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**Northwest Forest Council v. Dan
Glickman and Bruce Babbitt
[Binder] [1]**

Index of Pleadings
Northwest Forest Council v. Dan Glickman and Bruce Babbitt
Civil No. 95-6244-HO
U.S. District Court for the District of Oregon

1. Complaint dated August 8, 1995
2. Motion for Temporary Restraining Order and Preliminary Injunction dated August 8, 1995
3. Defendants' Opposition to Motion for Temporary Restraining Order and Preliminary Injunction dated August 14, 1995
4. Federal Defendants' Answer to Complaint and Second Notice of Filing of Agencies' Interpretation dated August 24, 1995
5. Federal Defendants' Motion for Summary Judgment dated August 25, 1995
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7. Defendants' Opposition to Plaintiff's Summary Judgment Motion dated September 1, 1995
8. Plaintiff's Memo in Opposition to Defendants' Motion for Summary Judgment dated September 1, 1995
9. Plaintiff Scott Timber Co.'s Complaint dated August 28, 1995
10. Draft of Defendants' Opposition to Plaintiff Scott Timber Co.'s Motion for Temporary Restraining Order dated September 7, 1995



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

10	NORTHWEST FOREST RESOURCE)	
11	COUNCIL, an Oregon corporation,	)	Civil No. 95-6244-HO
12)	
	Plaintiff,)	
13	vs.	)	COMPLAINT
14	DAN GLICKMAN, in his capacity	)	(Action to Compel Federal
15	as Secretary of Agriculture;	)	Officials To Perform
16	BRUCE BABBITT, in his capacity	)	Mandatory Duty; Agency
17	as Secretary of the Interior,	)	Action Unlawfully Withheld;
18		)	Violation of § 2001(k) of
19	Defendants.	)	Pub. L. 104-19; Declaratory
20		)	and Injunctive Relief)

18 For its complaint herein, plaintiff alleges as follows:

19 INTRODUCTION

20 1. This is an action to compel defendants Dan Glickman,
21 Secretary of Agriculture, and Bruce Babbitt, Secretary of
22 Interior to perform the mandatory duty owed to plaintiff and its
23 members under § 2001(k) of Pub. L. 104-19 (July 27, 1995) to
24 award and release by September 10, 1995 (45 days after enactment
25 of the new law) all timber sales offered prior to the date of
26 enactment in all national forests in Oregon and Washington and

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1 Bureau of Land Management ("BLM") districts in western Oregon.
2 Defendants Glickman and Babbitt are not complying and do not
3 intend to comply with this law except for some timber sale con-
4 tracts that were offered in fiscal year 1990 under Section 318 of
5 Pub. L. 101-121. Plaintiff seeks to compel defendants to perform
6 their duties under 28 U.S.C. § 1361 and 5 U.S.C. § 706(1).

7 JURISDICTION AND VENUE

8 2. This Court has jurisdiction over this action under 28
9 U.S.C. § 1361 (mandamus) and 28 U.S.C. § 1331 (federal question).
10 Venue in this district is proper under 28 U.S.C. § 1391(e)
11 because a substantial part of the events or omissions giving rise
12 to the claims here occurred in this district, most of the timber
13 sales are located in this district and plaintiff resides in this
14 district. Most of the sales involved in this case are located in
15 Douglas, Coos, Lane, Linn, Benton and Marion Counties in Oregon.

16 PARTIES

17 3. Plaintiff Northwest Forest Resource Council ("NFRFC") is
18 a nonprofit corporation organized under the laws of the state of
19 Oregon, located in Portland, Oregon. NFRFC is comprised of
20 associations, businesses and individuals in the forest products
21 industry in Oregon and Washington, including hundreds of timber
22 and logging companies. These companies purchase almost all of
23 the timber sales offered by the U.S.D.A. Forest Service and the
24 BLM in Oregon and Washington. NFRFC includes among its members
25 the following forest products industry trade associations:
26 Associated Oregon Loggers, which has more than 700 members

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1 engaged in the business of logging timber from public and private
2 lands in the state of Oregon; Columbia River Plywood Coopera-
3 tives, an association of worker-owned cooperative businesses
4 operating plywood manufacturing facilities along the Columbia
5 River in Oregon and Washington; Douglas Timber Operators,
6 comprised of individuals and businesses involved in the forest
7 products business in Douglas County and Coos County, Oregon;
8 Independent Forest Products Association, comprised of individuals
9 and companies involved in the forest products industry throughout
10 the western United States; Northwest Forestry Association,
11 comprised of companies involved in the manufacture of lumber and
12 plywood products in Oregon and Washington; Oregon Forest Indus-
13 tries Council, comprised of individuals and companies that own
14 timberland and are involved in the forest products industry
15 throughout the state of Oregon; Southern Oregon Timber Industries
16 Association, comprised of individuals and companies involved in
17 the forest products industry in Jackson, Josephine, and Curry
18 Counties, Oregon; Washington Contract Loggers Association, which
19 represents over 600 logging companies in the state of Washington,
20 and Willamette Forestry Council, an association of companies in
21 the forest products industry that conduct business in Lane
22 County, Oregon and purchase timber from Forest Service and BLM
23 land in Oregon.

24 4. Companies represented by NFRC hold or have the right to
25 be awarded the great majority of all the timber sales that are
26 required to be awarded and released by September 10, 1995 under

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3 - COMPLAINT

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1 § 2001(k) of Pub. L. 104-19, including Rosboro Lumber Co.,
2 Douglas County Forest Products Co., D.R. Johnson Lumber Co.,
3 Croman Corp., Rough & Ready Lumber Co., Boise Cascade Co., Thomas
4 Creek Lumber Co., Scott Timber Co., Lone Rock Timber Co. and CLR
5 Timber Holdings Inc., all of which statutorily entitled to the
6 award and release of one of more timber sales under § 2001(k) of
7 Pub. L. 104-19.

8 5. Defendant Dan Glickman is the Secretary of Agriculture,
9 the official in charge of the Forest Service. Defendant Glickman
10 is assigned the responsibility of complying with § 2001(k) of
11 Pub. L. 104-19 as it relates to the Forest Service.

12 6. Defendant Bruce Babbitt is the Secretary of the
13 Interior, the official in charge of the BLM. Defendant Babbitt
14 is assigned the responsibility of complying with § 2001(k) of
15 Pub. L. 104-19 as it relates to the BLM.

16 BACKGROUND ALLEGATIONS

17 7. On July 27, 1995 the President signed into law Pub. L.
18 104-19, the Rescissions Act of 1995. Section 2001 of this law
19 contains a series of provisions establishing an "Emergency
20 Salvage Timber Sale Program." Subsection (k)(1) directs the
21 award and release of certain previously offered timber sales as
22 follows:

23 (1) AWARD AND RELEASE REQUIRED.--Notwithstanding
24 any other provision of law, within 45 days
25 after the date of the enactment of this Act,
26 the Secretary concerned shall act to award,
release, and permit to be completed in fiscal
years 1995 and 1996, with no change in origi-
nally advertised terms, volumes, and bid

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1 prices, all timber sale contracts offered or
2 awarded before that date in any unit of the
3 National Forest System or district of the
4 Bureau of Land Management subject to section
5 318 of Public Law 101-121 (103 Stat. 745).
The return of the bid bond of the high bidder
shall not alter the responsibility of the
Secretary concerned to comply with this
paragraph.

6 Subsections (k)(2) and (3) relate to the circumstance, not
7 currently at issue in this case, where a threatened or endangered
8 bird species is known to be nesting within a sale unit area, in
9 which case alternative volume of like kind and value must be
10 provided to the sale owner.

11 8. Section 318 of Pub. L. 101-121 (103 Stat. 745) mandated
12 timber sales in specified volumes in fiscal year 1990 in Oregon
13 and Washington. The "unit[s] of the National Forest System or
14 district[s] of the Bureau of Land Management subject to section
15 318 of Public Law 101-121 (103 Stat. 745)" referred to in
16 § 2001(k)(1) are the national forests of Oregon and Washington
17 and the BLM administrative districts in western Oregon.

18 9. In the national forests of Oregon and Washington, the
19 Forest Service has approximately 15 timber sale contracts, three
20 awarded and 12 unawarded, containing approximately 47 million
21 board feet of timber that were offered prior to July 27, 1995 in
22 fiscal years other than 1990. There may be additional sales to
23 be released that plaintiff is not presently aware of.

24 10. In its western Oregon districts, the BLM has approxi-
25 mately 27 unawarded timber sale contracts containing approximate-
26 ly 125 million board feet of timber that were offered prior to

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1 July 27, 1995 in fiscal years other than 1990.

2 11. Defendants Glickman and Babbitt, through their agents
3 and employees and other representatives of the Clinton Adminis-
4 tration, have verbally denied that sales offered in fiscal years
5 other than 1990 ("FY 1991-95 sales"), must be awarded and
6 released under § 2001(k). Although representatives of the
7 Clinton Administration have claimed that defendants Glickman and
8 Babbitt intend to issue written instructions in the near future
9 interpreting § 2001(k) along with other subsections of § 2001, no
10 such instructions have issued to date.

11 12. To date defendants Glickman and Babbitt have failed to
12 take any steps to be able to award the FY 1991-95 sales by
13 September 10, 1995, although most of the sales require some
14 office review and on-site marking or examination of trees before
15 the sales can be awarded. For this reason, the current failure
16 of defendants Glickman and Babbitt to take steps to prepare the
17 FY 1991-95 sales for award and release assures that defendants
18 will violate § 2001(k) by failing to award and release the FY
19 1991-95 sales by September 10, 1995 irrespective of the instruc-
20 tions they may give in the future.

21 13. Plaintiff will be irreparably injured by defendants'
22 failure to award and release the FY 1991-95 sales by September
23 10, 1995 because Congress has granted plaintiff and the companies
24 it represents an absolute and unconditional statutory right to
25 the award and release of the FY 1991-95 sales by September 10,
26 1995. Plaintiff has no adequate remedy at law.

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CLAIMS FOR RELIEF

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CLAIM ONE

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(Violation of mandatory duty owed to plaintiff)

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14. Plaintiff incorporates paragraphs 1-13 as if fully set forth herein.

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15. Defendants owe a mandatory duty to plaintiff to award and release by September 10, 1995 all timber sales offered prior to July 27, 1995 in all national forests in Oregon and Washington and BLM districts in western Oregon, including the FY 1991-95 sales. Defendants have failed to perform this duty and will fail to perform this duty with respect to the FY 1991-95 sales.

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16. Plaintiff is entitled to relief in the nature of mandamus directing defendants to comply with their mandatory duty to award and release the FY 1991-95 sales by September 10, 1995.

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CLAIM TWO

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(Unlawful withholding of agency action)

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17. Plaintiff incorporates paragraphs 1-13 as if fully set forth herein.

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18. Defendants have unlawfully withheld and will unlawfully withhold the award and release of the FY 1991-95 sales in violation of the terms of § 2001(k). The court may compel such action under 5 U.S.C. § 706(1). Defendants have also unlawfully withheld and unreasonably delayed the completion of the administrative steps that must be completed prior to September 10, 1995 so that the sales can all be awarded and released by the statutory deadline. The withholding and delay in completing these

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7 - COMPLAINT

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1 preliminary steps is also in violation of the terms of § 2001(k),
2 and the court may also compel such action under 5 U.S.C.
3 § 706(1).

4 PRAYER FOR RELIEF

5 WHEREFORE, plaintiff prays for judgment as follows:

6 1. A declaration that § 2001(k) of Pub. L. 104-19 requires
7 defendants Glickman and Babbitt by September 10, 1995 to award,
8 release, and permit to be completed in fiscal years 1995 and
9 1996, with no change in originally advertised terms, volumes, and
10 bid prices, all timber sales offered prior to July 27, 1995 in
11 all national forests in Oregon and Washington and BLM districts
12 in western Oregon, including the FY 1991-95 sales;

13 2. A permanent injunction compelling and directing
14 defendants Glickman and Babbitt by September 10, 1995 to award,
15 release, and permit to be completed in fiscal years 1995 and
16 1996, with no change in originally advertised terms, volumes, and
17 bid prices, all timber sales offered prior to July 27, 1995 in
18 all national forests in Oregon and Washington and BLM districts
19 in western Oregon, including the FY 1991-95 sales;

20 3. A temporary restraining order and preliminary injunc-
21 tion compelling and directing defendants Glickman and Babbitt to
22 take all administrative actions necessary prior to September 10,
23 1995 to be able by September 10, 1995 to award, release, and
24 permit to be completed in fiscal years 1995 and 1996, with no
25 change in originally advertised terms, volumes, and bid prices,
26 all timber sales offered prior to July 27, 1995 in all national

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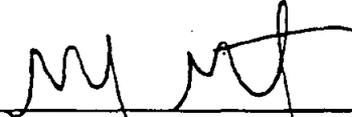
forests in Oregon and Washington and BLM districts in western Oregon, including the FY 1991-95 sales;

4. Costs and attorney fees under sections (b) and (d) of the Equal Access to Justice Act, 28 U.S.C. § 2412; and

5. Such other relief as the court deems just and equitable.

Dated this 8th day of August, 1995.

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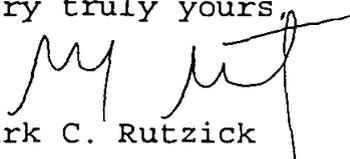
Re: *NFRC v. Glickman*, Civil Action No. 95-6244-HO

Dear Ms. Olson:

As suggested in my letter to Lois Schiffer yesterday, we have filed the above-captioned case in Eugene today. We understand the case is assigned to Judge Hogan. Enclosed are all the papers we filed today, including a motion for a temporary restraining order and preliminary injunction. We will complete service with appropriate summonses when we receive the summonses back from the court. In the meantime, you now have all the papers we have filed with the court.

I am also sending a copy of the papers to Ms. Schiffer's attention in Washington, D.C.

Very truly yours,



Mark C. Rutzick

MCR:cp

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE)
COUNCIL, an Oregon corporation,) Civil No. 95-6244 HO
)
Plaintiff,)
)
vs.) MOTION FOR TEMPORARY
) RESTRAINING ORDER AND
) PRELIMINARY INJUNCTION
DAN GLICKMAN, in his capacity)
as Secretary of Agriculture;) Request For Oral Argument
BRUCE BABBITT, in his capacity)
as Secretary of the Interior,)
)
Defendants.)
_____)

18 Pursuant to Fed. R. Civ. P. 65(a) and (b) plaintiff North-
19 west Forest Resource Council moves for a temporary restraining
20 order and preliminary injunction compelling and directing
21 defendants Glickman and Babbitt to take all administrative
22 actions necessary prior to September 10, 1995 to be able by
23 September 10, 1995 to award, release, and permit to be completed
24 in fiscal years 1995 and 1996, with no change in originally
25 advertised terms, volumes, and bid prices, all timber sales
26 offered prior to July 27, 1995 in all of the national forests in

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Oregon and Washington and Bureau of Land Management districts in western Oregon, including timber sales offered in years other than fiscal year 1990.

In support of this motion the court is respectfully referred to Plaintiff's Memorandum In Support of Motion for Temporary Restraining Order and Preliminary Injunction and the Declaration of Robert E. Ragon filed herewith.

Dated this 8th day of August, 1995.

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

12 NORTHWEST FOREST RESOURCE)
 13 COUNCIL, an Oregon corporation,)
 14) Plaintiff,)
 15) vs.)
 16) DAN GLICKMAN, in his capacity)
 17) as Secretary of Agriculture;)
 18) BRUCE BABBITT, in his capacity)
 19) as Secretary of the Interior,)
 20) Defendants.)

Civil No. 95-6244 HO

21 PLAINTIFF'S MEMORANDUM IN SUPPORT OF
 22 MOTION FOR TEMPORARY RESTRAINING ORDER
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harm unless preliminary injunctive relief is granted 19

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1
2 **INTRODUCTION**

3 Plaintiff Northwest Forest Resource Council ("NFERC"),
4 representing several dozen timber companies, has filed an action
5 for expedited declaratory and injunctive relief to enforce
6 § 2001(k) of the emergency salvage timber law enacted July 27,
7 1995, Pub. L. 104-19, which imposes a clear mandatory duty on
8 defendants Dan Glickman, Secretary of Agriculture, and Bruce
9 Babbitt, Secretary of the Interior, to award and release by
10 September 10, 1995 all timber sales offered prior to the date of
11 enactment in the national forests of Oregon and Washington and
12 the Bureau of Land Management ("BLM") administrative districts in
13 western Oregon.

14 Despite the clear and absolute terms of this new law,
15 defendants Glickman and Babbitt have taken no steps to be able to
16 award and release by September 10, 1995 some 42 timber sales from
17 national forests in Oregon and Washington and BLM districts in
18 western Oregon containing 170 million board feet of timber that
19 were offered for sale by the Forest Service and the BLM in fiscal
20 years 1991 and thereafter. Defendants Glickman and Babbitt
21 apparently intend only to award and release certain timber sales
22 offered in fiscal year 1990, and not to award and release any
23 sales offered in other years. The single issue in this case is
24 whether sales offered in fiscal years other than 1990 must be
25 awarded and released under § 2001(k).

26 NFERC is seeking an expedited ruling on the merits of this
case prior to September 10, 1995. Pending the ruling on the

1 merits, NFRC seeks limited temporary relief to preserve the
2 status quo by requiring defendants Glickman and Babbitt to
3 complete all preliminary review and preparation of the sales in
4 question (not including award of the sales) prior to September
5 10, 1995 so that defendants can award and release the sales by
6 September 10, 1995 if ordered to do so by this court.

7 As NFRC is highly likely to succeed on the merits of this
8 case and faces the irreparable loss of the right guaranteed by
9 Congress unless temporary relief is granted, NFRC is entitled to
10 a temporary restraining order and preliminary injunction granting
11 the limited relief it has requested.

12 **STATEMENT OF FACTS**

13 There are few facts involved in this case, and none will be
14 in dispute.

15 **1. Section 2001(k).**

16 On July 27, 1995 the President signed into law Pub. L. 104-
17 19, the Rescissions Act of 1995. Section 2001 of this law
18 contains a series of provisions establishing an "Emergency
19 Salvage Timber Sale Program." Section 2001(k)(1) directs the
20 award and release of certain previously offered timber sales as
21 follows:

22 (1) AWARD AND RELEASE REQUIRED.--Notwithstanding
23 any other provision of law, within 45 days
24 after the date of the enactment of this Act,
25 the Secretary concerned shall act to award,
26 release, and permit to be completed in fiscal
years 1995 and 1996, with no change in origi-
nally advertised terms, volumes, and bid
prices, all timber sale contracts offered or
awarded before that date in any unit of the

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National Forest System or district of the Bureau of Land Management subject to section 318 of Public Law 101-121 (103 Stat. 745). The return of the bid bond of the high bidder shall not alter the responsibility of the Secretary concerned to comply with this paragraph.

§ 2001(k)(1) (emphasis added). Subsections (k)(2) and (3), not currently at issue in this case, provide that if a threatened or endangered bird species is known to be nesting within a sale unit area, alternative volume of like kind and value must be provided to the sale owner in place of the unit where the nesting is occurring.

