies undertook their First  
11 Review of THP 099, and Forestry requested a pre-harvest inspection to occur  
12 between March 14 and March 23, 1995. Even before the pre-harvest  
13 inspection, CDFG expressed its view that the plan area supported the  
14 Murrelet, "a state and federal listed endangered species;" and that Pacific  
15 Lumber's proposed protection measures for the Murrelet, "may be inadequate  
16 to avoid 'take' of the species."  
17  
18

19 139

20 On April 25, 1995, CDFG recommended denial of THP 099 for any  
21 of three reasons, two of which were procedural, and the last of which related  
22 to the Murrelet. As to the Murrelet, CDFG stated:

23 "The plan as proposed, will likely result in  
24 jeopardy to the marbled murrelet, a state listed  
25 endangered and federal listed threatened species.  
26 Operation of the proposed plan would cause  
27 significant, long-term damage to the species,  
28

1 qualifying the plan for denial pursuant to 14 CCR  
2 898.2(d).

3 \* \* \*

4 "[I]mpacts to the habitat, through fragmentation and  
5 incremental degradation will adversely effect [sic]  
6 species dependent on ecological old-growth. Listed  
7 species, such as the marbled murrelet . . . are all  
8 extremely sensitive to habitat loss and disturbance.  
9 The near elimination of optimal reproductive habitat  
10 for these species in the assessment area, constitutes a  
11 loss of reproductive opportunity which will  
12 ultimately lead to population decline and failure."

13 \* \* \*

14 "The proposed plan occurs within the 'old growth  
15 redwood' stand. It therefore follows, clearcutting a  
16 corridor, 80-100 feet wide and 4,500 feet long, would  
17 be inconsistent with the conditions already  
18 established by [CDFG] and the USF&WS, for the  
19 marbled murrelet in this habitat type."

20  
21  
22 140

23 On July 19, 1995, CDFG wrote to Forestry that the plan, if  
24 implemented, was likely to take or jeopardize marbled murrelets under the  
25 Federal ESA. Forestry was therefore required to deny the THP under the  
26 California Forest Practice Rules § 919.11, which provides: "If [CDFG]  
27 determines jeopardy or a take will occur as a result of operations proposed in  
28 the THP, the Director shall disapprove the THP unless the THP is

1 accompanied by authorization under § 2081 of the [California Fish and Game  
2 Code]." As alleged above in paragraph 6, the state has ceded to the  
3 United States all control over federally protected species such as the Murrelet.  
4

5  
6 141

7 CDFG proposed four alternatives:  
8

9 "1. Deny the THP, as proposed, as it will likely  
10 jeopardize the continued existence of the endangered  
11 (Federal Endangered Species Act [FESA] threatened)  
12 species marbled murrelet and/or result in  
13 unauthorized take.  
14

15 "2. Modify the project to conform to the  
16 conditions that the Department and USFWS have  
17 stipulated within the April 12, 1995, and June 28,  
18 1995, letters to [Pacific Lumber] for harvesting in and  
19 around murrelet habitat. It appears a road could be  
20 established along or near the proposed alignment  
21 without removing standing trees. . . .  
22

23 "3. Enter into formal consultation with the  
24 Department and USFWS where a written finding of  
25 jeopardy and take will be provided. This can be a  
26 rather lengthy process and, under the circumstances,  
27 the results will probably not be different than this  
28 effort.

1 "4. Confer with [Pacific Lumber] and encourage  
2 the submitter to set this proposed THP aside for the  
3 time being and concentrate on finalizing [Pacific  
4 Lumber's] marbled murrelet habitat conservation  
5 plan (HCP). When approved, the HCP will  
6 specifically address projects such as the subject THP  
7 in the overall context of the submitter's needs for  
8 commercial timber harvesting and conservation of  
9 the murrelet on [Pacific Lumber's] ownership.  
10 Through this process incidental take of murrelets can  
11 be permitted under Section 10(a)(1)(B) of the FESA."  
12  
13

14 142

15 In response to the July 19, 1995 CDFG memorandum, Pacific  
16 Lumber, on August 16, 1995 wrote to Forestry requesting that a prompt  
17 decision be made on the THP 099. Forestry, however, decided it could not  
18 evaluate THP 099 without a determination by USFWS of the THP's impacts  
19 on the Murrelet.  
20  
21

22 143

23 On September 15, 1995, Forestry asked USFWS whether there  
24 would be a take under the Federal ESA if THP 099 were to be approved.  
25  
26  
27  
28

1  
2 On November 13, 1995, USFWS responded by saying that THP 099  
3 would result in a take of a listed species and thereby violate the Federal ESA,  
4 unless Pacific Lumber obtained an HCP and an Incidental Take Permit.  
5  
6

7  
8 Joseph Fassler, as the Second Review Team chairman, told Pacific  
9 Lumber he would recommend denial of the plan based on Forest Practice  
10 Rule 14 CCR § 898.2(d) because "implementation of the plan as proposed  
11 would result in either a taking or finding of jeopardy of wildlife species listed  
12 as rare or endangered by either the Fish and Game Commission or the  
13 [United States] Fish and Wildlife Service . . . ." Further, Mr. Fassler told  
14 Pacific Lumber that it need not attend Second Review during which the  
15 apparent formality of recommending denial would be performed. Mr. Fassler  
16 stated there would be no opportunity for further discussion, no taking of  
17 information or evidence, and that the Second Review would not provide an  
18 opportunity to make any objection on the record.  
19  
20

21  
22 As promised, on or about November 29, 1995, the Second Review  
23 Team recommended denial of the Road Only Plan. At the Second Review  
24 Team's meeting, Armand Gonzales, the CDFG representative, asked whether  
25 Forestry was going to make any determinations on the non-Murrelet related  
26 reasons for denial of the plan. Mr. Fassler replied that since the plan was  
27 being denied on Murrelet grounds, it would not be necessary to address other  
28 concerns.

1  
2 On December 20, 1995, Forestry issued its final determination:  
3

4 "Based on my review I cannot approve your plan as  
5 it presently exists because it would result in a taking  
6 of the marbled murrelet. . . .  
7

8 "The department's position is based upon the  
9 determination of the U.S. Fish and Wildlife Service  
10 (USFWS) as contained in their letter of November  
11 13, 1995 that a taking of the murrelet would occur.

12 The USFWS states that a take is likely to occur  
13 because 'the THP would remove suitable nesting  
14 habitat from an area where behaviors associated with  
15 marbled murrelet breeding have been observed and  
16 because the THP would open portions of the  
17 surrounding forest to access by other avian species  
18 known to prey upon murrelet eggs and nestlings'.  
19 The department interprets 'likely to occur' to mean  
20 that it will occur if the project is carried out as  
21 proposed." (Emphasis added.)  
22  
23

24  
25 In rejecting THP 099, Forestry applied the same rationale —  
26 prevention of a take of the Murrelet — to the entire Headwaters. It wrote:

27 "The THP indicates that murrelet activity  
28 throughout the 2800 acre (approximately) contiguous

1 block of unentered old growth was high with all  
2 survey stations showing either 'presence' or  
3 'occupied' behavior characteristics. This large block  
4 of timber thus can be considered valuable marbled  
5 murrelet habitat."  
6

7 "The THP also indicates that in addition to this  
8 proposed 8 acre right-of-way harvest, over a period of  
9 apparently thirty years, the total 2800 acre block will  
10 be completely regenerated, removing most if not all  
11 of the original old growth trees.

12 \* \* \*

13 "[W]hen considering all elements found within the  
14 THP file, including correspondence between agencies  
15 and between agencies and the plan submitter, and the  
16 determination of both DF&G and USF&WS that the  
17 proposed plan will result in a 'take' or 'jeopardy', the  
18 plan is denied . . . ."

19  
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21 149

22 On February 23, 1996, Pacific Lumber appealed Forestry's decision  
23 to the California State Board of Forestry. On March 5, 1996, the appeal was  
24 summarily denied.  
25  
26  
27  
28

1 **DAMAGES**

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4 150

5 As a result of Pacific Lumber's inability to use its land, it suffers  
6 the loss of that land. It also suffers additional harm, which goes beyond the  
7 raw land and timber value of Owl Creek (including Boot Jack Prairie), Allen  
8 Creek, and Headwaters. The loss of those specific properties cripples the  
9 entirety of Pacific Lumber's business, in at least the following ways, specified  
10 in paragraphs 151-160, below.  
11  
12

13 151

14 *Harm to the production cycle.* The government take alters the  
15 pre-planned cycles of cutting. Each cycle may last 100 years or more. This has  
16 an impact on all aspects of business planning and, more important, it reduces  
17 the age and size of trees that are cut during second growth harvesting  
18 operations.  
19  
20

21 152

22 *Diminished Value of Capital Investments such as Mills, Roads,*  
23 *Infrastructure, and Improvements.* Pacific Lumber's capital investments  
24 depend on Owl Creek, Allen Creek, and Headwaters. As of at least 1986,  
25 Pacific Lumber planned to cut virgin old growth timber in the near future  
26 and regrow the areas. A second-growth economy would then exist in the first  
27 part of the 21st century. The company's plans call for integrated use of its  
28 mills.