2. Section 318.

Section 318 of Pub. L. 101-121 (103 Stat. 745), referred to in the new law, was enacted by Congress in 1989 to mandate timber sales in specified volumes in fiscal year 1990 in Oregon and Washington. See *Robertson v. Seattle Audubon Society*, 503 U.S. 429, 430 (1992). Section 318(a) directed:

(1) The Forest Service shall offer . . . an aggregate timber sale level of seven billion seven hundred million board feet of net merchantable timber from the national forests of Oregon and Washington for fiscal years 1989 and 1990.

(2) The Bureau of Land Management shall offer such volumes as are required in fiscal year 1990 to meet an aggregate timber sale level of one billion nine hundred million board feet for fiscal years 1989 and 1990 from its administrative districts in western Oregon.

Id. By its terms Section 318 expired on September 30, 1990. Section 318(k); *Robertson v. Seattle Audubon Society*, 503 U.S. at 430.

1 Thus, the "unit[s] of the National Forest System or dis-
2 trict[s] of the Bureau of Land Management subject to section 318
3 of Public Law 101-121 (103 Stat. 745)" referred to in
4 § 2001(k)(1) are "the national forests of Oregon and Washington"
5 and the BLM "administrative districts in western Oregon."¹

6 **3. Timber sales in dispute.**

7 In the national forests of Oregon and Washington, the Forest
8 Service has, to plaintiff's knowledge, approximately 15 timber
9 sale contracts, three awarded and 12 unawarded, containing
10 approximately 47 million board feet of timber that were offered
11 prior to July 27, 1995 in years other than fiscal year 1990.
12 Declaration of Robert E. Ragon, ¶ 6. There may well be addition-
13 al sales not yet known to NFRC.

14 In its western Oregon administrative districts, the BLM has
15 approximately 27 unawarded timber sale contracts containing
16 approximately 125 million board feet of timber that were offered
17 prior to July 27, 1995 in years other than fiscal year 1990.
18 *Id.*, ¶ 5.

19 Defendants Glickman and Babbitt, through their agents and
20 employees and other representatives of the Clinton Administra-
21 tion, have verbally denied that sales offered in fiscal years
22 other than 1990 ("FY 1991-95 sales") must be awarded and released
23 under § 2001(k). Ragon Dec., ¶ 12. Although representatives of
24 the Clinton Administration have claimed that defendants Glickman
25

26 ¹ These districts are Salem, Eugene, Roseburg, Coos Bay,
Medford and Lakeview.

1 and Babbitt intend to issue written instructions in the near
2 future interpreting subsection (k) along with other subsections
3 of § 2001, no such instructions have issued to date. *Id.*, ¶ 12.

4 Most of the sales in question require some office review and
5 on-site marking or examination of trees before the sales can be
6 awarded. Ragon Dec., ¶ 8. To date defendants Glickman and
7 Babbitt have failed to initiate any review or preparation of the
8 FY 1991-95 sales to be in a position to award them by September
9 10, 1995. *Id.*, ¶¶ 8-10. Unless defendants Glickman and Babbitt
10 begin immediately to take the steps necessary to prepare the FY
11 1991-95 sales for award and release by September 10, 1995,
12 defendants will be unable to award and release the FY 1991-95
13 sales by September 10, 1995 and will violate § 2001(k)(1)
14 irrespective of the instructions they may give in the future, and
15 irrespective of whether this court orders them to comply with the
16 statute.

17 **4. Plaintiff's injury.**

18 NFRC is a nonprofit corporation representing several hundred
19 timber and logging companies, including most of the companies
20 that have the right to award and release of the 42 or more sales
21 at issue in this case. Ragon Dec. ¶¶ 1-2.² NFRC and the compa-

23 ² Among the companies represented by NFRC that are statuto-
24 rily entitled to the award and release of one of more timber
25 sales under § 2001(k) are Rosboro Lumber Co., Douglas County
26 Forest Products Co., D.R. Johnson Lumber Co., Croman Corp., Rough
& Ready Lumber Co., Boise Cascade Co., Thomas Creek Lumber Co.,
Scott Timber Co., Lone Rock Timber Co. and CLR Timber Holdings,
Inc. Ragon Dec., ¶ 2.

1 nies it represents will be irreparably injured by defendants'
2 failure to award and release the FY 1991-95 sales by September
3 10, 1995 because Congress has granted the companies that right
4 absolutely and unconditionally. Congress determined that award
5 and release of this timber is required as an emergency measure to
6 restore timber supply in Oregon and Washington after years of
7 limited federal timber offerings. NFRC and the companies it
8 represents have no adequate remedy at law for the loss of this
9 irreparable right granted by Congress.

10 ARGUMENT

11 *NFRC IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND*
12 *PRELIMINARY INJUNCTION REQUIRING DEFENDANTS TO PRESERVE*
13 *THE STATUS QUO SO THEY CAN COMPLY WITH § 2001(k)*
14 *FOLLOWING THE FINAL JUDGMENT OF THIS COURT.*

15 A. *Standard for restraining order and preliminary injunction.*

16 The Ninth Circuit's familiar standard for the grant of a
17 temporary restraining order or preliminary injunction is as
18 follows:

19 A moving party is entitled to a preliminary
20 injunction if it demonstrates that it is
21 likely to succeed on the merits and may
22 suffer irreparable injury, or that serious
23 questions exist on the merits and the balance
24 of hardships tips in its favor. . . . The
25 two tests are not separate but represent a
26 sliding scale in which the required probabilit-
ity of success on the merits decreases as the
degree of harm increases.

27 *Self-Realization Fellowship Church v. Ananda Church of Self-*
28 *Realization, ___ F.3d ___, 1995 WL 394367 *13 (9th Cir. July 6,*
29 *1995).*

1 **B. NFRC is highly likely to succeed on the merits.**

2 This case involves a single simple issue of statutory
3 construction. The first rule of statutory interpretation is that
4 a statute is interpreted and applied according to its plain
5 meaning. *Chevron U.S.A., Inc. v. Natural Resource Defense*
6 *Council, Inc.* 467 U.S. 837, 843 (1984). Where the plain meaning
7 of statutory language is clear, no resort is legislative history
8 is required, unless there is "clearly expressed legislative
9 intention contrary to the language." *INS v. Cardoza-Fonseca*, 480
10 U.S. 421, 446-49 (1987); *Williamson v. C.I.R.*, 974 F.2d 1525,
11 1531 (9th Cir. 1992). An ambiguity exists in a statute only if
12 there are two or more reasonable interpretations of the statute.
13 *United States v. Iron Mountain Mines, Inc.* 812 F. Supp. 1528,
14 1557 (E.D. Cal. 1992). If an ambiguity exists, the court may
15 refer to the legislative history. *United States v. Aguilar*, 21
16 F.3d 1475, 1480 (9th Cir. 1994), *aff'd in part, rev'd in part and*
17 *remanded*, 115 S. Ct. 2357 (1995). If the statute and legislative
18 history clearly reveal Congress' intent, an administrative
19 agency's interpretation of the statute is entitled to no weight.
20 *Chevron*, 467 U.S. at 843 n.9.

21 A statute must be interpreted to give significance to all of
22 its parts:

23 Under accepted canons of statutory interpre-
24 tation, we must interpret statutes as a
25 whole, giving effect to each word and making
26 every effort not to interpret a provision in
 a manner that renders other provisions of the
 same statute inconsistent, meaningless, or
 superfluous.

1 *Boise Cascade Corp. v. U.S.E.P.A.*, 942 F.2d 1427, 1432 (9th Cir.
2 1991); *Bresgal v. Brock*, 843 F.2d 1163, 1166 (9th Cir. 1987).

3 In this case the plain meaning of the § 2001(k) supports
4 NFRC's position, and the legislative history convincingly
5 confirms that plain meaning. There is no basis in the words of
6 the statute or the legislative history for defendants to refuse
7 to award and release the FY 1991-95 sales.³

8 1. *The plain meaning of the statute releases FY 1991-95*
9 *sales.*

10 The meaning of § 2001(k) is clear: it requires the Secre-
11 taries within 45 days of the date of enactment to award, release
12 and permit completion of "all timber sale contracts offered or
13 awarded before that date in any unit of the National Forest
14 System or district of the Bureau of Land Management subject to
15 section 318."

16 There is no ambiguity to this phrase. All contracts offered
17 or awarded before July 27, 1995 in the national forest units and
18 BLM districts subject to Section 318 must be awarded and re-
19 leased. The phrase "subject to section 318" modifies the phrase
20 "any unit of the National Forest System or district of the Bureau
21 of Land Management," and defines the geographic reach of
22 § 2001(k). Within that geographic region (all national forests
23 in Oregon and Washington, all BLM districts in western Oregon),
24 all timber sales offered before July 27, 1995 must be awarded and

25
26 ³ For this reason NFRC seeks an award of attorney fees under
§ 2412(b) to be paid in accordance with § 2412(c)(2).

1 released within 45 days.

2 Since enactment of the law (never before), some Administra-
3 tion officials have argued that "subject to Section 318" does not
4 modify the phrase it follows (i.e., "any unit of the National
5 Forest System or district of the Bureau of Land Management") but
6 instead modifies the earlier phrase "all timber sale contracts,"
7 and therefore only requires the release of the specific timber
8 sales that were offered in fiscal year 1990 under Section 318.
9 In this view, the statute releases "all timber sale contracts
10 . . . subject to section 318."

11 This is not a reasonable or even plausible interpretation of
12 the law, and creates no ambiguity. This argument ignores the
13 words used in the statute, and requires a tortured, ungrammatical
14 twisting of the sentence. It violates a standard rule of
15 statutory interpretation:

16 The general rule is that a qualifying phrase
17 or clause only modifies that which immediate-
18 ly precedes it. "Referential and qualifying
19 words and phrases, where no contrary inten-
20 tion appears, refer solely to the last ante-
21 cedent. The last antecedent is the last
22 word, phrase, or clause that can be made an
23 antecedent without impairing the meaning of
24 the sentence. . . ."

21 *Zogbi v. Federated Dept. Store*, 767 F. Supp. 1037, 1039 (C.D.
22 Cal. 1991) (citing 2A *Sutherland on Statutes* § 47.33 at 245 (4th
23 ed. 1984)); accord, *Pacificorp v. Bonneville Power Administra-*
24 *tion*, 856 F.2d 94, 97 (9th Cir. 1988) (rule applies unless it
25 leads to absurd results).

26 The Administration argument is implausible because if

1 Congress had intended to limit relief to Section 318 timber
2 sales, it could simply have directed the release of "all timber
3 sales subject to Section 318."

4 The Administration argument renders two phrases in
5 § 2001(k)(1) completely meaningless: (1) "offered or awarded
6 before that date [of enactment of the law]" and (2) "in any unit
7 of the National Forest System or district of the Bureau of Land
8 Management." This result is of course contrary to the rule of
9 statutory interpretation requiring every word and phrase in a
10 statute to be given meaning, *Boise Cascade Corp. v. U.S.E.P.A.*,
11 942 F.2d at 1432:

12 1. Since all Section 318 sales were by definition offered
13 in fiscal year 1990 (the statute expired September 30, 1990), the
14 phrase "offered or awarded before that date [of enactment of the
15 law]" would be meaningless and unnecessary if only Section 318
16 sales were covered. The phrase "offered or awarded before that
17 date" only makes sense if the statute applies to later sales
18 since only in that case would a cut off date be necessary.
19 Applying the law to sales offered in fiscal years 1991-1995 gives
20 the cut off date meaning since sales offered after July 27, 1995
21 are not covered by the law.

22 2. The phrase "in any unit of the National Forest System
23 or district of the Bureau of Land Management" is also rendered
24 meaningless if the statute is limited to "all timber sale
25 contracts . . . subject to section 318." Under that interpreta-
26 tion all the Section 318 sales in "any unit of the National

1 Forest System or district of the Bureau of Land Management" would
2 be released even if that phrase were absent, and thus the phrase
3 would add nothing to the law. The only possible meaning of the
4 phrase "in any unit of the National Forest System or district of
5 the Bureau of Land Management" is in conjunction with the phrase
6 "subject to section 318" to define the geographic scope of the
7 area in which sales are released. The court must give the
8 statute this meaning to give effect to every word of the law.
9 *Boise Cascade Corp. v. U.S.E.P.A.*, 942 F.2d at 1432.

10 The Administration argument also contradicts Congress'
11 heading for section (k): "AWARD AND RELEASE OF PREVIOUSLY OFFERED AND
12 UNAWARDED TIMBER SALE CONTRACTS." The heading would have read "Award
13 and Release of Section 318 timber sales" under the Administration
14 view. The heading is much broader, in line with the plain
15 meaning of the statute.

16 2. *The legislative history of § 2001(k) confirms the plain*
17 *meaning of the statute.*

18 In the House of Representatives, the emergency salvage
19 timber bill was offered as an amendment to the rescissions bill
20 in the House Appropriations Committee. The section releasing
21 previously offered or awarded sales (then called § 307(i))
22 contains the identical language ultimately enacted in
23 § 2001(k)(1) that is at issue in this case. 141 Cong. Rec. H3218
24 (March 15, 1995).

25 The sponsor of the bill was Rep. Charles Taylor of North
26 Carolina, a member of the Interior Appropriations Subcommittee of

1 the House Appropriations Committee. Rep. Taylor is an expert at
2 forestry matters, as the only forester serving in Congress. See
3 141 Cong. Rec. H3232 (March 15, 1995).

4 On the floor of the House of Representatives Rep. Taylor
5 offered an explanation of this section which confirms its plain
6 meaning:

7 Section (i) of section 307 addresses
8 another related timber supply problem of an
emergency nature. . . .

9 Previously-offered timber sales in the
10 Northwest cannot be operated due to adminis-
11 trative delays and reviews. **Many of these**
12 **sales were mandated by Congress in Section**
13 **318 of the Department of interior and Related**
14 **Agencies Appropriations Act, Fiscal Year**
15 **1990, Pub. L. 101-121; others were offered in**
16 **fiscal year 1991 and some more**
17 **recently. . . .**

18 Subsection 307 (i) (1) frees up all these
19 sales, saving the government over one hundred
20 million dollars in buyout claims, generating
21 the \$207.8 million in revenues and immediat-
22 ly providing substantial amounts of timber
23 for mills hurt by Federal supply reductions.
24 It applies to all national forests and BLM
25 districts that were subject to Section 318 of
26 the Department of interior and Related Agen-
cies Appropriations Act, Fiscal Year 1990,
Pub. L. 101-121; it applies throughout fiscal
years 1995 and 1996, or longer as necessary,
notwithstanding any other provision of law;
and it requires full compliancy by the agen-
cies within 30^[4] days of the date of enact-
ment of the section. It directs the award of
all unawarded sales as originally advertised,
whether or not bids on a sale previously
rejected, and it directs the release of these
sales and all other awarded sales in the
affected area so that all the sales can be
operated to completion, on their original

⁴ Extended to 45 days in final enactment.

1 terms, in fiscal years 1995 and 1996.
2 141 Cong. Rec. H3233 (March 15, 1995) (emphasis added) (attached
3 hereto as Exhibit A). Rep. Taylor's explanation is entitled to
4 great weight: The "remarks ... of the sponsor of the language
5 ultimately enacted[] are an authoritative guide to the statute's
6 construction." *North Haven Bd. of Ed. v. Bell*, 456 U.S. 512,
7 526-27 (1982).

8 Rep. Taylor also went to great lengths to assure that the
9 Administration understood Congress' intent, writing a letter to
10 Forest Service Chief Jack Ward Thomas and having several meetings
11 with Forest Service staff to assure no misunderstanding about the
12 intent of the law. 141 Cong. Rec. H3232, H3233 (letter). The
13 Administration never expressed any doubt about the meaning of
14 § 2001(k) before it was enacted into law.

15 In the Senate, Senator Gorton, chairman of the Senate
16 Interior Appropriations subcommittee, offered the Taylor amend-
17 ment. 141 Cong. Rec. S4868-69. On April 6, 1995 the bill passed
18 the Senate on a vote of 99-0 with language describing the sales
19 to be released that was identical to the House bill, and to
20 § 2001 (k) as ultimately enacted. 141 Cong. Rec. S5380. A
21 conference committee reconciled other differing elements of the
22 rescissions bill, and approved it on May 11, 1995. The confer-
23 ence bill contains § 2001(k) as enacted into law except the
24 release time was later extended from 30 days to 45 days from
25 enactment. 141 Cong. Rec. H5024-25 (May 16, 1995) (Exhibit B).
26 The conference report, H. Rep. 104-124, expressly confirms the

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13 - MEMORANDUM IN SUPPORT OF MOTION FOR
T.R.O. AND PRELIM. INJUNCTION

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1 plain reading of § 2001(k)(1) and Rep. Taylor's explanation of
2 it:

3 The bill releases all timber sales which were
4 offered for sale beginning in fiscal year
5 1990 to the date of enactment which are
6 located in any unit of the National Forest
7 System or District of the Bureau of Land
8 Management within the geographic area encom-
9 passed by Section 318 of the Fiscal Year 1990
Interior and Related Agencies Appropriations
Act. Included are all sales offered, award-
ed, or unawarded, whether or not bids have
subsequently been rejected by the offering
agency, with no change in original terms,
volumes, or bid prices.

10 141 Cong. Rec. H5050 (May 16, 1995) (emphasis added) (attached
11 hereto as Exhibit C). A conference report is universally
12 recognized as the most authoritative piece of legislative
13 history:

14 Because the conference report represents the
15 final statement of the terms agreed to by
16 both houses, next to the statute itself it is
the most persuasive evidence of congressional
intent.

17 *Dept. of Health & Welfare, State of Idaho v. Block*, 784 F.2d 895,
18 901 (9th Cir. 1986), quoting *Demby v. Schweiker*, 671 F.2d 507,
19 510 (D.C.Cir. 1981); *RJR Nabisco, Inc. v. U.S.*, 955 F.2d 1457,
20 1463 (11th Cir. 1992) (collecting cases to same effect). No one
21 from the Administration ever expressed any disagreement with this
22 view before enactment of the law.

23 Subsequently the President vetoed the conference bill (H. R.
24 1158). After negotiations between the White House and Congress,
25 agreement was reached on a new rescissions bill. The new bill
26 was approved by the House on June 29, 1995, 141 Cong. Rec.

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1 H6644), approved by the Senate on July 21, 1995, 141 Cong. Rec.
2 S10467, and signed into law by the President on July 27, 1995.
3 Section 2001(k) was unchanged from the conference bill approved
4 in May except the time for releasing sales was extended from 30
5 days to 45 days after enactment.