1           Currently, Mill "A" is running two shifts, almost exclusively for  
2 large Douglas fir. Mill "B" is running one shift per day and specializes in old  
3 growth redwood. In 1972, Pacific Lumber bought the Fortuna Mill, which  
4 operates three shifts and has a 42-inch diameter saw for medium-sized second  
5 growth trees (44 inches is the diameter of the average tree left standing in the  
6 forest after the forest has been cut — that is, residual timber). And in 1986,  
7 Pacific Lumber bought Carlotta Mill from Louisiana Pacific. That mill  
8 operates two shifts and handles second-growth and smaller residual old  
9 growth logs. It is equipped for 60-inch diameter trees — that is, it has a 60-  
10 inch diameter opening carriage.

11           The foregoing combination allowed the mills at Scotia to be used  
12 for the large old growth. In 1983, Mill "A" was retrofitted for this purpose at a  
13 cost of \$14 million.

14           Moreover, the foregoing combination would have given Pacific  
15 Lumber twenty years to strategically use its capital. However, because of the  
16 Murrelet problems, Pacific Lumber has accelerated harvest of residuals and  
17 second growths ahead of schedule.

18           In addition, there are road systems that need to be amortized  
19 against the old growth properties. Pacific Lumber will be unable to recuperate  
20 unamortized road and management costs resulting from the loss of flexibility  
21 in future logging operations in adjacent ownership areas.

22           There is also specialized equipment for cutting old growth, even  
23 including a machine shop to make such equipment. These too cannot be  
24 amortized given the loss of old growth.

1  
2           *Access roads.* The inability to use Owl Creek, Allen Creek, and  
3 Headwaters will deprive Pacific Lumber of the ability to construct access roads  
4 to other parts of its timberlands.  
5

6  
7  
8           *Usable natural resources for other Pacific Lumber lands.* Natural  
9 resources used on other parts of the Pacific Lumber forest, such as quarry rock,  
10 which is used to build roads and road surfaces for the entire property, have  
11 been lost. There are rock pits in Headwaters, for instance, that could have  
12 been used for this purpose.  
13

14  
15  
16           *Labor displacement.* There will be labor displacement, resulting in  
17 the need for severance packages, loss of community, and loss of schools. It is  
18 necessary for Pacific Lumber to have, in Scotia, a stable community with jobs,  
19 the attendant health and disability plans, retirement plans, scholarships,  
20 schools and the like. In contrast is the town of Orick, California, where 70%  
21 of people went on welfare after lumbering was replaced by a park.  
22

23  
24  
25           *Other economic impact.* In a 1995 study of the economic effects of  
26 the USFWS proposed Critical Habitat Designation, a finance professor  
27 consulted by Pacific Lumber concluded the losses would be staggering. One  
28 scenario assumed about 33,000 acres would be withdrawn from forest

1 management activity, resulting in an estimated 367 jobs lost directly at Pacific  
2 Lumber, and 1,280 jobs lost region-wide, with the annual value of logs not  
3 harvested at \$26,650,000, and a discounted value of future lost harvest at over  
4 \$460 million. Under a 6,000 acre scenario, an estimated 352 Pacific Lumber  
5 jobs would be lost, and 1,160 region-wide jobs would be lost. The annual  
6 value of logs not harvested would be \$11,025,000, with the present discounted  
7 value of the future lost harvest at \$166 million.

8         The professor concluded that the impact on Pacific Lumber's  
9 employment rolls is much more than proportional to the reduction in  
10 overall harvestable acreage. Mills "A" and "B", the oldest of the mills, are  
11 specifically configured to mill the large diameter old growth trees. That  
12 lumber has high market value, and the production process justified by the  
13 end product is much more labor intensive than processes used at the other  
14 mills. Thus, the number of jobs that will be lost with the loss of old growth  
15 — and the consequent inability of the company to function economically — is  
16 significantly greater than it would be simply as a measurement of the old  
17 growth acreage as a proportion of the company's entire forestland.

18  
19  
20 157.

21         *Attorneys' fees.* Pacific Lumber had to incur attorneys' fees,  
22 including the Murrelets' attorneys' fees, in excess of \$2 million in the  
23 *Marbled Murrelet* litigation. Those fees are part of the property taken from  
24 Pacific Lumber as a result of the Federal ESA's application to Pacific Lumber's  
25 land.