6 On the day the President signed the bill, the congressional
7 sponsors of the bill wrote a letter to Secretaries Glickman and
8 Babbitt once again confirming that Congress' intent in § 2001(k)
9 is reflected in the plain meaning of the law:

10 We want to make it clear that subsection (k)
11 of the salvage legislation applies **within the**
12 **geographic area** of National Forest units and
13 BLM districts that were subject to Section
14 318 of the Department of Interior and Related
15 Agencies Appropriations Act, Fiscal Year
16 1990, Pub. L. 101-121, and **within that geo-**
17 **graphic area requires the release of all**
18 **previously offered or awarded timber sales,**
19 **including Section 318 sales as well as all**
20 **sales offered or awarded in other years (such**
21 **as Fiscal Years 1991-95) that are not subject**
22 **to Section 318. The reference to Section 318**
23 **in subsection (k)(1) defines the geographic**
24 **area that is subject to subsection (k).**

18 This interpretation is vital to the
19 policies intended in Section 2001. The
20 legislation directs all sales referenced in
21 subsection (k) to be released promptly to
22 local mills to avoid further economic dislo-
23 cation in rural timber-dependent communities.

22 Letter to Secretary Dan Glickman and Secretary Bruce Babbitt from
23 Senators Frank Murkowski, Larry Craig and Slade Gorton and
24 Representatives Don Young, Charles Taylor and Pat Roberts.
25 (Attached as Exhibit D) (emphasis added).

26 These six members of Congress are the chairmen of the

1 appropriations and authorizing committees for forestry legisla-
2 tion in both houses of Congress:

3 Senator Murkowski: Chairman of the Senate Energy and
4 Natural Resources Committee.

5 Senator Craig: Chairman of the Forestry, Conservation and
6 Rural Revitalization subcommittee of the
Senate Agriculture, Nutrition and Forestry
Committee.

7 Senator Gorton: Chairman of the Interior Appropriations
8 subcommittee of the Senate Appropriations
Committee.

9 Rep. Young: Chairman of the House Resources Committee.

10 Rep. Taylor: Member of the Interior Appropriations subcom-
11 mittee of the House Appropriations Committee.

12 Rep. Roberts: Chairman of the House Agriculture Committee
(which has jurisdiction over forestry).

13 As sponsors and relevant committee and subcommittee chair-
14 men, their contemporaneous interpretation of the legislation they
15 passed is another highly persuasive expression of legislative
16 intent. *North Haven Bd. of Ed. v. Bell*, 456 U.S. at 526-27; see
17 *Montana Wilderness Ass'n v. U.S. Forest Service*, 655 F.2d 951,
18 957 (9th Cir. 1981), cert. denied 455 U.S. 989 (1982).

19 3. **The BLM was aware in March 1995 that FY 1991-95 sales
20 are released under the salvage law.**

21 The Administration's current position is also contradicted
22 by the actions of the BLM as far back as March 1995 when the
23 House of Representatives first passed § 2001(k)(1) (then known as
24 § 307(i)) with identical language. Back in March the BLM Oregon
25 state office prepared, and later distributed to NFRC, two tables
26 listing by name the 27 FY 1991-95 timber sales that would be

1 released by the new law. Ragon Dec., ¶ 5 and Exhibit 1, Tables
2 2 and 3. The volume of timber in the 27 FY 1991-95 sales (125
3 million board feet) is almost double the volume in the 13 Section
4 318 sales (70 million board feet) -- not a trivial detail but the
5 bulk of BLM timber to be released under the new law.

6 The BLM understood since March that the FY 1991-95 sales
7 were to be released. The BLM's actions in March make the
8 Administration's post-enactment position that much more incredi-
9 ble in every sense of the word.

10 4. *NFRC will prevail on its claims.*

11 a. *NFRC has standing.*

12 A plaintiff has standing to seek mandamus under 28 U.S.C.
13 § 1361 if he is within the "zone of interests" protected by the
14 underlying statute. *Silveyra v. Moschorak*, 989 F.2d 1012, 1014
15 n.1 (9th Cir. 1993). NFRC's members are the specific intended
16 beneficiaries of § 2001(k). A nonprofit corporation like NFRC
17 devoted to furthering the interests of its members who are the
18 beneficiaries of the underlying statute has standing to maintain
19 a mandamus suit to compel an agency to act in accordance with the
20 statute. *Greater Los Angeles Council on Deafness, Inc. v.*
21 *Baldrige*, 827 F.2d 1353, 1358 (9th Cir. 1987).

22 b. *NFRC is entitled to mandamus relief.*

23 Mandamus relief is available when "(1) the plaintiff's claim
24 is clear and certain, (2) defendant official's duty to act is
25 ministerial, and so plainly prescribed as to be free from doubt,
26 and (3) no other adequate remedy is available." *Barron v. Reich*,

1 13 F.3d 1370, 1374 (9th Cir. 1994), quoting *Fallini v. Hodel*, 783
2 F.2d 1343, 1345 (9th Cir. 1986). Mandamus jurisdiction exists
3 "when a plaintiff has a clear right to relief, a defendant has a
4 clear duty to act and no other adequate remedy is available."
5 *Piledrivers' Local Union No. 2375 v. Smith*, 695 F.2d 390, 392
6 (9th Cir. 1982).

7 Mandamus relief is available even where the interpretation
8 of the underlying statutory duty is in dispute. "Jurisdiction in
9 a mandamus action is not lacking even though the statute requires
10 construction to determine the duties it creates." *Piledrivers'*
11 *Local*, 695 F.2d at 392 (mandamus jurisdiction to determine
12 geographic reach of statute); *13th Regional Corp. v. U.S. Dept.*
13 *of Interior*, 654 F.2d 758, 760 (D.C. Cir. 1980) ("as long as the
14 statute, once interpreted, creates a peremptory obligation for
15 the officer to act, a mandamus action will lie").

16 Mandamus is appropriate even where the statutory deadline
17 for government action has not yet occurred, if it is apparent
18 that "the program adopted by the government makes it impossible"
19 to comply with the statutory timeframe. *Garcia v. Taylor*, 40
20 F.3d 299, 302 (9th Cir. 1994). Moreover, where the government
21 has stated that it will not comply with a statute, mandamus is
22 appropriate even where time remains under the statute for the
23 government to act:

24 The proper inquiry is whether the government
25 has any intention of attempting to complete
26 the administrative process before [the statu-
tory deadline]. Let there be all the time in
the world, if the government has expressed an

1 intention to proceed in a manner that will
2 violate the statute, mandamus may lie.

3 *Id.*

4 Mandamus will also lie even where an official's responsi-
5 bilities are in some respects discretionary, where there exist
6 "statutory or regulatory standards delimiting the scope or manner
7 in which such discretion can be exercised." *Barron v. Reich*, 13
8 F.3d at 1376; *Silveyra v. Moschorak*, 989 F.2d at 1014. In these
9 cases "mandamus will lie when the standards have been ignored or
10 violated." *Barron v. Reich*, 13 F.3d at 1376.

11 **c. Declaratory and injunctive relief are
12 also available.**

13 Where jurisdiction exists under section 1361, declaratory
14 and injunctive relief are also available. "Mandamus jurisdiction
15 under 28 U.S.C. § 1361 permits flexibility in remedy," *Crawford*
16 *v. Cushman*, 531 F.2d 1114, 1126 (2d Cir. 1976), including injunc-
17 tive and declaratory relief. *Tagupa v. East-West Center, Inc.*,
18 642 F.2d 1127, 1129 (9th Cir. 1981) (mandatory injunction may
19 properly issue along with mandamus, compelling federal defendants
20 to carry out their duties); *National Treasury Employees v. Nixon*,
21 492 F.2d 586, 616 and n.65 (D.C. Cir. 1974) (appropriate to issue
22 declaratory relief after mandamus jurisdiction established).

23 **C. NFRC and the companies it represents face irreparable harm
24 unless preliminary injunctive relief is granted.**

25 NFRC and the companies it represents face irreparable harm
26 if defendants violate the mandatory terms of § 2001(k). Congress
directed the release of these sales as part of the emergency

1 salvage program because of the timber supply shortage in the
2 Northwest produced by years of limited federal timber sale
3 offerings. 141 Cong. Rec. H3231 (March 15, 1995) (Rep. Taylor)
4 (sales released by § 2001(k) will "immediately provid[e] substan-
5 tial amounts of timber for mills hurt by Federal supply reduc-
6 tions"). The sponsors advised the Secretaries on July 27, 1995
7 that release of the FY 1991-95 sales "is vital to the policies
8 intended in Section 2001 . . . to avoid further economic disloca-
9 tion in rural timber-dependent communities." Exhibit C at 2.

10 Defendants' current failure to initiate the administrative
11 steps needed to award and release the FY 1991-95 sales by
12 September 10 will frustrate and defeat Congress' very clearly
13 expressed intent unless this court intervenes to grant the
14 limited injunctive relief NFRC has requested. Preliminary relief
15 is needed immediately to put the agencies in a position to comply
16 with § 2001(k) by September 10.

17 Conversely, this limited preliminary injunctive relief will
18 cause no irreparable harm to the defendants. The requested
19 relief does not require the immediate award of the sales. It
20 does not harm or prejudice the defendants in any way.

21 ***D. Preliminary injunctive relief is in the public interest.***

22 A court must consider the public interest in determining
23 whether to grant injunctive relief. *Sierra Club v. Penfold*, 857
24 F.2d 1307, 1318 (9th Cir. 1988). There is no stronger public
25 interest than in having government officials and agencies obey
26 the law. *Seattle Audubon Society v. Evans*, 771 F. Supp. 1081,

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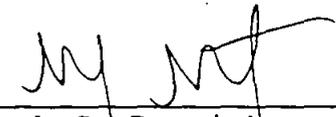
1096 (W.D. Wash.), *aff'd* 952 F.2d 297 (9th Cir. 1991). Flaunting the clearly expressed intent of Congress is highly injurious to the public interest.

CONCLUSION

NFRC's motion for a temporary restraining order and a preliminary injunction should be granted.

Dated this 8th day of August, 1995.

MARK C. RUTZICK LAW FIRM
A Professional Corporation

By: 
Mark C. Rutzick
Alison Kean Campbell
Attorneys for Plaintiff

conditions while providing the secondary benefit of increased fiber supplies for our region's mills.

Mr. Chairman, I would have liked to offer a balanced alternative to this proposal today, but the Republican leadership would not allow it. The issue should never have been brought to the floor in this fashion. Salvage and forest health should be properly debated in the committees with jurisdiction and expertise and not written by special interests in the back rooms out of the public eye.

This proposal lacks even the most basic environmental protections for steep, unstable slopes, fragile soils, critical riparian habitat, even wild and scenic rivers. It defines what is to be harvested as dead, dying, diseased or associated with the large stands of green timber to be harvested.

I have legislated salvage before, but I did it properly in my first term in Congress. I played a major role in resolving a salvage controversy at least as contentious as the forest debate now raging here in Congress. The Silver Fire burned and erodes this area of the Siskiyou National Forest, long defended by environmental activists. That salvage was successfully done without harm. We could do the same across the Western United States if we were given the chance to offer a proper amendment.

Mr. Chairman, for too long, the extremes in the debate over western forest management have dominated the stage. On one side, are those who oppose any timber harvest on our public lands, even if it is necessary to improve forest health and reduce the risk of catastrophic fires. On the other side, there are those who would treat our National Forests as little more than industrial tree farms, sacrificing even the most basic environmental protections in the interests of short-term profit.

In my first term in Congress, I played a major role in resolving a salvage controversy at least as contentious as the forest health debate now raging in Congress. The Silver Fire burned in a roadless area of the Siskiyou National Forest long defended by environmental activists. The industry wanted to extend a road into the area and engage in wholesale salvage of dead and green timber. I was able to mediate an agreement that prevented new road building and green timber harvest, but allowed a significant amount of helicopter salvage of burned timber.

Neither the industry nor the environmental community were entirely happy with the agreement we reached. But today the Silver Fire salvage stands as an example of environmentally sound salvage that had the additional benefit of providing a significant volume of timber.

Today, I once again find myself somewhere between the extremes. On one side are those who oppose any thinning and salvage logging in the fire and pest-stricken forests of the West. On the other side are those who would throw all environmental protection out the window, and maximize timber production under the guise of a sound salvage program. Neither side has it right.

Forests across the West are in the grip of an ecological crisis of unprecedented propor-

tions. The forest health crisis is the result of long term drought and a century of human impacts in the form of fire suppression, timber harvesting, and the introduction of foreign pests, to name a few. The result is that millions of acres of public forest are in the worst shape they've ever been, victim to disease, insect infestation, and fire.

Fire suppression has played a big part in undermining forest health. Controlling wildfires in forests where frequent, low intensity fires historically kept vegetation sparse has allowed a huge build-up of dense understory vegetation to take place. One study on the Boise National Forest in Idaho found that tree density on one site was about 29 trees per acre for the 300-plus years before 1906. Today on the same site, tree density has increased to 533 trees per acre and the species composition has changed from predominantly Ponderosa pine to predominantly Douglas Fir.

Last summer's Western wildfires provided a hint of what may lie ahead. Catastrophic fires, unlike the low-intensity fire regime that has been the historical norm, could devastate habitat for many declining and threatened species, including Columbia basin salmon populations.

An ecologically sensitive program of thinning, controlled burning and salvage logging is essential to restoring forest health across millions of acres in the West. If done with care, such a program could improve forest conditions, while providing the secondary benefit of increased fiber supplies for the region's mills.

We need legislation to help expedite a response to the forest health crisis in the West. But a sound salvage and forest health program needs some environmental safeguards. Unfortunately, the Taylor-Dicks amendment contains none. The Taylor-Dicks amendment would allow logging in Wild and Scenic River corridors and sensitive riparian and roadless areas, with no restrictions based on slope or soil conditions. Its definition of salvage is so broad that it opens the door to wholesale logging in the region's remaining old growth forests and roadless areas. This is not the balanced approach to forest management that most Oregonians want to see.

By setting an arbitrary minimum timber sale level, while prohibiting any environmental considerations on the part of the Forest Service, the Taylor-Dicks salvage amendment guarantees that sensitive salmon streams will be damaged, roadless areas will be opened up to commercial timber harvest, and areas that are simply unsuitable for timber management will be logged. This is a proposal that lurches from one unacceptable extreme to the other. That's why I will vote against this proposal and hope we have the opportunity to craft a salvage bill that gets the job done while protecting the values that Oregonians share.

I would have liked to offer a balanced alternative to this proposal today, but the Republican leadership wouldn't allow it. The issue should never have been brought to the floor in this fashion. Salvage and forest health should be properly debated in the committees with jurisdiction and expertise, not written by industry lawyers in backrooms out of the public eye.

So I am faced with two unacceptable choices—an extreme salvage program with no environmental safeguards or the status quo, which is simply not getting the job done.

It bears stating that the Forest Service is moving ahead with a salvage program, though slowly. The agency plans to offer at least 1.4 billion board feet of salvage in each of the next 2 years. Assistant Secretary Lyons tells me they could offer even more if Congress would appropriate more money for sale preparation and other related activities. But this salvage bill contains no additional money for sale preparation.

Oregonians, by and large, support policies that protect our environment and quality of life, without sacrificing our state's economic well-being. I hope to have an opportunity in the weeks ahead to offer a balanced Oregon alternative to the extreme log-it-at-all-costs salvage approach offered here today. I believe I'll have the support of most of my state's citizens when I do so.

Mr. LIVINGSTON. Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina [Mr. TAYLOR], the sponsor of the amendment and a distinguished member of the subcommittee.

Mr. TAYLOR of North Carolina. Mr. Chairman, in 2 minutes I can tell my colleagues several things about this. First of all, it will restore forest health. Most of the things that have been said about it so far just are not true. Scientists recognize that the forests are undergoing a serious ecological decline because of a lack of management. Fire disasters, unnatural species compositions, disease, insect infestation; all of these are threatening the forest health, and this legislation which has been worked out with professionals, it has been worked out in consulting with the Forest Service, as many people as we could find to try to alleviate this emergency were brought in in this short period of time, and it is an emergency. Even the chief of the Forest Service, Mr. Chairman, has said we need to increase our salvage cutting for forest health.

Second, there are tens of billions of dollars of revenue coming to the Treasury, or millions of dollars of revenue coming to the Treasury. It is not a loss. CBO scored it \$37 million last year. FPA says it could be as much as \$650 million. So it is a very positive revenue producer.

Third, it will stabilize the cost of homes. It will create jobs, and that is why the home builders, and realtors and many others are supporting this. It will create thousands of jobs all across this country in a much needed area, putting timber in the pipeline, and that is why the Teamsters Union supports it. It is why the Western Council of Industrial Workers supports it, the United Paperworkers International Union supports it, the United Brotherhood of Carpenters supports it, the International Association of Machinists and the Association of Western Paperworkers, because these are men and women who make the livings of this country and recognize that this will produce jobs, and they are endorsing this amendment in this legislation.

Mr. Chairman, it is an opportunity for us. It is an opportunity for us to

provide forest health and to provide a good amendment to this bill.

Mr. Chairman, I rise to address the provisions of section 307 of H.R. 1159, a measure co-authored by myself and Mr. Dicks, and supported strongly by a number of our colleagues on the Appropriations Committee and on the authorizing committees with jurisdiction.

I wish to outline the intent of the provision, and the direction we have provided to the agencies affected for two reasons. First, I wish to be sure that the requirements of the provision are not misrepresented as the debate over this bill continues to the other body. Second, and perhaps more importantly, I wish to provide clear direction to the implementing agencies, and do everything possible to assure that the agencies understand, and can execute the direction we have provided.

To this latter end, the authors of section 307 have met several times with U.S. Forest Service Chief, Jack Ward Thomas, and his staff since the provision imposes most of its requirements on the Forest Service. The Chief and his staff have been quite helpful in reviewing the terms of section 307, suggesting modifications to assure that these requirements are technically correct, and evaluating the Forest Service's technical and operational capability to meet the requirements of section 307, including the volume targets for timber salvage. As a forester by training, I am very sensitive to saddling our Federal agencies with mandates that they are not able to implement.

Based upon our discussion with Chief Thomas it is the clear understanding of the authors of section 307 that—aside from the question of whether the Clinton administration agrees with the goals of section 307 as a matter of politics and policy—the Forest Service can implement the provision of section 307 in a fashion that meets the timber salvage targets contained in this section. Today, I have sent a letter to Chief Thomas which I will include in the RECORD at the end of this statement. In this letter, I review with the Chief the intention of the authors of section 307 and our expectations about Forest Service implementation of the measure. I have asked the Chief for a prompt response so that, if there is any difference in interpretation, this can be reviewed during Senate consideration of the bill and any necessary adjustments can be made. If the measure passes both bodies and is signed into law, we expect appropriate implementing actions to carry out a clear congressional intent which is, itself, grounded in an understanding of agency capabilities.

Now let me review the terms of section 307. Section 307 would provide authority and direction to the Secretaries of Agriculture and the Interior to conduct a 2-year emergency salvage timber sales program on lands of the Forest Service and the Bureau of Land Management (BLM). The purpose of this one-time, short duration congressional mandate is to eliminate the extraordinary backlog of dead and dying trees on Federal lands in all regions of the country. This backlog has been created by the alarming decline in forest health and the unprecedented scale of wildfires over the last 2 years. Without an accelerated and dedicated response from the land management agencies in planning and conducting these emergency salvage timber sales, the decaying trees will soon lose any commercial value, thereby preventing harvesting and the timely

accomplishment of reforestation and other restoration activities on the affected lands.