1                   The Fifth Amendment of the United States Constitution requires  
2 that when private property is taken by the government for the use of the  
3 public, the property owner must be justly compensated.

4                   Pacific Lumber is entitled to compensation for the taking of its  
5 property.

6  
7  
8                   WHEREFORE, Plaintiffs demand judgment and pray that the  
9 Court rule that Defendant has taken Pacific Lumber's property, and award  
10 Plaintiffs:

- 11
- 12                   1.           just compensation for all Pacific Lumber's property taken;
- 13
- 14                   2.           the costs of this suit;
- 15
- 16                   3.           pre-judgment and post-judgment interest;
- 17
- 18                   4.           the attorneys' fees and expert witness fees incurred to  
19 bring this suit;
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5. the attorneys' fees incurred to litigate the Murrelet's occupation of Pacific Lumber's land; and

6. such other and further relief as the Court deems appropriate.

Dated: May 6, 1996

[Redacted signature line]



ATTORNEY OF RECORD MICHAEL M. BERGER

[Redacted address line]

Telephone: (310) 449-1000  
Attorneys for The Pacific  
Lumber Company, Scotia Pacific  
Holding Company, and The  
Salmon Creek Corporation

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

22-Apr-1996 10:27am

TO:            Elena Kagan

FROM:         Elisabeth Blaug  
               Council on Environmental Quality

SUBJECT:      headwaters

I'm trying to get a copy of the property list to which Katie referred in her previous e-mail. I'd also like to include Alan McReynolds (from DOI) in our discussion, as he compiled that list and knows the properties like the back of his hand. What's your schedule like tomorrow? Thanks!



Mark

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	To Elizabeth Blaug from Kathleen McGinty cc Elena Kagan and Shelly Fidler. Subject: headwaters. (1 page)	04/17/1996	P5

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Elena Kagan  
OA/Box Number: 8289

### FOLDER TITLE:

Headwaters Forest Complex [1]

2009-1006-F

vz131

### RESTRICTION CODES

#### Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

#### Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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

01-Apr-1996 06:57pm

TO:           Elena Kagan  
TO:           Dawn Chirwa  
  
FROM:         Elisabeth Blaug  
              Council on Environmental Quality  
  
CC:           Kathleen A. McGinty  
  
SUBJECT:     headwaters

Earlier today I faxed you a draft "Principles Governing Discussions" of Headwater, and accompanying draft letter to John Garamendi from Pacific Lumber/Maxxam/Hurwitz, in which the latter agree that any statements made during the course of Headwaters discussions will be inadmissible in any future judicial proceedings. I am reviewing it, and would appreciate your thoughts on the documents as well. Thanks!

EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY

TO: Elena Kagan (Dawn Chirba)

FROM: Elizabeth Blay

DATE: \_\_\_\_\_

FAX: 61647

Number of pages including cover: 6

COMMENTS: Please take a look at draft  
Maxxam letter - this



PHONE: (202) 395-5750 FAX: (202) 456-6546  
722 JACKSON PLACE  
WASHINGTON, D.C. 20501



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Division of Conservation and Wildlife  
1849 C Street N.W., Mail Stop 6560  
Washington, D.C. 20240

Phone 202-208-4379 7957  
Fax 202-229-1927 208-3877  
Internet Dave\_Watts@ios.doi.gov

## FAX Cover Sheet

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From:

David A. Watts  
Deputy Associate Solicitor  
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*Woolly*

Comments:

*Any comment or suggestions ?*

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## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. draft	Draft letter. (4 pages)	04/01/1996	P5

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Counsel's Office  
Elena Kagan  
OA/Box Number: 8289

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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E. Blang 3/8/96 HEADWATERS

Pacific lumber acquired from building rd loc of this  
C. Hewitz - Headwaters - (habitats for murrelets)  
cutting } old-growth redwoods  
          } → 500m (maybe too hi)

FDIC/OTS - claims agt CH - 400m in claims  
Pondered S+L to buy mill. ✓  
Possible settlement -  
Best for nature swap

Interap mtg a few mos ago -  
FDIC / Interap / DOJ / Fur Serv

Need new appraisal of HW - Interap doing this

KM, Geremond - met w/ CH + athy - 1 mo ago

Usually settle for \$50¢ to \$ (We'd throw in land)

Gerem, Lyons, Frazier - mtg Tuesday  
Pres existed