The two Secretaries are directed to offer a sufficient number of salvage timber sales during the 2-year emergency period following enactment to ensure that a minimum of 3-billion board feet is sold each year on Forest Service lands and 115-million board feet is sold each year on BLM lands (subsec. (b)(2)).

These volume targets were derived after extensive discussion with the Forest Service and BLM. The Forest Service targets were established after consultation with the Agency's field offices. They are statutory mandates that represent reasonable progress toward reducing the backlog of dead and dying timber on our Federal forests. The agencies have indicated that it is within their capability to achieve these targets and thereby improve the health of our Federal forests under the terms of section 307.

A timber sale qualifies as a salvage timber sale that can be offered under the provisions of section 307 only if an important reason for the sale is the removal of diseased or insect-infested trees; dead, damaged, or down trees; or trees affected by fire or imminently susceptible to fire or insect attack. Removal of associated trees for the purpose of ecosystem improvement or rehabilitation can occur if the sale has an identifiable component of trees to be salvaged. (Subsec. (a)(4).)

Salvage timber sales are to be offered whether or not revenues derived from the sales are likely to exceed the sales' costs (subsec. (c)(5)). In conducting the sales, the Secretaries are authorized to use salvage sale funds otherwise available to them (subsec. (b)(3)). But the Secretaries are not to substitute salvage timber sales under section 307 for planned non-salvage sales (subsec. (c)(7)).

Section 307 does not permit any salvage timber sales on specifically protected lands, namely areas designed by Congress as units of the National Wilderness Preservation System, any roadless areas in Colorado or Montana which were specifically designated by acts of Congress by geographical name or map reference as Wilderness Study Areas, any roadless areas recommended by the Forest Service or BLM for wilderness designation in their most recent land management plans, and areas where timber harvesting for any purpose has been specifically prohibited by a specific statutory provision. This proscription does not include any prohibition in any regulation, land management plan, agency guidance, research study, or settlement agreement which purports to rely on general statutory authority (subsec. (g)(2)).

This last distinction is important because we do not, even by inference, want to prohibit application of this section in areas where the agencies on their own have restricted timber harvesting. This includes agency initiatives such as the timber sale screens on the East-side of the Cascades and the California Spotted Owl Report, the following environmental assessment, and the pending draft Environmental Impact Statement. Whether and to whatever extent the agencies choose to restore the forest health by scheduling salvage sales in such areas, they are still bound to meet the salvage targets in subsection (b)(2) of this section.

In order to ensure that the sales are conducted in a timely manner, section 307 requires the two land management agencies to

follow certain schedules, expedited procedures, and reporting requirements. The schedule for offering timber sales requires that sales for at least 50 percent of the volume each agency is directed to make available in the first year must be offered in the first 3 months after enactment, and sales for at least 50 percent of the volume each agency is directed to make available in the second year must be offered within 15 months after enactment. Sales for the remaining 50 percent of the volume required each year can be spread evenly throughout the remaining 9 months of the year. (Subsec. (c)(2).) To track compliance with this schedule, the Secretaries are required to report to Congress every 3 months throughout the 2-year emergency period on the sales and volumes offered during the last 3-month period and expected to be offered during the next 3-month period (subsec. (b)(2)).

To meet this schedule, the Secretaries are admonished to use all available authority in preparing and advertising the salvage timber sales. This includes use of private contractors, and applying the type of expedited contracting procedures used to fight fires to the tasks of advertising and preparing salvage sales. To augment the available personnel, section 307 authorizes employment of former employees who received voluntary separation incentive payments under the Federal Workforce Restructuring Act of 1994 (P.L. 103-226) without applying the provisions of Section 3(d)(1) of P.L. 103-226. (Subsec. (c)(4).)

Salvage procedures are expedited by the requirement that each Secretary prepare a single document analyzing the environmental effects of each salvage sale. The level of analysis in this consolidated environmental analysis document is to be that normally contained in an environmental assessment (not an environmental impact statement) under the National Environmental Policy Act [NEPA] on the environmental impacts of the sale generally and in a biological evaluation under the Endangered Species Act [ESA] on any specific effects the sale may have on any endangered or threatened species. (Subsec. (c)(1).) The language of this provision is explicit that these are the only document and the only procedure required from an environmental standpoint to comply with existing laws and regulations (subsec. (c)(6)). For example, the agency does not have to prepare a Finding of No Significant Impact under NEPA, nor consult with the Fish and Wildlife Service or National Marine Fisheries Service under the ESA after completing the consolidated environmental analysis document. Nor is an agency bound by any existing documents. On the other hand, if a NEPA document or a biological evaluation is already prepared for any particular sale by the date of enactment, a consolidated environmental analysis document need not be prepared for that sale. (Subsec. (c)(1).)

Each Secretary is to make the decisions on a sale's configuration and whether to offer the sale on the basis of the consolidated environmental analysis document. The Secretary may decide to not offer the sale or to reduce the size of the sale for an environmental reason grounded in the consolidated environmental analysis document, but he must then determine if he can meet the applicable volume requirement on schedule. If he determines he cannot, he must substitute another sale or

sales with volume equal to the shortfall. (Subsec. (c)(3).)

The Secretary's decision, based on that consolidated environmental documentation, is deemed to satisfy all applicable environmental and land management laws (subsec. (c)(6)). This means, for example, that the Secretary cannot be sued for violation of the Clean Water Act, the provisions of the National Forest Management Act concerning species' viability, unsuitability, or consistency with the resource management plans, or the jeopardy or take standards of the Endangered Species Act. Furthermore, as indicated, a sale can be offered that does not comport with a resource management plan, or interim guidelines, or management directives. This provision is both reasoned and consistent with the one-time, emergency nature of section 307. Few if any such plans, guidelines, screens, or other agency guidance contemplated the dramatic decline in forest health and consequent unprecedented wildfires. Section 307 does not excuse long-term compliance with such agency guidance; instead, it permits only a one-time divergence therefrom. Without such temporary divergence, the very wildlife and other resources that the guidance is intended to protect may be destroyed or damaged, thereby rendering the guidance ineffective for the longer term. Finally, a sale can be offered even if it would be barred under any decision, injunction, or order of any federal court (subsec. (c)(8)).

Expedited procedures continue to apply after the decision to offer a salvage timber sale. Section 307 bars an administrative appeal of any sale decision (subsec. (e)). This allows challengers to go directly to court and hastens a final disposition of the challenge—a disposition timely enough to permit the sale and harvesting of dead and dying timber if the court ultimately determines that the sale is legally valid.

Finally as to expedited procedures, in language borrowed verbatim from previously enacted law (section 318 of Public Law 101-121), section 307 sets deadlines for challengers for filing and appealing lawsuits challenging salvage timber sales (15 days and 30 days, respectively) (subsec. (f)(1) and (7)) and for the district courts to decide the lawsuits (45 days, unless the particular court decides a longer period is necessary to satisfy Constitutional requirements) (subsec. (f)(5)). To protect challengers, the section requires that each challenged timber sale must be stayed by the appropriate agency for the same 45-day period in which the court hears and decides the case (subsec. (f)(2)). With a mandated automatic stay, restraining orders or preliminary injunctions are unnecessary and, therefore, are barred (subsec. (f)(3)).

A court is free to issue a permanent injunction against, order modification of, or void an individual salvage timber sale if it determines that the decision to prepare, advertise, offer, award, or operate the sale was arbitrary and capricious or otherwise not in accordance with law (subsec. (f)(4)). As the sale is deemed by law to satisfy the environmental and land management laws (subsec. (c)(6)), the challengers must allege and prove to the court under this standard that the sale was arbitrary or capricious under, or violates a specific provision of section 307.

The Secretaries' duties do not stop after the salvage timber sales are sold; they are di-

rected to complete reforestation of the lands as expeditiously as possible after harvesting but no later than any periods required by law or the agencies' regulations. This last requirement is every bit as important as the rest of the section because it completes the forest restoration process and highlights the authors' commitment to sound forest stewardship.

Section (i) of section 307 addresses another related timber supply problem of an emergency nature. In this case, the emergency involves government liability for failure to perform the terms of a contract.

Previously-offered timber sales in the Northwest cannot be operated due to administrative delays and reviews. Many of these sales were mandated by Congress in Section 318 of the Department of Interior and Related Agencies Appropriations Act, Fiscal Year 1990, Pub. L. 101-121; others were offered in fiscal year 1991 and some more recently. Many of these sales were awarded to purchasers years ago; the government will have to pay tens of millions of dollars in contract buyouts if these sales were cancelled. Other sales were auctioned years ago but never awarded; in some cases the agencies rejected bids well after the auction due to administrative reviews and delays and changing standards. This is the case even though the preponderance of these sales were approved for harvest in the Record of Decision accompanying the President's Pacific Northwest Forest Plan, as not jeopardizing the continued existence of any of the numerous species of wildlife considered by that plan. The government will forego \$207.8 million in timber receipts if these sales are not operated.

Subsection 307(i)(1) frees up all these sales, saving the government over one hundred million dollars in buyout claims, generating the \$207.8 million in revenues and immediately providing substantial amounts of timber for mills hurt by Federal supply reductions. It applies to all national forests and BLM districts that were subject to section 318 of the Department of Interior and Related Agencies Appropriations Act, fiscal year 1990, Pub. L. 101-121; it applies throughout fiscal years 1995 and 1996, or longer as necessary, notwithstanding any other provision of law; and it requires full compliance by the agencies within 30 days of the date of enactment of the section. It directs the award of all unawarded sales as originally advertised, whether or not bids on a sale previously rejected, and it directs the release of these sales and all other awarded sales in the affected area so that all the sales can be operated to completion, on their original terms, in fiscal years 1995 and 1996.

Subsection (i)(2) provides that agency compliance with this section will not provide a legal basis for a court to block an existing agency management plan, or to order an agency to change an existing plan. It leaves in place all other grounds unrelated to this section that may exist for any person to challenge an agency plan for any reason. It does not affect pending cases challenging agency plans for reason unrelated to this section.

CONGRESS OF THE UNITED STATES.

Washington, DC, March 15, 1995.

DR. JACK WARD THOMAS,
Chief, U.S. Forest Service,
Department of Agriculture,
Washington, DC.

DEAR CHIEF THOMAS: We write to continue our important dialogue on the emergency

forest health amendment contained in Section 307 of HR 1159. This amendment has bipartisan support in the House, and will shortly be considered in the Senate when that body takes up HR 1159.

We thank you and your staff for the technical assistance you provided to us as we developed the provision. While we understand the Administration has yet to take a position on the measure, we nevertheless appreciate the nonpartisan assistance the Forest Service provided to make sure that the amendment is drafted in a technically and legally sound fashion. We are sensitive to the need to avoid saddling our federal resource management agencies with mandates that cannot be implemented on the ground.

To this end we request one more review by your resource specialists and attorney advisors of the final language of Section 307. Enclosed is the final language and a floor statement we made during House consideration explaining our intent in writing this amendment. We want to ensure that the amendment can be implemented in a manner that brings salvage timber to the marketplace as quickly as possible within the environmental process provided.

We would like your review to assure that your specialists agree that the language would have the on-the-ground effect that we intend. Alternatively, if this is not the case, we would like to know which provisions are problematic, why this is the case, and what technical changes would better accomplish our purposes.

Let me be clear that we are not asking whether the Administration, the Agency, or you support the amendment or agree with its intent. We respect any difference of opinion you might have with specific requirements. Nevertheless, we need to be sure that we have a common understanding that our intent is implementable under the term of amendment. If the amendment is passed by both Houses of Congress and signed by the President we will expect full implementation of its terms.

Since the bill is being taken up in Subcommittee in the Senate next Wednesday, we will need your response by Monday, March 20. We apologize for the short notice, but we are victims of the legislative schedule.

We appreciate your continuing assistance and cooperation on this matter.

Sincerely,

CHARLES H. TAYLOR,
Member, U.S. Congress.

DON YOUNG,
Chairman.

Mr. YATES. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. MILLER].

(Mr. MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. MILLER of California. Mr. Chairman, I rise in strong support of the Yates amendment to strike the Taylor Timber Salvage Language. We have all heard the old adage that you have to spend money to make money but the timber salvage provisions of H.R. 1159 turn this into a case where we will be spending money to lose money. Nominally, CBO shows that such sales will bring in \$134 million, a far cry from the \$1 billion in receipts proponents were touting just 2 weeks ago. The other side of the CBO analysis which bill proponents will not be speaking about is that salvage is direct spending, and thus the money goes right back out.

The taxpayer loses under the Taylor Salvage Language because whatever profitable

on the National Priorities List established by section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended (42 U.S.C. 9605), unless the Administrator receives a written request to propose for listing or to list a facility from the governor of the State in which the facility is located, or unless legislation to reauthorize CERCLA is enacted.

SEC. 1007. None of the funds made available in any Appropriations Act for fiscal year 1995 shall be spent by the Environmental Protection Agency to disapprove a state implementation plan (SIP) revision solely on the basis of the Agency's regulatory 50 percent discount for alternative test-and-repair inspection and maintenance programs. Notwithstanding any other provision of EPA's regulatory requirements, the EPA shall assign up to 100 percent credit when such State has provided data for the proposed inspection and maintenance system that demonstrates evidence that such credits are appropriate. The Environmental Protection Agency shall complete and present a technical assessment of the State's demonstration within 45 days after submittal by the State.

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
SCIENCE, AERONAUTICS AND TECHNOLOGY
(RESCISSION)**

Of the funds made available under this heading in Public Law 103-327 and any unobligated balances from funds appropriated under "Research and Development" in prior years, \$52,000,000 are rescinded.

**CONSTRUCTION OF FACILITIES
(RESCISSION)**

Of the funds made available under this heading in Public Law 102-389, for the Consortium for International Earth Science Information Network, \$27,000,000 are rescinded; and of any unobligated balances from funds appropriated under this heading in prior years, \$7,000,000 are rescinded.

**MISSION SUPPORT
(RESCISSION)**

Of the funds made available under this heading in Public Law 103-327, \$32,000,000 are rescinded.

**SPACE FLIGHT, CONTROL AND DATA COMMUNICATIONS
(RESCISSION)**

Of the available balances under this heading in previous fiscal years \$20,000,000 are rescinded.

**ADMINISTRATIVE PROVISIONS
(INCLUDING TRANSFER OF FUNDS)**

SEC. 1008. The Administrator shall acquire, for no more than \$35,000,000, a certain parcel of land, together with existing facilities, located on the site of the property referred to as the Clear Lake Development Facility, Clear Lake, Texas. The land and facilities in question comprise approximately 13 acres and include a Light Manufacturing Facility, an Avionics Development Facility, and an Assembly and Test Building which shall be modified for use as a Neutral Buoyancy Laboratory in support of human space flight activities.

SEC. 1009. Notwithstanding any other provision of law or regulation, the National Aeronautics and Space Administration (NASA) shall convey, without reimbursement, to the State of Mississippi, all rights, title and interest of the United States in the property known as the Yellow Creek Facility and consisting of approximately 1,200 acres near the city of Iuka, Mississippi, including all improvements thereon and also including any personal property owned by NASA that is currently located on-site and which the State of Mississippi requires to facilitate the transfer. Provided, That appropriated funds shall be used to effect this conveyance; provided further, That \$10,000,000 in appropriated funds otherwise available to NASA shall

be transferred to the State of Mississippi to be used in the transition of the facility. Provided further, That each Federal agency with prior contact to the site shall remain responsible for any and all environmental remediation made necessary as a result of its activities on the site. Provided further, That in consideration of this conveyance, NASA may require such other terms and conditions as the Administrator deems appropriate to protect the interests of the United States. Provided further, That the conveyance of the site and the transfer of the funds to the State of Mississippi shall occur not later than thirty days from the date of enactment of this Act.

**NATIONAL SCIENCE FOUNDATION
ACADEMIC RESEARCH INFRASTRUCTURE
(RESCISSION)**

Of the funds made available under this heading in Public Law 103-327, \$131,867,000 are rescinded.

**CORPORATIONS
FEDERAL DEPOSIT INSURANCE CORPORATION
FDIC AFFORDABLE HOUSING PROGRAM
(RESCISSION)**

Of the funds made available under this heading in Public Law 103-327, \$11,281,034 are rescinded.

**TITLE II—GENERAL PROVISIONS
SEC. 2001. EMERGENCY SALVAGE TIMBER SALE PROGRAM.**

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

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

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

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

(4) The term "Secretary concerned" means—
(A) the Secretary of Agriculture, with respect to lands within the National Forest System; and
(B) the Secretary of the Interior, with respect to Federal lands under the jurisdiction of the Bureau of Land Management.

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

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

(3) SALES IN PREPARATION.—Any salvage timber sale in preparation on the date of the enact-

ment of this Act shall be subject to the provisions of this section.

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

(1) SALE DOCUMENTATION.—
(A) PREPARATION.—For each salvage timber sale conducted under subsection (b), the Secretary concerned shall prepare a document that combines an environmental assessment under section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(E)) (including regulations implementing such section) and a biological evaluation under section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2)) and other applicable Federal law and implementing regulations. At the sole discretion of the Secretary concerned and to the extent the Secretary concerned considers appropriate and feasible, the document prepared under this paragraph must consider the environmental effects of the salvage timber sale and consider the effect, if any, on threatened or endangered species.

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

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

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

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

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

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

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

(E) A statement of the intentions of the Secretary concerned with respect to the salvage timber sale volume levels specified in the joint explanatory statement of managers accompanying the conference report on this Act.

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

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

(5) SALE PREPARATION.—
(A) USE OF AVAILABLE AUTHORITIES.—The Secretary concerned shall make use of all available authority, including the employment of private contractors and the use of expedited fire

contracting procedures, to prepare and advertise salvage timber sales under subsection (b).

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

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

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

(C) INCENTIVE PAYMENT RECIPIENTS; REPORT.—The provisions of section 3(d)(1) of the Federal Workforce Restructuring Act of 1994 (Public Law 103-226; 5 U.S.C. 5597 note) shall not apply to any former employee of the Secretary concerned who received a voluntary separation incentive payment authorized by such Act and accepts employment pursuant to this paragraph.

(f) JUDICIAL REVIEW.—
(1) PLACE AND TIME OF FILING.—A salvage timber sale to be conducted under subsection (b), and a timber sale to be conducted under subsection (d), shall be subject to judicial review only in the United States district court for the district in which the affected Federal lands are located. Any challenge to such sale must be filed in such district court within 15 days after the date of initial advertisement of the challenged sale. The Secretary concerned may not agree to, and a court may not grant, a waiver of the requirements of this paragraph.
(2) EFFECT OF FILING ON AGENCY ACTION.—For 45 days after the date of the filing of a challenge to a salvage timber sale to be conducted under subsection (b) or a timber sale to be conducted under subsection (d), the Secretary concerned shall take no action to award the challenged sale.
(3) PROHIBITION ON RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS, AND RELIEF PENDING REVIEW.—No restraining order, preliminary injunction, or injunction pending appeal shall be issued by any court of the United States with respect to any decision to prepare, advertise, offer, award, or operate a salvage timber sale pursuant to subsection (b) or any decision to prepare, advertise, offer, award, or operate a timber sale pursuant to subsection (d). Section 705 of title 5, United States Code, shall not apply to any challenge to such a sale.
(4) STANDARD OF REVIEW.—The courts shall have authority to enjoin permanently, order modification of, or void an individual salvage timber sale if it is determined by a review of the record that the decision to prepare, advertise, offer, award, or operate such sale was arbitrary and capricious or otherwise not in accordance with applicable law (other than those laws specified in subsection (i)).
(5) TIME FOR DECISION.—Civil actions filed under this subsection shall be assigned for hearing at the earliest possible date. The court shall render its final decision relative to any challenge within 45 days from the date such challenge is brought, unless the court determines that a longer period of time is required to satisfy the requirement of the United States Constitution. In order to reach a decision within 45 days, the district court may assign all or part of any such case or cases to one or more Special Masters, for prompt review and recommendations to the court.
(6) PROCEDURES.—Notwithstanding any other provision of law, the court may set rules governing the procedures of any proceeding brought under this subsection which set page limits on briefs and time limits on filing briefs and motions and other actions which are shorter than the limits specified in the Federal rules of civil or appellate procedure.
(7) APPEAL.—Any appeal from the final decision of a district court in an action brought pur-

suant to this subsection shall be filed not later than 30 days after the date of decision.
(g) EXCLUSION OF CERTAIN FEDERAL LANDS.—
(1) EXCLUSION.—The Secretary concerned may not select, authorize, or undertake any salvage timber sale under subsection (b) with respect to lands described in paragraph (2).
(2) DESCRIPTION OF EXCLUDED LANDS.—The lands referred to in paragraph (1) are as follows:
(A) Any area on Federal lands included in the National Wilderness Preservation System.
(B) Any roadless area on Federal lands designated by Congress for wilderness study in Colorado or Montana.
(C) Any roadless area on Federal lands recommended by the Forest Service or Bureau of Land Management for wilderness designation in its most recent land management plan in effect as of the date of the enactment of this Act.
(D) Any area on Federal lands on which timber harvesting for any purpose is prohibited by statute.
(h) RULEMAKING.—The Secretary concerned is not required to issue formal rules under section 553 of title 5, United States Code, to implement this section or carry out the authorities provided by this section.
(i) EFFECT ON OTHER LAWS.—The documents and procedures required by this section for the preparation, advertisement, offering, awarding, and operation of any salvage timber sale subject to subsection (b) and any timber sale under subsection (d) shall be deemed to satisfy the requirements of all applicable Federal laws (and regulations implementing such laws) including but not limited to the following:
(1) The Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.).
(2) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).
(3) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
(4) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
(5) The National Forest Management Act of 1976 (16 U.S.C. 472a et seq.).
(6) The Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.).
(7) Other Federal environmental and natural resource laws.
(j) EXPIRATION DATE.—The authority provided by subsections (b) and (d) shall expire on September 30, 1997. The terms and conditions of this section shall continue in effect with respect to salvage timber sale contracts offered under subsection (b) and timber sale contracts offered under subsection (d) until the completion of performance of the contracts.
(k) AWARD AND RELEASE OF PREVIOUSLY OFFERED AND UNAWARDED TIMBER SALE CONTRACTS.—
(1) AWARD AND RELEASE REQUIRED.—Notwithstanding any other provision of law, within 30 days after the date of the enactment of this Act, the Secretary concerned shall act to award, release, and permit to be completed in fiscal years 1995 and 1996, with no change in originally advertised terms, volumes, and bid prices, all timber sale contracts offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318 of Public Law 101-121 (103 Stat. 745). The return of the bid bond of the high bidder shall not alter the responsibility of the Secretary concerned to comply with this paragraph.
(2) THREATENED OR ENDANGERED BIRD SPECIES.—No sale unit shall be released or completed under this subsection if any threatened or endangered bird species is known to be nesting within the acreage that is the subject of the sale unit.
(3) ALTERNATIVE OFFER IN CASE OF DELAY.—If for any reason a sale cannot be released and completed under the terms of this subsection within 45 days after the date of the enactment

of a district court in an action brought pursuant to this subsection shall be filed not later than 30 days after the date of decision.

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(C) Any roadless area on Federal lands recommended by the Forest Service or Bureau of Land Management for wilderness designation in its most recent land management plan in effect as of the date of the enactment of this Act.
(D) Any area on Federal lands on which timber harvesting for any purpose is prohibited by statute.
(h) RULEMAKING.—The Secretary concerned is not required to issue formal rules under section 553 of title 5, United States Code, to implement this section or carry out the authorities provided by this section.
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(1) The Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.).
(2) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).
(3) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
(4) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
(5) The National Forest Management Act of 1976 (16 U.S.C. 472a et seq.).
(6) The Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.).
(7) Other Federal environmental and natural resource laws.
(j) EXPIRATION DATE.—The authority provided by subsections (b) and (d) shall expire on September 30, 1997. The terms and conditions of this section shall continue in effect with respect to salvage timber sale contracts offered under subsection (b) and timber sale contracts offered under subsection (d) until the completion of performance of the contracts.
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(2) THREATENED OR ENDANGERED BIRD SPECIES.—No sale unit shall be released or completed under this subsection if any threatened or endangered bird species is known to be nesting within the acreage that is the subject of the sale unit.
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(C) Any roadless area on Federal lands recommended by the Forest Service or Bureau of Land Management for wilderness designation in its most recent land management plan in effect as of the date of the enactment of this Act.
(D) Any area on Federal lands on which timber harvesting for any purpose is prohibited by statute.
(h) RULEMAKING.—The Secretary concerned is not required to issue formal rules under section 553 of title 5, United States Code, to implement this section or carry out the authorities provided by this section.
(i) EFFECT ON OTHER LAWS.—The documents and procedures required by this section for the preparation, advertisement, offering, awarding, and operation of any salvage timber sale subject to subsection (b) and any timber sale under subsection (d) shall be deemed to satisfy the requirements of all applicable Federal laws (and regulations implementing such laws) including but not limited to the following:
(1) The Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.).
(2) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).
(3) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
(4) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
(5) The National Forest Management Act of 1976 (16 U.S.C. 472a et seq.).
(6) The Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.).
(7) Other Federal environmental and natural resource laws.
(j) EXPIRATION DATE.—The authority provided by subsections (b) and (d) shall expire on September 30, 1997. The terms and conditions of this section shall continue in effect with respect to salvage timber sale contracts offered under subsection (b) and timber sale contracts offered under subsection (d) until the completion of performance of the contracts.
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(1) AWARD AND RELEASE REQUIRED.—Notwithstanding any other provision of law, within 30 days after the date of the enactment of this Act, the Secretary concerned shall act to award, release, and permit to be completed in fiscal years 1995 and 1996, with no change in originally advertised terms, volumes, and bid prices, all timber sale contracts offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318 of Public Law 101-121 (103 Stat. 745). The return of the bid bond of the high bidder shall not alter the responsibility of the Secretary concerned to comply with this paragraph.
(2) THREATENED OR ENDANGERED BIRD SPECIES.—No sale unit shall be released or completed under this subsection if any threatened or endangered bird species is known to be nesting within the acreage that is the subject of the sale unit.
(3) ALTERNATIVE OFFER IN CASE OF DELAY.—If for any reason a sale cannot be released and completed under the terms of this subsection within 45 days after the date of the enactment

of a district court in an action brought pursuant to this subsection shall be filed not later than 30 days after the date of decision.

of this Act, the Secretary concerned shall provide the purchaser an equal volume of timber, of like kind and value, which shall be subject to the terms of the original contract and shall not count against current allowable sale quantities.

(1) **EFFECT ON PLANS, POLICIES, AND ACTIVITIES.**—Compliance with this section shall not require or permit any revisions, amendment, consultation, supplementation, or other administrative action in or for any land management plan, standard, guideline, policy, regional guide, or multi-forest plan because of implementation or impacts, site-specific or cumulative, of activities authorized or required by this section. No project decision shall be required to be halted or changed by such documents or guidance, implementation, or impacts.

SEC. 2002. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

DOWNWARD ADJUSTMENTS IN DISCRETIONARY SPENDING LIMITS

SEC. 2003. Upon the enactment of this Act, the director of the Office of Management and Budget shall make downward adjustments in the discretionary spending limits (new budget authority and outlays) specified in section 601(a)(2) of the Congressional Budget Act of 1974 for each of the fiscal years 1995 through 1998 by the aggregate amount of estimated reductions in new budget authority and outlays for discretionary programs resulting from the provisions of this Act (other than emergency appropriations) for such fiscal year, as calculated by the Director.

PROHIBITION ON USE OF SAVINGS TO OFFSET DEFICIT INCREASES RESULTING FROM DIRECT SPENDING OR RECEIPTS LEGISLATION

SEC. 2004. Reductions in outlays, and reductions in the discretionary spending limits specified in section 601(a)(2) of the Congressional Budget Act of 1974, resulting from the enactment of this Act shall not be taken into account for purposes of section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 2005. July 27 of each year until the year 2003 is designated as "National Korean War Veterans Armistice Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities, and to urge the departments and agencies of the United States and interested organizations, groups, and individuals to fly the American flag at halfstaff on July 27 of each year until the year 2003 in honor of the Americans who died as a result of their service in Korea.

DENIAL OF USE OF FUNDS FOR INDIVIDUALS NOT LAWFULLY WITHIN THE UNITED STATES

SEC. 2006. (a) **IN GENERAL.**—None of the funds made available in this Act may be used to provide any direct benefit or assistance to any individual in the United States when it is made known to the Federal entity or official to which the funds are made available that—

(1) the individual is not lawfully within the United States; and

(2) the benefit or assistance to be provided is other than search and rescue; emergency medical care; emergency mass care; emergency shelter; clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services; warning of further risks or hazards; dissemination of public information and assistance regarding health and safety measures; provision of food, water, medicine, and other essential needs, including movement of supplies or persons; or reduction of immediate threats to life, property, and public health and safety.

(b) **ACTIONS TO DETERMINE LAWFUL STATUS.**—Each Federal entity or official receiving funds under this Act shall take reasonable actions to determine whether any individual who is seek-

ing any benefit or assistance subject to the limitation established in subsection (a) is lawfully within the United States.

(c) **NONDISCRIMINATION.**—In the case of any filing, inquiry, or adjudication of an application for any benefit or assistance subject to the limitation established in subsection (a), no Federal entity or official (or their agent) may discriminate against any individual on the basis of race, color, religion, sex, age, or disability.

**TITLE III
EMERGENCY SUPPLEMENTAL APPROPRIATIONS
ANTI-TERRORISM INITIATIVES
OKLAHOMA CITY RECOVERY
CHAPTER I**

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES

**DEPARTMENT OF JUSTICE
GENERAL ADMINISTRATION
COUNTERTERRORISM FUND**

There is hereby established the Counterterrorism Fund which shall remain available without fiscal year limitation. For necessary expenses, as determined by the Attorney General, \$34,220,000, to remain available until expended, is appropriated to the Counterterrorism Fund to reimburse any Department of Justice organization for the costs incurred in reestablishing the operational capability of an office or facility which has been damaged or destroyed as the result of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City or any domestic or international terrorism event: Provided, That funds from this appropriation also may be used to reimburse the appropriation account of any Department of Justice agency engaged in, or providing support to, countering, investigating or prosecuting domestic or international terrorism, including payment of rewards in connection with these activities and to conduct a terrorism threat assessment of Federal agencies and their facilities: Provided further, That any amount obligated from appropriations under this heading may be used under the authorities available to the organization reimbursed from this appropriation: Provided further, That amounts in excess of the \$10,555,000 made available for extraordinary expenses incurred in the Oklahoma City bombing for fiscal year 1995, shall be available only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with Section 605 of Public Law 103-317: Provided further, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That the amount not previously designated by the President as an emergency requirement shall be available only to the extent an official budget request, for a specific dollar amount that includes designation of the entire amount of the request as an emergency requirement, as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted to Congress.

LEGAL ACTIVITIES

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For an additional amount of expenses resulting from the bombing of the Alfred P. Murrah Federal Building in Oklahoma City and other anti-terrorism efforts, \$2,000,000, to remain available until expended: Provided, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That the amount not previously designated by the President as an emergency requirement shall be available only to the extent an official budget request, for a

specific dollar amount that includes designation of the entire amount of the request as an emergency requirement, as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted to Congress.

**FEDERAL BUREAU OF INVESTIGATION
SALARIES AND EXPENSES**

For an additional amount for expenses resulting from the bombing of the Alfred P. Murrah Federal Building in Oklahoma City and other anti-terrorism efforts, including the establishment of a Domestic Counter-terrorism Center, \$77,140,000, to remain available until expended: Provided, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That the amount not previously designated by the President as an emergency requirement shall be available only to the extent an official budget request, for a specific dollar amount that includes designation of the entire amount of the request as an emergency requirement, as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted to Congress.

GENERAL PROVISIONS

SEC. 3001. Any funds made available to the Attorney General heretofore or hereafter in any Act shall not be subject to the spending limitations contained in 18 U.S.C., sections 3059 and 3072: Provided, That any reward of \$100,000 or more, up to a maximum of \$2,000,000, may not be made without the personal approval of the President or the Attorney General, and such approval may not be delegated.

SEC. 3002. Funds made available under this Act for this Title for the Department of Justice are subject to the standard notification procedures contained in Section 605 of Public Law 103-317.

THE JUDICIARY

**COURT OF APPEALS, DISTRICT COURTS,
AND OTHER JUDICIAL SERVICES
COURT SECURITY**

For an additional amount for "Court Security" to enhance security of judges and support personnel, \$16,640,000, to remain available until expended, to be expended directly or transferred to the United States Marshals Service: Provided, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That the amount not previously designated by the President as an emergency requirement shall be available only to the extent an official budget request, for a specific dollar amount that includes designation of the entire amount of the request as an emergency requirement, as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted to Congress.

CHAPTER II

**TREASURY, POSTAL SERVICE, AND
GENERAL GOVERNMENT
DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
SALARIES AND EXPENSES**

For an additional amount for emergency expenses of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, and anti-terrorism efforts, including the President's anti-terrorism initiative, \$34,223,000, to remain available until expended: Provided, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

**FEDERAL LAW ENFORCEMENT TRAINING CENTER
SALARIES AND EXPENSES**

For an additional amount for the Federal response to the bombing of the Alfred P. Murrah:

production effort at Yellow Creek. The bill language included by the conferees on the transfer of the NASA Yellow Creek facility reflects the most recent commitment made by the NASA Administrator to the Governor of the State of Mississippi. The major investment by the State of Mississippi in facilities and infrastructure to support Yellow Creek, in excess of \$100,000,000, is a key factor in NASA's agreement to turn the site over to the State of Mississippi. The main elements of the agreement reached between NASA and the State of Mississippi, which the conferees expect to be adhered to by the two parties, are as follows:

The Yellow Creek facility will be turned over to the appropriate agency of the State of Mississippi within 30 days of enactment of this Act. All of the NASA property on Yellow Creek which the State of Mississippi requires to facilitate the transfer of the site transfers with the site to the State, subject to the following exceptions anticipated by the conferees:

(1) Any property assigned to a NASA facility other than Yellow Creek prior to May 2, 1995, but located at Yellow Creek, will be returned to its assigned facility;

(2) Only those contracts for the sale of NASA property at Yellow Creek signed by both parties prior to May 2, 1995 shall be executed;

(3) Those items deemed to be in the "national security interest" of the federal government shall be retained by NASA. The national security clause shall be narrowly construed and shall apply only in a limited manner, consistent with established criteria relating to national security interests. This clause shall not be used to circumvent the intent of this Act, which is to transfer the site and all of its property, except as otherwise noted, to the State of Mississippi; and

(4) Other items of interest to NASA may be retained by NASA with the consent of the State of Mississippi.

It is the expectation of the conferees that all other NASA personal property will transfer to the State of Mississippi. The conferees further expect facilities on the site not subject to the above provisions, such as the environmental lab, to be left as is.

Any environmental remediation of Yellow Creek necessary as a result of the activities of governmental agencies, such as NASA, or quasi-governmental agencies, such as the Tennessee Valley Authority, will be the responsibility of the federal agency or quasi-federal agency, including any successors and interests.

Within thirty days of enactment of this Act, \$10,000,000 will be transferred from NASA to the appropriate agency of the State of Mississippi.

The site's environmental permits will become the property of the State of Mississippi. NASA will provide all necessary assistance in transferring these permits to the State of Mississippi.

NATIONAL SCIENCE FOUNDATION

ACADEMIC RESEARCH INFRASTRUCTURE

Rescinds \$131,867,000, as proposed by both the House and the Senate.

CORPORATIONS

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC AFFORDABLE HOUSING PROGRAM

Rescinds \$11,281,034 from the FDIC Affordable Housing program as proposed by the House and Senate.

TITLE II—GENERAL PROVISIONS

EMERGENCY TIMBER SALVAGE

The managers have included bill language (section 2001) that directs the appropriate Secretary to prepare, advertise, offer, and award salvage timber sale contracts utilizing

emergency processes and procedures provided in the bill.

The managers, in order to establish their expectation of performance have included salvage timber sale volume requirements in this statement. The managers have not included volume requirements directly in bill language but expect the Secretary concerned to reduce backlogged salvage volume and award additional salvage sale contracts to the maximum extent feasible. However, the managers underscore their intent that the salvage volume levels are not merely aspirational; each Secretary is expected to meet the volume levels specified herein.

The managers, in cooperation with the authorizing committees of jurisdiction, have agreed to monitor the USDA and BLM progress toward meeting the salvage levels set out herein. The committees of jurisdiction will carefully assess the reports to determine whether or not the agencies have met the salvage levels put forward in the statement of the managers. Depending on performance, the need for volume targets will be reevaluated in future appropriations bills, beginning in FY 1996.

Forest Health

The managers note that the emergency forest health situation from fire, insect infestation and disease has approached epidemic levels. As a result, the backlog of dead and dying trees in National Forests and other public lands is substantial.

In part, the severe risk of permanent damage to forest land necessitates removal of dead, dying, and salvage trees before greater damage occurs—including second phase fires which burn hotter and destroy land and streams. Once removal of salvage trees occurs, reforestation is required by the emergency salvage provision. Reforestation will facilitate regrowth of healthy forests that are less prone to fire damage, insect infestation, and disease.

Much of this salvage volume must be removed within one year or less for the timber of retain maximum economic value, and to prevent future disasters from fire that can permanently damage forest land, eradicate wildlife, and ruin aquatic habitat. Therefore, the managers have included bill language to provide all necessary tools to expedite environmental processes, streamline, administrative procedures, expedite judicial review, and give maximum flexibility to the Secretary concerned in order to provide salvage timber for jobs, to improve forest health, and prevent future forest fires.

The managers expect the agencies to implement available flexibility to achieve maximum returns and that agency personnel expeditiously process the environmental documentation needed to finalize emergency timber sales.

Volume Levels

The managers have carefully reviewed the materials submitted by the Departments concerning the capability of the Forest Service and Bureau of Land Management to respond to the emergency nature of the forest health situation. For the Forest Service, the documents submitted indicate that the total merchantable salvage volume (dead and dying trees) in national forests exceeds 18.25 BBF. The Forest Service identified 12.68 BBF of volume which is economically operable during the next two years, while still complying with basic forest land stewardship protection measures.

Of particular interest in the Forest Service's assessment that 6.75 BBF of volume could be available during the next three years using the expedited procedures of this section, without violating the substantive requirements of existing environmental laws. This volume estimate was developed by

Forest Service line managers and biologists. The Forest Service reports that there is a significant margin of error (+/-25%) in these estimates, and it is reasonable to expect that the volumes may increase somewhat as on-the-ground implementation gets underway. Given the margin of error in the estimates, it appears the Forest Service could meet the salvage volumes in the House bill without sacrificing the substantive objectives of all environmental laws. The Senate bill contained no sale volumes.

The managers extended the provisions of this section through FY 1997, effectively making the program duration 2.5 years. Based on the capability statements by the Forest Service and similar representatives by the Bureau of Land Management, the managers expect that the procedures of this section will expedite the implementation of existing programmed salvage volumes and allow the Secretary of Agriculture to prepare, advertise, offer, and award contracts for an additional increment of salvage volume as follows: FY 1995—750 million board feet; FY 1996—1.5 billion board feet; FY 1997—1.5 billion board feet. These programmed levels for the Forest Service are contained in the attachment to the April 25, 1995, letter to the Chairman of the House Resources Committee. Similarly, the managers expect an emergency timber salvage program from the Secretary of the Interior as follows: FY 1995—115 million board feet; FY 1996—115 million board feet; FY 1997—115 million board feet. These numbers are within the range of achievement in an environmentally sound program. Each Secretary may exceed these salvage levels if field conditions demonstrate additional salvage opportunities.

The managers have directed periodic reporting on the agencies' progress in implementing the procedures of this section in order to reassess their expectation concerning achievement of specified salvage volumes and agency performance. The managers expect that the committees of jurisdiction will remain actively involved in the monitoring of the emergency salvage program.

Process

The managers intend that as the environmental processes are completed for individual sales, the Secretary concerned may choose among the completed combined documents to determine how sales should go forward.

The bill language provides a process for judicial review of emergency salvage sales by the Federal District Courts. The managers provided this mechanism for legitimate concerns with agency actions. Automatic stays for 45 days are required pending the final decision on review of the record by the district court within that time period. Due to the exigency of the emergency salvage situation administrative appeals are waived.

For emergency timber salvage sales, Option 9, and sales in Section 318 areas, the bill contains language which deems sufficient the documentation on which the sales are based, and significantly expedites legal actions and virtually eliminates dilatory legal challenges. Environmental documentation, analysis, testimony, and studies concerning each of these areas are exhaustive and the sufficiency language is provided so that sales can proceed.

The managers are aware of the high cost, time, and personnel commitment needed to mark salvage trees individually. The managers also recognize the requirement for federal agencies to designate timber authorized for cutting. Federal agencies are directed to determine the extent to which the use of designation by description is practical and are further directed to use the most effective method of designation to prepare salvage timber sales.

The emergency salvage provision clearly prohibits harvesting in National Wilderness Preservation System lands, roadless areas designated by Congress for wilderness study, and roadless areas recommended for wilderness designation in the most recent land management plan. Lands not specifically protected by the provision include prohibitions such as agency initiatives, timber sale screens, interim guidelines, settlement agreements, the CASPO Report, riparian areas covered by other initiatives, and any other area where the agencies restrict timber harvesting on their own accord.

The bill also allows all salvage sales proposals in development on the date of enactment of this Act to be immediately brought into conformity with this, the emergency salvage provision.

Reporting

The bill language directs the agencies to prepare a report by August 30, 1995, detailing the steps the agency is taking, and intends to take, to meet salvage timber sale volumes. The report shall also include a statement of the intention of the Secretary concerned with respect to the salvage volumes specified herein.

The managers will carefully review the Administration's implementation of the salvage program, and, if found to be inadequate, will employ such actions as deemed necessary. Such actions might include, but are not limited to, reallocation within budget categories or other prioritizations to be determined by the Congress.

Option 9

The managers have retained bill language added by the Senate that provides the Forest Service and Bureau of Land Management the authority to expedite timber sales allowed under the President's forest plan for the Pacific Northwest, commonly known as option 9. The managers are concerned that the administration has not made the necessary efforts to fulfill the commitment it made to the people of the region to achieve an annual harvest level of 1.1 billion board feet and have included bill language to assist the administration in this effort.

On December 21, 1994, the Federal District Court issued an opinion upholding option 9 as valid under all present environmental laws. The managers wish to make clear that the bill language does not independently validate option 9 and does not restrict pending or future challenges.

The managers have added bill language to eliminate the need for an additional environmental impact statement in order to speed up the issuance of a final 4(d) rule, which will provide expedited relief to thousands of nonfederal landowners in the region. The managers understand that the Secretary of the Interior is extending the comment period on the proposed Section 4(d) rule, and expect the Secretary to review carefully the extensive Special Emphasis Areas in Washington to assure regulatory relief for nonfederal lands, particularly in light of new owl population data on the Olympic Peninsula. As provided in bill language, the managers have agreed that no environmental impact statement will be required for the Section 4(d) rule notwithstanding the outcome of pending litigation over Option 9. Finally, nothing in this provision is intended to prejudice the outcome of pending litigation over Endangered Species Act Section 9 prohibitions.

Released Timber Sales

The bill releases all timber sales which were offered for sale beginning in fiscal year 1990 to the date of enactment which are located in any unit of the National Forest System or District of the Bureau of Land Management within the geographic area encom-

passed by Section 318 of the Fiscal Year 1990 Interior and Related Agencies Appropriations Act. Included are all sales offered, awarded, or unawarded, whether or not bids have subsequently been rejected by the offering agency, with no change in original terms, volumes, or bid prices. The sales will go forward regardless of whether the bid bond from the high bidder has been returned, provided it is resubmitted before the harvesting begins. The harvest of many of these sales was assumed under the President's Pacific Northwest forest plan, but their release has been held up in part by extended subsequent review by the U.S. Fish and Wildlife Service. The only limitation on release of these sales is in the case of any threatened or endangered bird species with a known nesting site in a sale unit. In this case, the Secretary must provide a substitute volume under the terms of subsection (k)(3).

FUNDS AVAILABILITY

The conference agreement retains a Senate provision (section 2002) restricting funds availability to the current fiscal year unless otherwise stated. The House bill contained no similar provision.

DOWNWARD ADJUSTMENTS IN DISCRETIONARY SPENDING LIMITS

The conferees agree to include a provision (section 2003) included in both the House and Senate bills that would reduce the discretionary spending limits by the savings resulting from this act for the fiscal years 1995 through 1998. The House bill also included an additional provision that would have made additional projected reductions by assuming that similar savings would be enacted in each of the next three fiscal years. The conferees recommend that spending limit adjustments for actions projected for the future should be made in appropriate legislative vehicles such as reconciliation bills. Also, the House bill included provisions that would appropriate the savings from the bill to a deficit reduction fund. By including the provision dealing with spending limit adjustments and the prohibition on the use of savings to offset tax cuts mentioned below, the intent of these House provisions is accommodated.

PROHIBITION ON USE OF SAVINGS TO OFFSET DEFICIT

INCREASES RESULTING FROM DIRECT SPENDING OR RECEIPTS LEGISLATION

The conference agreement includes a provision (section 2004) included in both the House and Senate versions of the bill that would preclude the savings in this bill from being used for any tax reductions or other similar direct spending or receipts legislation.

NATIONAL KOREAN WAR VETERANS ARMISTICE DAY

The conference agreement inserts language (section 2005), not contained in the House or Senate bill, which designates July 27 of each year, until the year 2003, as "National Korean War Veterans Armistice Day".

ASSISTANCE TO ILLEGAL IMMIGRANTS

The conference agreement includes an amended House provision (section 2006) that prohibits any individual who is not lawfully in the United States from receiving any direct benefit or assistance from funds in the bill except for emergency assistance. The conference agreement expands the provision to include direction that agencies should take reasonable steps in determining the lawful status of individuals seeking assistance. Also, a nondiscrimination clause has been added. The Senate bill did not include any provision on this subject.

This provision is essentially the same provision that was included in the initial emer-

gency supplemental appropriations act that provided relief from the earthquake that hit the Los Angeles area in 1994 (Public Law 103-211). The conferees understand that this provision was implemented for that bill in a manner that did not delay non-emergency assistance to appropriate recipients. The conferees agree that this should be the situation for this bill.

SENSE OF THE SENATE REGARDING TAX AVOIDANCE

The conference agreement deletes a Senate provision that expressed the sense of the Senate that Congress should act as quickly as possible to preclude persons from avoiding taxes by relinquishing their citizenship. The House bill contained no similar provision.

FEDERAL ADMINISTRATIVE AND TRAVEL EXPENSES

The conference agreement deletes two Senate provisions that would have rescinded \$342,500,000 for administrative and travel activities. The conferees agree that it is more appropriate to make rescissions in the regular accounts rather than making across the board rescissions.

IMPACT OF LEGISLATION ON CHILDREN

The conference agreement deletes a sense of the Congress provision included in the Senate version of the bill that Congress should not adopt any legislation that would increase the number of children who are hungry or homeless. The House bill contained no similar provision.

TITLE III

EMERGENCY SUPPLEMENTAL APPROPRIATIONS

ANTI-TERRORISM INITIATIVES

OKLAHOMA CITY RECOVERY

Chapter I

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES

After House and Senate consideration of this bill, the Administration requested emergency supplemental appropriations of \$71,455,000 for the Department of Justice and \$10,400,000 for the Judiciary to address urgent needs arising from the Oklahoma City bombing and for enhanced anti-terrorism efforts. The conference agreement provides an emergency supplemental appropriation of \$113,360,000 for the Department of Justice and \$16,640,000 for the Judiciary for these purposes, an increase of \$48,145,000. These funds are designated by the Congress as emergency requirements pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended and amounts above the supplemental request are available as emergency spending only to the extent that the President also designates these funds as emergency requirements.

The conference agreement provides funding through fiscal year 1996 for the full anticipated costs of expenses related to the investigation and prosecution of persons responsible for the bombing as well as the full cost of funding new personnel for enhanced counterterrorism efforts. The conference agreement also provides for a more flexible mechanism for the Attorney General to reimburse Department of Justice law enforcement agencies and State and local expenses related to the Oklahoma City bombing by appropriating funds requested for these expenses to a new Counterterrorism Fund.

While awaiting the Administration's 1996 budget amendment, the conferees have attempted to anticipate and fully fund the requirements for enhanced counterterrorism activities in both 1995 and 1996. To the extent that the supplemental does not fully anticipate the total needs, the conferees expect

EXHIBIT

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7 Portland, Oregon 97204-2089
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Attorneys for Plaintiffs

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

11 NORTHWEST FOREST RESOURCE)
12 COUNCIL, an Oregon corporation,) Civil No. 95-6244 HO
13)
14 Plaintiff,)
15 vs.) DECLARATION OF MARK C.
16) RUTZICK REGARDING THE
17) DECLARATION OF ROBERT E.
18 DAN GLICKMAN, in his capacity) RAGON
19 as Secretary of Agriculture;)
20 BRUCE BABBITT, in his capacity)
21 as Secretary of the Interior,)
22)
23 Defendants.)
24)

25 Mark C. Rutzick, with full knowledge of the penalty of
26 perjury, declares as follows:

1. I am one of the attorneys for plaintiff Northwest
Forest Resource Council in this action. I make this declaration
on personal knowledge, and if called to testify as a witness
herein would testify as set forth below.

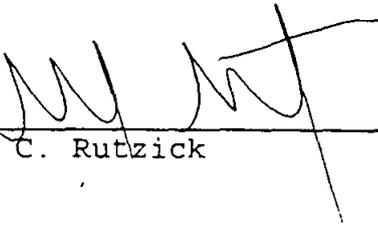
2. Attached hereto is a true and correct copy of the
Declaration of Robert E. Ragon which we received by telefax from
him this afternoon. An original will be filed with the court as

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soon as it is received.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 8, 1995.



Mark C. Rutzick

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14 vs.)
15 DAN GLICKMAN, in his capacity)
16 as Secretary of Agriculture;)
17 BRUCE BABBITT, in his capacity)
18 as Secretary of the Interior,)
19 Defendants.)
20)
21)
22)
23)
24)
25)
26)

27 Robert E. Ragon, with full knowledge of the penalty of
28 perjury, declares as follows:

29 1. I currently serve as the chairman of the Northwest
30 Forest Resource Council ("NFRC"), plaintiff in this case. NFRC
31 is a nonprofit Oregon corporation that represents forest products
32 companies and associations in Oregon and Washington. NFRC
33 represents several hundred timber and logging companies in both
34 states, either directly or through trade associations that are
35 members of NFRC. I make this declaration on personal knowledge,

1 and if called to testify as a witness herein would testify as set
2 forth below.

3 2. Companies represented by NFRC purchase the great
4 majority of all the federal timber offered for sale in Oregon and
5 Washington by the U.S.D.A. Forest Service and the Bureau of Land
6 Management ("BLM"). Among the companies represented by NFRC that
7 are statutorily entitled to the award and release of one of more
8 timber sales under § 2001(k) of Pub. L. 104-19 are Rosboro Lumber
9 Co., Douglas County Forest Products Co., D.R. Johnson Lumber Co.,
10 Croman Corp., Rough & Ready Lumber Co., Boise Cascade Co., Thomas
11 Creek Lumber Co., Scott Timber Co., Lone Rock Timber Co. and CLR
12 Timber Holdings, Inc.

13 3. NFRC has been active in representing the forest
14 products industry in connection with Congress' deliberations and
15 enactment of the emergency salvage timber program in § 2001 of
16 the 1995 Rescissions Act. We have had regular contact with both
17 the Forest Service and the BLM to attempt to ascertain how many
18 timber sales may be released under § 2001(k).

19 4. On April 4, 1995, after the House of Representatives
20 had passed the salvage bill, I and other NFRC representatives met
21 with BLM Oregon state office staff including Elaine Zielinski,
22 the Oregon State Director, to discuss the BLM's implementation of
23 the bill. At the meeting I discussed the fact that fiscal year
24 1991-95 timber sales would be released by the law, including a
25 large batch of fiscal year 1991 sales that had been offered by
26 the BLM but never awarded due to various legal and administrative

1 obstacles.

2 5. In March 1995 the BLM had prepared a list of the
3 specific timber sales that could be subject to the salvage bill.
4 At our meeting on April 4, the BLM staff agreed to provide us
5 with a list of the specific sales that would be released, and
6 they faxed a copy of the list to us on April 5, 1995. Exhibit 1
7 (Tables 1, 2 and 3) (showing fax date of 04/05/95). Tables 2 and
8 3 list 27 unawarded FY 1991-95 timber sales offered in fiscal
9 year 1991, totalling approximately 125 million board feet of
10 timber. Table 1 lists 13 Section 318 sales with 70 million board
11 feet of timber that would be released under the statute.

12 6. NFRC has also developed similar data for the Forest
13 Service. We currently estimate is that there are 15 Forest
14 Service contracts on national forests in Oregon and Washington
15 from fiscal years other than 1990 (i.e., FY 1991--95 sales) that
16 are uncompleted. Three of these sales have been awarded and 12
17 have not. The volume of timber in these 15 sales is approxi-
18 mately 47 million board feet. This list is preliminary, and
19 there may well be additional Forest Service FY 1991-95 sales to
20 be released that we have not yet learned of.

21 7. On August 2, 1995 NFRC had another meeting with the BLM
22 Oregon state office staff, including Ms. Zielinski, to discuss
23 the BLM's implementation of § 2001(k) following its enactment
24 into law on July 27. We had a similar meeting with Forest
25 Service staff on July 28, 1995.

26 8. At our meeting with the BLM, we were informed that the

1 BLM was not initiating or undertaking any efforts to award and
2 release the FY 1991-95 sales, but was limiting its efforts to
3 releasing 14 FY 1990 sales that currently remain uncompleted.
4 Ms. Zielinski and the staff (I am not sure which staff member
5 made which comments) explained that since all the FY 1991-95
6 sales are unawarded, they would require some administrative
7 review and preparation before they could be awarded. For most of
8 the sales, BLM timber staff will have to go out to the site of
9 the sale to determine if the tree markings placed in 1991 remain
10 intact, or have to be remarked. For some sales that were in the
11 process of being administratively modified, the sales have
12 already had the markings changed, and will have to be reworked on
13 the ground to be offered with their original terms and volumes as
14 required by § 2001(k).

15 9. However, the BLM staff told us that this work is not
16 being done, and there is no plan to do this work by September 10,
17 1995. They explained that they are waiting for instructions from
18 Washington, D.C. as to the implementation of § 2001(k), and that
19 they have no latitude to do anything until they receive their
20 instructions from their superiors in Washington, D.C.

21 10. At our meeting with the Forest Service, we were told
22 the same thing: they are waiting for instructions from Washing-
23 ton, D.C. and can do nothing until they receive the instructions.
24 The Forest Service staff gave us no indication that they are
25 undertaking any efforts to be able to award and release their 15
26 FY 1991-95 timber sales by September 10.

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1 11. Neither the BLM nor Forest Service staff suggested that
 2 they wish to frustrate the intent of Congress, and I do not
 3 believe the agency field staff are responsible for the current
 4 predicament. Both agencies explained that high level Adminis-
 5 tration officials in Washington, D.C. had taken over the inter-
 6 pretation of § 2001(k), and that the field staff for the agencies
 7 could do nothing to implement the law in any way until they
 8 receive their instructions from Washington, D.C.

9 12. While no instructions have yet been issued from the
 10 Departments of Agriculture and Interior in Washington, D.C. on
 11 the interpretation of § 2001(k), forest industry trade associa-
 12 tion executives have been told by high level representatives of
 13 the Clinton Administration that the Administration is "surprised"
 14 that FY 1991-95 sales are released in the law, did not know this
 15 was true, and do not want to release these sales. For this
 16 reason, NFRC is anticipating an interpretation of § 2001(k) that
 17 excludes the FY 1991-95 sales from release.

18 I declare under penalty of perjury that the foregoing is
 19 true and correct.

20 Executed on August 8, 1995.

21
 22 
 23 Robert E. Ragon

March 22, 1995

TABLE 1

BLM SECTION 318 SOLD, UNACCEPTED TIMBER SALES

EXHIBIT

PAGE

04/05/95 15:56 DIV. OF LANDS AND REN. RESOURCES 002

	SALE NAME	PURCHASER	DISTRICT	VOLUMES (MBF)	
				ORIGINAL	REVISED
1	88 BLACK JACK	WEYERHAEUSER CO.	EUGENE	6,863	
2	90 PITCHER PERFECT	SWANCO TIMBER	EUGENE	2,438	2,414
3	90 ROMAN DUNN	HULL-OAKES	EUGENE	10,646	
4	SWINGLOG THIN.	SWANCO TIMBER	EUGENE	1,542	1,141
5	CANTON CR. II	DOUGLAS CO. FP	ROSEBURG	3,440	2,888
6	SUMMIT CREEK	SCOTT TIMBER CO.	ROSEBURG	7,910	
7	TEXAS GULCH	DR JOHNSON LUMBER	ROSEBURG	6,212	1,686
8	UPPER RENHAVEN	BOHEMIA	ROSEBURG	1,796	
9	YELLOW CR. MTN.	SCOTT TIMBER CO.	ROSEBURG	7,080	
10	BIG WINDS	SPALDING & SON	MEDFORD	6,864	
11	HOXIE GRIFFIN	CROMAN CORP.	MEDFORD	2,809	1,917
12	BEAR AIR	MURPHY TIMBER CO.	COOS BAY	11,564	
13	CHINA CREEK	SCOTT TIMBER CO.	COOS BAY	1,216	

~ 70 mmbf

16.441 5 sales
10.046
6.395

March 22, 1995

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DIV. OF LANDS AND REN. RESOURCES

15:56

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TABLE 2

BLM FISCAL YEAR 1991 SOLD, UNAWARDED, PREVIOUSLY ENJOINED, "VIABLE" TIMBER SALES

EXHIBIT

2

PAGE

SALE NAME	PURCHASER	DISTRICT	VOLUMES (MBF)	
			ORIGINAL	REVISED
✓ PARK RIDGE BASIN	HULL-OAKES LUMBER	SALEM	2,710	
✓ MARTEN POWER	ROSBORO LUMBER	EUGENE	9,668	
✓ ANOTHER FAIRVIEW	DOUGLAS CO. FP	ROSEBURG	4,589	
✓ BATTLE AXE	RESERVATION RANCH	ROSEBURG	1,205	
✓ DEAD MIDDLEMAN	DR JOHNSON	ROSEBURG	7,154	
✓ BIRDSEYE ROGUE	CROMAN CORP.	MEDFORD	3,876	
✓ GOLDEN SUCKER	ROUGH & READY	MEDFORD	4,367	
✓ LICK II	WESTERN TIMBER CO.	MEDFORD	811	
✓ LOWER DUDLEY'S SUMMIT	BOISE CASCADE	MEDFORD	2,340	
✓ PP&J	BOISE CASCADE	MEDFORD	6,387	
✓ CORNER SOCK	ROGGE FOREST PROD.	COOS BAY	1,721	
✓ DAFFI DORA	ROGGE FOREST PROD.	COOS BAY	4,654	
✓ DEEP CREEK	ROGGE FOREST PROD.	COOS BAY	3,120	
✓ LOBSTER HILL	SCOTT TIMBER	COOS BAY	8,471	
✓ LOST SOCK	ROGGE FOREST PROD.	COOS BAY	3,596	
✓ UOLY ECKLEY	ROGGE FOREST PROD.	COOS BAY	5,815	
✓ WREN 'N DOUBT	SCOTT TIMBER CO.	COOS BAY	8,803	

79,287
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March 22, 1995

TABLE 3

BLM FISCAL YEAR 1991 SOLD, UNAWARDED, PREVIOUSLY ENJOINED, "NON-VIABLE" TIMBER SALES
BID BONDS RETURNED

	SALE NAME	PURCHASER	DISTRICT	VOLUMES (MBF)	
				ORIGINAL	REVISED
1991	CHERRY TREE PLUM SALVAGE	HULL-OAKES LUMBER	SALEM	1,038	
1991	ROCKY ROAD	THOMAS CREEK LUMBER	SALEM	1,574	
1991	TOBE WEST	HULL-OAKES LUMBER	SALEM	4,807	
1991	JEFFERS REVENGE	LONE ROCK TIMBER CO.	ROSEBURG	3,914	
1991	POND VIEW	JOHNSON D R LUMBER	ROSEBURG	4,777	
1991	91 MILLERS VIEW	JOHNSON D R LUMBER	ROSEBURG	3,863	
1991	CRAZY B'S	CLR TIMBER HOLDINGS INC	COOS BAY	3,957	
1991	NORTH FORK CHETCO	CLR TIMBER HOLDINGS INC	COOS BAY	7,372	
1991	CAMP	TIMBER PRODUCTS CO	LAKEVIEW	7,127	
1991	SHADY	TIMBER PRODUCTS CO	LAKEVIEW	7,635	

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Attorneys for Plaintiff

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

11 NORTHWEST FOREST RESOURCE)
12 COUNCIL, an Oregon corporation,) Civil No. 95-6244-HC
13)
14 Plaintiff,) ORDER TO SHOW CAUSE
15)
16 vs.)
17)
18 DAN GLICKMAN, in his capacity)
19 as Secretary of Agriculture;)
20 BRUCE BABBITT, in his capacity)
21 as Secretary of the Interior,)
22)
23 Defendants.)
24)

25 This matter, having come before the court on plaintiff
26 Northwest Forest Resource Council's motion for a temporary
restraining order pursuant to Fed. R. Civ. P. 65(a) and (b), and
the court having considered the pleadings filed on this matter
and the file and record herein, and the Court being fully advised
therein;

NOW THEREFORE, pursuant to Local Rule 220-8 and Fed. R. Civ.
P. 65(a) and (b), the court hereby orders defendants Glickman and
Babbitt to show cause why a preliminary injunction should not be

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granted, compelling and directing defendants and their officers, agents, employees, and attorneys, to do the following:

to take all administrative actions necessary prior to September 10, 1995 to be able by September 10, 1995 to award, release, and permit to be completed in fiscal years 1995 and 1996, with no change in originally advertised terms, volumes, and bid prices, all timber sales offered prior to July 27, 1995 in all of the national forests in Oregon and Washington and Bureau of Land Management districts in western Oregon, including timber sales offered in years other than fiscal year 1990.

The hearing on plaintiff's motion for preliminary injunction shall take place on _____, 1995, at _____ a.m./p.m. The temporary restraining order, and all of plaintiff's supporting pleadings and papers, shall be served upon defendants by _____, 1995, defendants' opposing pleadings and papers shall be served upon plaintiff by _____, 1995, and plaintiff's reply pleadings and papers shall be served upon defendants by _____, 1995.

Dated this _____ day of _____, 1995.

Honorable Michael R. Hogan
United States District Judge.

Presented by:
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A Professional Corporation
Mark C. Rutzick
Alison Kean Campbell
Attorneys for Plaintiff

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NORTHWEST FOREST RESOURCE)
 COUNCIL, an Oregon corporation,) Civil No. 95-6244-HO
)
 Plaintiff,)
)
 vs.) MOTION FOR ORDER CON-
) SOLIDATING PRELIMINARY
) INJUNCTION HEARING WITH
) TRIAL ON THE MERITS
 DAN GLICKMAN, in his capacity)
 as Secretary of Agriculture;) Request For Oral Argument
 BRUCE BABBITT, in his capacity)
 as Secretary of the Interior,)
)
 Defendants.)
)

Pursuant to Fed. R. Civ. P. 65(a)(2), plaintiff Northwest Forest Resource Council moves for an order advancing and consolidating trial of the action on the merits with the preliminary injunction hearing.

In support of this motion the court is respectfully referred to Plaintiff's Memorandum In Support of Motion for Temporary Restraining Order and Preliminary Injunction and the Declaration

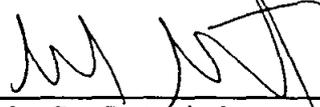
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of Robert E. Ragon filed herewith.

Dated this 8th day of August, 1995.

MARK C. RUTZICK LAW FIRM
A Professional Corporation

By: _____


Mark C. Rutzick
Alison Kean Campbell
Attorneys for Plaintiff

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Attorneys for Plaintiff

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

11 NORTHWEST FOREST RESOURCE)
12 COUNCIL, an Oregon corporation,) Civil No. 95-6244 HO
13)
14 Plaintiff,) [PROPOSED]
15) TEMPORARY RESTRAINING ORDER
16 vs.)
17)
18 DAN GLICKMAN, in his capacity)
19 as Secretary of Agriculture;)
20 BRUCE BABBITT, in his capacity)
21 as Secretary of the Interior,)
22)
23 Defendants.)
24)

25 This matter, having come before the court on plaintiff
26 Northwest Forest Resource Council's motion for a temporary
restraining order pursuant to Fed. R. Civ. P. 65(a) and (b), and
the court having held a hearing on plaintiff's motion and consid-
ered the pleadings filed on this matter, the arguments of
counsel, and the file and record herein, and the Court being
fully advised therein;

NOW THEREFORE, pursuant to Fed. R. Civ. P. 65(b), the court
hereby enters the following temporary restraining order:

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defendants Glickman and Babbitt, and their officers, agents, servants, employees, and attorneys are hereby compelled and directed to do the following:

to take all administrative actions necessary prior to September 10, 1995 to be able by September 10, 1995 to award, release, and permit to be completed in fiscal years 1995 and 1996, with no change in originally advertised terms, volumes, and bid prices, all timber sales offered prior to July 27, 1995 in all of the national forests in Oregon and Washington and Bureau of Land Management districts in western Oregon, including timber sales offered in years other than fiscal year 1990.

This temporary restraining order shall expire on _____, 1995, unless it is extended by this court for good cause shown.

Dated this _____ day of _____, 1995.

Honorable Michael R. Hogan
United States District Judge

Presented by:
MARK C. RUTZICK LAW FIRM
A Professional Corporation
Mark C. Rutzick
Alison Kean Campbell
Attorneys for Plaintiff

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Attorneys for Plaintiff

9 IN THE UNITED STATES DISTRICT COURT

10 FOR THE DISTRICT OF OREGON

11	NORTHWEST FOREST RESOURCE)	
	COUNCIL, an Oregon corporation,	)	Civil No. 95-6244-40
12)	
	Plaintiff,	)	[PROPOSED]
		)	ORDER GRANTING
13	vs.	)	PRELIMINARY INJUNCTION
)	
14	DAN GLICKMAN, in his capacity)	
	as Secretary of Agriculture;)	
15	BRUCE BABBITT, in his capacity)	
	as Secretary of the Interior,)	
16)	
	Defendants.)	
17)	

18 This matter, having come before the court on plaintiff
19 Northwest Forest Resource Council's motion for a preliminary
20 injunction pursuant to Fed. R. Civ. P. 65(a) and (b), and the
21 court having held a hearing on plaintiff's motion and considered
22 the pleadings filed on this matter, the arguments of counsel, and
23 the file and record herein, and the Court being fully advised
24 therein;

25 And this court finding that the public interest favors the
26 injunctive relief sought, that plaintiff is likely to succeed on

1 the merits, and that plaintiff will suffer irreparable injury
2 unless the requested injunction is issued;

3 NOW THEREFORE, pursuant to Fed. R. Civ. P. 65(a), IT IS
4 HEREBY ORDERED that plaintiff's motion is granted, and defendants
5 Glickman and Babbitt, and their officers, agents, servants
6 employees, and attorneys are hereby compelled and directed to do
7 the following, until a final hearing and determination of the
8 merits of this action or until further order of this Court:

9 to take all administrative actions necessary
10 prior to September 10, 1995 to be able by
11 September 10, 1995 to award, release, and
12 permit to be completed in fiscal years 1995
13 and 1996, with no change in originally adver-
14 tised terms, volumes, and bid prices, all
15 timber sales offered prior to July 27, 1995
16 in all of the national forests in Oregon and
17 Washington and Bureau of Land Management
18 districts in western Oregon, including timber
19 sales offered in years other than fiscal year
20 1990.

21 Dated this _____ day of _____, 1995.

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Honorable Michael R. Hogan
United States District Judge

3



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10 Telephone: (202) 272-6217

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

13 NORTHWEST FOREST RESOURCE COUNCIL,)
14)
Plaintiff,)
15)
v.)
16)
17 DAN GLICKMAN, in his capacity)
as Secretary of Agriculture,)
18 BRUCE BABBITT, in his capacity)
as Secretary of Interior,)
19)
Defendants.)
20)

Civil No. 95-6244-HO

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28 DEFENDANTS' OPPOSITION
TO MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

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MISCELLANEOUS

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141 Cong. Rec. 5050	17
141 Cong. Rec. H3232	15
Pub. L. 104-19 §2001 (1995)	2
Black's Law Dictionary, 1594 (4th ed. 1966)	13
2A Sutherland Statutory Construction, § 47.28, 47.30 (5th ed. 1992)	13

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

13 NORTHWEST FOREST RESOURCE COUNCIL,)
14)
Plaintiff,)
15)
v.)
16)
17 DAN GLICKMAN, in his capacity)
as Secretary of Agriculture,)
18 BRUCE BABBITT, in his capacity)
as Secretary of Interior,)
19)
Defendants.)
20)

Civil No. 95-6244-HO

DEFENDANTS' OPPOSITION
TO MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

21 INTRODUCTION

22 Just nine business days after Section 2001 of the
23 Rescissions Act of 1995 was signed into law and over a month
24 before expiration of the 45-day time frame for agency action
25 specified in the statute, plaintiff filed this action seeking a
26 writ of mandamus directing the Secretaries of Agriculture and the

27 DEFENDANTS' OPPOSITION TO
28 MOTION FOR T.R.O. AND P.I. - 1

1 Interior to comply with plaintiff's one-sided interpretation of
2 the statute. Seeking to impose its interpretation via an
3 expedited proceeding, plaintiff would have the Court direct the
4 agencies to proceed with the costly process of awarding and
5 releasing sales for millions of board feet of timber in
6 environmentally sensitive locations, before the merits of the
7 action can be briefed and decided on a fully developed record.
8 The relief plaintiff seeks - - a mandatory preliminary injunction
9 that would alter, not preserve, the status quo - - is extremely
10 rare and highly disfavored by the courts in the Ninth Circuit.
11 Neither the facts nor the law support the grant of such
12 extraordinary relief in this case.

13 BACKGROUND

14 The Rescissions Act of 1995 (the Act) was signed into law by
15 President Clinton on July 27, 1995. See Pub. L. 104-19 §2001
16 (1995). Subsection 2001(k) of the Act directs the Secretaries of
17 the Interior and Agriculture to, inter alia,:

18 act to award, release, and permit to be completed in
19 fiscal years 1995 and 1996, with no change in
20 originally advertised terms, volumes, and bid prices,
21 all timber sale contracts offered or awarded before
22 that date in any unit of the National Forest System or
23 district of the Bureau of Land Management subject to
24 section 318 of Public Law 101-121 (103 Stat. 745).

25 Since enactment of the Rescissions Act, the Bureau of Land
26 Management (BLM) and the United States Forest Service have taken
27 preliminary steps looking toward the award and release of
28 affected section 318 sales by September 10, 1995. See
Declaration of Stephen J. Paulson at ¶ 3 (attached hereto as

1 Exhibit A); Declaration of William L. Bradley at ¶ 6 (attached
2 hereto as Exhibit B). During this same two-week period since
3 enactment of the law, the agencies have been working to prepare a
4 final decision framing the agencies' interpretation of subsection
5 2001(k) as a whole. This interpretation will describe how the
6 section is to be implemented in an integrated manner that gives
7 effect to all provisions.

8 If the BLM and Forest Service were required to proceed to
9 award and release all sales previously offered or awarded before
10 July 27, 1995 in Oregon and Washington, in addition to the
11 section 318 sales, the agencies would have to expend additional
12 resources to prepare such sales for award and release. Paulson
13 Decl. at ¶ 6; Bradley Decl. at ¶ 6. The commitment of such
14 resources may, of course, ultimately prove to have been
15 unnecessary if it is later determined that such additional sales
16 were not covered by subsection 2001(k). Moreover, if the BLM and
17 Forest Service were to award contracts which later were
18 determined not to be authorized by subsection 2001(k), such
19 action could result in claims brought against the agencies for
20 substantial contractual damages.¹

21
22
23
24 ¹ A complaint, accompanied by a motion for a preliminary
25 injunction, has been filed in the Western District of Washington
26 challenging subsection 2001(k)(2). Pilchuck Audubon Society, et
al., v. Glickman, et al., Civ. No. C-95-1234-WD (W.D. Wash.,
August 10, 1995). That complaint and motion are attached as
Exhibit C.

1 serious questions are raised on the merits and the balance of
2 hardships tips sharply in its favor.² Id.

3 The Ninth Circuit imposes a higher burden, however, in cases
4 such as this where a party seeks a mandatory, rather than a
5 prohibitory, injunction. "A mandatory injunction 'goes well
6 beyond simply maintaining the status quo pendente lite [and] is
7 particularly disfavored.'" Stanley v. University of Southern
8 California, 13 F.3d 1313, 1320 (9th Cir. 1994) (citing Anderson
9 v. United States, 612 F.2d 1112, 1114 (9th Cir. 1979)).

10 Accordingly, "[w]hen a mandatory preliminary injunction is
11 requested, the district court should deny such relief 'unless the
12 facts and law clearly favor the moving party.'" Stanley, 13 F.3d
13 at 1320 (quoting Anderson).

14 Because of the significant consequences that could flow from
15 a mandatory injunction sought by plaintiff and because "such
16 relief is particularly disfavored under the law of this circuit,"
17 plaintiff's request must be subject to an even higher degree of
18 scrutiny. See Stanley, 13 F.3d at 1320; Anderson, 612 F.2d at
19 1114. As demonstrated below, plaintiff has failed to satisfy its
20
21

22 ² This test is not modified even in those cases where a
23 statutory violation is proven. See Amoco Production Co. v.
24 Village of Gambell, 480 U.S. 531 (1987) ("Village of Gambell")
25 (where an agency fails to comply with a statutory procedure,
26 courts cannot presume irreparable harm from that violation); see,
27 also, Save the Yaak Committee v. Block, 840 F.2d 714, 722 (9th
28 Cir. 1988); Town of Huntington v. Marsh, 884 F.2d 648, 651 (2nd
Cir. 1989) ("injunctive relief does not follow automatically upon
a finding of statutory violations, including environmental
violations").

1 burden of proof warranting the granting of such extraordinary
2 relief.

3 A. Plaintiff Has Failed To Establish That It Will Suffer
4 Irreparable Harm.

5 Under any formulation of the test for preliminary injunctive
6 relief, the party seeking this extreme remedy must demonstrate a
7 significant threat of irreparable harm. Arcamuzi v. Continental
8 Airlines, Inc., 819 F.2d 935, 937 (9th Cir. 1987). Indeed, the
9 "[Supreme] Court has repeatedly held that the basis for
10 injunctive relief in the federal courts has always been
11 irreparable injury and the inadequacy of legal remedies."
12 Weinberger, 456 U.S. at 312 (citations omitted); Village of
13 Gambell, 480 U.S. at 542.

14 In the instant case, Plaintiff claims that it will be
15 irreparably harmed in the absence of a preliminary injunction
16 because (1) the agencies will allegedly exceed the time period
17 for awarding timber sales, set forth in subsection 2001(k), and
18 (2) plaintiff's members will not receive the economic benefits of
19 those sales as a result of this alleged infraction by the
20 agencies. Neither of these purported injuries rises to the level
21 of irreparable harm. As a consequence, plaintiff's request for
22 such relief lacks a foundational component and, therefore, must
23 fail.

- 24 1. NFRC's claim of procedural injury is insufficient to
25 satisfy the requirement of irreparable harm.

26 Without providing a scintilla of evidence, plaintiff asserts
27 that it will be irreparably harmed unless all timber sales are

1 awarded within 45 days. Pl. Mem. at 19-20. Although the
2 agencies are making every effort to award the section 318 sales
3 within the 45 day period, even if this effort fails, there is no
4 evidence to support the contention that a delay would cause the
5 plaintiff "irreparable harm." In fact, this contention strains
6 credulity given the years-long delay that has already occurred.

7 Rather than providing evidence of true irreparable harm, the
8 plaintiff has instead alleged merely the fear of a technical
9 procedural violation of the statute -- the possible failure to
10 award certain sales within 45 days. This type of procedural
11 injury standing alone is wholly insufficient to warrant the
12 issuance of extraordinary relief. See Village of Gambell, 480
13 U.S. at 544 (violation of statutory procedure is not per se
14 irreparable injury; focus is on underlying substantive policy
15 that process is intended to effectuate); Weinberger, 465 U.S. at
16 313-314 ("[t]he grant of jurisdiction to ensure compliance with a
17 statute hardly suggests an absolute duty to do so under any and
18 all circumstances, and a federal judge sitting as chancellor is
19 not mechanically obligated to grant an injunction for every
20 violation of law.") (distinguishing TVA v. Hill, 437 U.S. 153
21 (1978)).

22 In this case, Plaintiff elevates form over substance by
23 asserting that any expansion of a statutory time frame
24 constitutes a violation of the purposes of the statute and,
25 therefore, inflicts irreparable harm. Even if Plaintiff were
26 correct in its assertion that the agencies will not completely

1 fulfill their statutory responsibilities prior to the expiration
2 of the statutory time period, it would still not be entitled to
3 the extreme remedy of preliminary injunctive relief given the
4 lack of irreparable harm.

5 2. NFRC's allegations of economic harm are inadequate as a
6 basis for the equitable remedy sought.

7 Even if plaintiff could demonstrate that it would suffer
8 some sort of harm prior to an adjudication of this case on the
9 merits, any such harm would be economic in nature, being solely a
10 potential loss of revenue to its members if the agencies fail to
11 award all sales within 45 days under subsection 2001(k).

12 Economic harm, by its very nature, is not ordinarily irreparable.

13 See Los Angeles Memorial Coliseum Comm'n. v. N.F.L., 634 F.2d
14 1197, 1202 (9th Cir. 1980) (it is well established that monetary
15 injury is not normally irreparable).

16 Indeed, the Ninth Circuit has opined that "the claim of mere
17 financial hardship does not establish irreparable harm." Hughes
18 v. United States, 953 F.2d 531, 536 (9th Cir. 1992) (citing Elias
19 v. Connett, 908 F.2d 521, 526 (9th Cir. 1990)). Specifically,
20 the Supreme Court has stated that

21 "Mere injuries, however substantial, in terms of money,
22 time and energy necessarily expended in the absence of
23 a[n injunction], are not enough. The possibility that
24 adequate compensatory or other corrective relief will
25 be available at a later date, in the ordinary course of
26 litigation, weighs heavily against a claim of
27 irreparable harm."

1 Sampson v. Murray, 415 U.S. 61, 90 (1974) (quoting Virginia
2 Petroleum Jobbers Assn. v. Federal Power Commn., 259 F.2d 921,
3 925 (D.C. Cir. 1958)).

4 In this case, the plaintiff has corrective relief available
5 if the sales are not awarded -- replacement timber is provided
6 pursuant to paragraph 2001(k)(3) of the statute. See discussion,
7 infra, at subsection B.1. The plaintiff has made no showing that
8 this remedy, provided in the statute itself, is somehow
9 inadequate. Accordingly, plaintiff has failed to establish that
10 it will be irreparably harmed in the absence of the extraordinary
11 relief which it now seeks.

12 B. Plaintiff Has Failed To Establish
13 A Likelihood Of Success On The Merits.

14 A writ of mandamus is an extraordinary remedy and should
15 issue only if the "petitioner meets 'the burden of showing that
16 its right to issuance of the writ is clear and indisputable.'" Bankers Life & Casualty Co. v. Holland, 346 U.S. 379, 384 (1953).
17 The extraordinary relief of a writ of mandamus is "proper only
18 when 1) the plaintiff has a plain right to have an act performed;
19 2) the defendant has a plain duty to perform it; and 3) there is
20 no other adequate remedy available to the plaintiff." Gifford
21 Pinchot Alliance v. Butruille, 742 F.Supp. 1077, 1082-1083 (D.
22 Or. 1990). Plaintiff cannot satisfy this test.
23
24
25
26

1 1. The statute provides an
2 adequate alternative remedy.

3 In arguing for mandamus relief, plaintiff fails to address
4 this critical requirement that there must be "no other adequate
5 remedy available." Subsection 2001(k) expressly states that:

6 If for any reason a sale cannot be released and
7 completed under the terms of this subsection within 45
8 days after the date of the enactment of this act, the
9 Secretary concerned shall provide the purchaser an
10 equal volume of timber, of like kind and value, which
11 shall be subject to the terms of the original contract
12

13 Pub. L. 104-19 § 2001(k)(3) (1995). Thus, if "for any reason" a
14 sale otherwise covered by the section cannot be released within
15 the 45-day period, the statute explicitly authorizes the
16 alternative remedy of directing the provision of replacement
17 timber. The Ninth Circuit has held that mandamus is not
18 appropriate when, in cases just like this, a statute provides an
19 alternative remedy. Pescosolido v. Block, 765 F.2d 827, 829-830
20 (9th Cir. 1985).

21 2. Plaintiff has failed to establish
22 a clear right to the relief requested.

23 a. The plain language of subsection 2001(k) does
24 not support plaintiff's interpretation.

25 Claiming that subsection 2001(k) is unambiguous, plaintiff
26 argues that paragraph 2001(k)(1) entitles its members to the
27 award of timber sales beyond those that were offered subject to
28 the authority of Section 318 of the Fiscal Year 1990 Interior and
Related Agencies Appropriations Act. However, analysis of the
statute as a whole reveals that Congress simply intended to

1 require these agencies to address the continuing delay in the
2 completion of section 318 timber sales, either through award
3 under their original terms or provision of replacement timber.
4 Plaintiff's expansive reading of subsection 2001(k) would require
5 this Court to disregard a straightforward construction of this
6 limited remedy and violate established rules of statutory
7 interpretation. Plaintiff's interpretation could lead to an
8 unintended give-away of timber under long-completed contracts,
9 may require replanning of a Forest Plan, the implementation of
10 which Congress specifically encouraged in this very legislation.
11 Thus, this interpretation should be rejected as inconsistent with
12 the statute on its face.

13 In enacting subsection 2001(k), Congress required the Forest
14 Service and BLM to reach a reasonable accommodation between
15 conflicting policies of species protection and settlement of
16 certain contract claims. Paragraph 2001(k)(1) requires the
17 Secretaries of Agriculture and the Interior to, within 45 days of
18 enactment:

19 act to award, release, and permit to be
20 completed in fiscal years 1995 and 1996, with
21 no change in originally advertised terms,
22 volumes, and bid prices, all timber sale
23 contracts offered or awarded before that date
in any unit of the National Forest System or
district of the Bureau of Land Management
subject to section 318 of Public Law 101-121
. . . .

24 Pub. L. 104-19 § 2001(k)(1) (1995).

25 Paragraphs 2001(k)(2) and (3), which Plaintiff disregards as
26 "not currently at issue," prohibit the release or completion of

1 sales where an endangered or threatened bird is known to be
2 nesting in the sale unit, paragraph 2001(k)(2), and require the
3 Secretaries to offer alternative timber if "for any reason" a
4 sale cannot be released within 45 days of enactment, paragraph
5 2001(k)(3). Thus, Congress has clearly required the agencies to
6 act to address the remaining section 318 timber sales, using
7 subsection 2001(k)'s provisions for release of existing sales and
8 for provision of alternative timber.

9 It is also clear that Congress required the agencies to
10 release "all timber sale contracts offered or awarded before" the
11 date of enactment to address all section 318 timber contracts.
12 Section 318 included timber sale volume requirements for all
13 National Forests in Oregon and Washington and the BLM districts
14 of western Oregon, provided ecological criteria for the
15 development of timber sales, and provided that timber sales
16 offered to meet section 318's volume requirements would be
17 subject to the terms and conditions of section 318 "for the
18 duration of those sale contracts." Section 318(k), Fiscal Year
19 1990 Interior and Related Agencies Appropriations Act, Pub. L.
20 101-121, 103 Stat. 745. All other provisions of section 318
21 expired on September 30, 1990. Robertson v. Seattle Audubon
22 Society, 503 U.S. 429, 433 (1992). However, some of the section
23 318 sales were awarded after the expiration of fiscal year 1990
24 on September 30, 1990, some remain unawarded, and some of the
25 remaining sales have undergone review and revision since that
26 date. Paulson Decl. at ¶ 5. Thus, paragraph 2001(k)(1) is

1 logically read as releasing all pending section 318 sales,
2 whether or not agency action with regard to those sales occurred
3 before September 30, 1990.

4 Plaintiff argues that the reference to section 318 in
5 paragraph 2001(k)(1) unambiguously requires the release of timber
6 sales offered or awarded under other authority, though those
7 Forests and BLM districts were clearly not "subject to section
8 318" for purposes of the offer or award of later sales.

9 Plaintiff arrives at this conclusion by construing "subject to"
10 not according to its common and legal meaning, but merely as part
11 of a geographic description. The definition of the statute's use
12 of "subject" makes clear that it describes a contingent
13 relationship that does not exist otherwise.³ Simply put, the
14 National Forests and BLM Districts were not subject to section
15 318 after September 30, 1990, except insofar as they continued to
16 administer the pending section 318 timber sales that subsection
17 2001(k) is designed to address. Plaintiff's construction
18 violates the general rule of statutory construction that, absent
19 legislative intent to the contrary, words are to be given their
20 common and legal meanings. 2A Sutherland Statutory Construction,
21 § 47.28, 47.30 (5th ed. 1992).

22
23 ³ "Subject," in this sense, is defined as "likely to be
24 conditioned, affected, or modified in some indicated way: having
25 a contingent relation to something and usu[ally] dependent on
26 such relation for final form, validity, or significance . . ."
27 Webster's Third New International Dictionary, 2275. Black's
28 defines "subject to" as "liable, subordinate, subservient,
inferior, obedient to; governed or affected by; . . ." Black's
Law Dictionary, 1594 (4th ed. 1966).

1 Plaintiff argues that this result is required by the
2 interpretive rule that a qualifying phrase generally modifies
3 only what immediately precedes it. However, that rule applies
4 the qualifying phrase to "is not inflexible or uniformly
5 binding." 2A Sutherland Statutory Construction, § 47.33 ("Where
6 the sense of the entire act requires that a qualifying word or
7 phrase apply to several preceding or even succeeding sections,
8 the word or phrase will not be restricted to its immediate
9 antecedent."). Limiting the phrase "subject to section 318" to
10 the antecedent description of National Forests and BLM Districts,
11 and adopting Plaintiff's definition of "subject" as solely a
12 geographic description, would lead to the absurd result of
13 applying subsection 2001(k) to every timber sale offered prior to
14 the date of enactment, including timber sales offered prior to
15 section 318, in those Forests and BLM Districts described in
16 section 318. Such an absurd result is not permitted by the terms
17 of the rule. Pacificorp v. Bonneville Power Administration, 856
18 F.2d 94, 97 (9th Cir. 1988).

19 b. The legislative history of subsection 2001(k) does
20 not confirm plaintiff's expansive interpretation.

21 Analysis of the legislative history confirms that Congress
22 enacted subsection 2001(k) to require the Forest Service and BLM
23 to address the continuing delay in the completion of section 318
24 timber sales, either through award under their original terms or
25 provision of replacement timber. Section 2001 of Public Law 104-
26 19 was originally introduced as Section 307 of H.R. 1159, a

1 bipartisan effort known as the Taylor-Dicks Amendment, and what
2 became subsection 2001(k) originally contained only the language
3 of paragraph 2001(k)(1) with 30 days provided for compliance.
4 H.R. 1159, § 307(i). The description of subsection 307(i) in the
5 Report of the House Appropriations Committee makes clear that
6 subsection 307(i) was intended "to release a group of sales that
7 have been already sold under the provisions of section 318 . . .
8 The harvest of these sales was assumed under the President's
9 Pacific Northwest Forest Plan" 104 H. Rept. 71. The
10 provision's cosponsor, Representative Taylor, described the
11 potential contract liability that this provision was designed to
12 address, and that he believed the sales were previously approved
13 for harvest.⁴

14 In the Senate, the language of section 2001 was modified to
15 provide the current provisions for protection of nesting birds
16

17 ⁴ "Many of these sales were awarded to purchasers years
18 ago; the government will have to pay tens of millions of dollars
19 in contract buyouts if these sales were cancelled. Other sales
20 were auctioned years ago but never awarded; in some cases the
21 agencies rejected bids well after the auction due to
22 administrative reviews and delays and changing standards. This
23 is the case even though the preponderance of these sales were
24 approved for harvest in the Record of Decision accompanying the
25 President's Pacific Northwest Forest Plan, as not jeopardizing
26 the continued existence of any of the numerous species of
27 wildlife considered by that plan." 141 Cong. Rec. H 3233.

28 Representative Taylor also made clear that the authors of
section 307 worked with the Forest Service in drafting this
section "to assure that these requirements are technically
correct, and evaluating the Forest Service's technical and
operational capability to meet the requirements of section 307,"
141 Cong. Rec. H3232, and "to make sure that the amendment is
drafted in a technically and legally sound fashion." 141 Cong.
Rec. H 3233.

1 and to require alternative timber volume where timber contracts
2 could not be released. While debating an alternative amendment
3 sponsored by Senator Murray, Senator Gorton, the author of
4 section 2001, described subsection 2001(k) only as applying to
5 section 318 sales.⁵ Senator Hatfield, the Chairman of the Senate
6 Appropriations Committee and the floor manager of the bill, also
7 described Senator Gorton's amendment only in terms of applying to
8 section 318 sales.⁶

9 Prior to conference between the House and Senate, the Forest
10 Service provided Congress with an assessment of the effects of
11 both the House and Senate versions (attached hereto as Exhibit
12 D). In it, the Forest Service interpreted paragraph (1) of the
13 House and Senate predecessors to 2001(k) only as "requiring the
14 award and release of all timber sale contracts subject to Section
15

16 ⁵ "The second and third elements in both amendments have to
17 do with option 9 and with so-called section 318 sales. Section
18 318 was a part of the Appropriations Act of 1990, designed to
19 provide some interim help for the forest in two Northwest States.
20 But many of the sales directed by this Congress pursuant to that
21 law have been held up by subsequent environmental actions. The
proposal that the committee has made simply says that those sales
would go ahead unless they involved places in which endangered
species are actually found, in which case, substitute lands will
take their place." 141 Cong. Rec. S 4875.

22 ⁶ "[T]he Gorton amendment releases 375 million board feet
23 of timber sales in western Oregon that were previously sold to
24 timber purchasers. Most of these sales, originally authorized by
25 the Northwest timber compromise amendment of 1989, were
26 determined in the record of decision for President Clinton's
option 9 plan not to jeopardize the existence of any species. To
ensure further protections, the Gorton amendment includes
provisions prohibiting activities in timber sale units which
contain any nesting threatened or endangered species." 141 Cong.
Rec. S 4881.

1 318." Ex. D, at 6. The Forest Service estimated that the
2 provision would release approximately 270 to 300 million board
3 feet that was proposed for cancellation or suspension. Id. at 5.

4 The Conference Committee reported section 2001 as part of
5 H.R. 1158,⁷ which was vetoed by the President. After extensive
6 negotiations and changes to other aspects of the rescissions
7 bill, section 2001 was incorporated into H.R. 1944 with one
8 change to subsection (k) -- extending the Secretaries' time for
9 compliance from 30 to 45 days. Prior to the Senate vote on H.R.
10 1944, Senator Gorton described subsection 2001(k) using the
11 Forest Service's estimate that the provision would release 300
12 million board feet of timber. 141 Cong. Rec. S 10464. Again,
13 Senator Gorton described this provision only as intended to
14 "release a group of timber sales that have already been sold
15
16

17 ⁷ Plaintiff relies on the Conference Report's ambiguous
18 description of 2001(k)(1), as releasing all timber sales
19 beginning in fiscal year 1990 to the date of enactment within the
20 area encompassed by Section 318. Under these circumstances, the
21 conference report description is not dispositive. "There are, we
22 recognize, contrary indications in the statute's legislative
23 history. But we do not resort to legislative history to cloud a
24 statutory text that is clear." Ratzlaf v. United States, 114 S.
25 Ct. 655, 662 (1994); Estate of McAlpine v. Commissioner, 968
26 F.2d 459 (5th Cir. 1992) ("it is, after all, a statute that we
are interpreting, not a conference report.") quoting Prussner v.
U.S., 896 F.2d 218, 228 (7th 1990). Moreover, aspects of this
conference report are inconsistent with the language of the
statute. Compare, also, 141 Cong. Rec. 5050 ("The only
limitation on release of these sales is in the case of any
threatened or endangered bird species with a known nesting site
in a sale unit") with 2001(k)(3) ("If for any reason a sale
cannot be released or completed . . .).

1 under the provisions of Section 318 of the fiscal year 1990
2 Interior and Related Agencies Appropriations Act." Id.

3 As noted above, the Forest Service and BLM have not
4 finalized their interpretation of subsection 2001(k) and
5 implementation guidance. In an ordinary action for review of an
6 agency's construction of a statute that it is charged with
7 administering, this Court would decide "whether Congress has
8 directly spoken to the precise question at issue" and, "if the
9 statute is silent or ambiguous with respect to the specific
10 issue, the question for the court is whether the agency's answer
11 is based on a permissible construction of the statute." Chevron
12 U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 822,
13 842-43 (1984) (footnote omitted). The view of an agency charged
14 with administering a statute is entitled to considerable
15 deference and need not be the only permissible construction which
16 the agency might have adopted. Id. at 844; Chemical Mfrs. Ass'n
17 v. Natural Resources Defense Council, Inc., 470 U.S. 116 (1985).

18 Under the circumstances of this case, where suit was brought
19 less than two weeks after enactment of the statute and more than
20 a month before the time period for agency action expires and
21 where the agency is in the process of making a final decision
22 setting forth its understanding of how the section is to be
23 implemented, plaintiff's interpretation should not be prematurely
24 adopted. Rather, the agency should be allowed to proceed with
25 making its decision and then, based upon a fully developed

1 record, the merits of the parties' respective position can be
2 fairly evaluated.

3 C. The Balance Of The Harms And The Public Interest Weigh
4 Heavily Against Granting Mandatory Injunctive Relief.

5 According to the plaintiff, the harm it will suffer absent
6 issuance of a mandatory preliminary injunction is that the
7 agencies will not have acted to award and release certain timber
8 sales within the next three and one-half weeks. Such sales, of
9 course, will still be available after the expiration of that
10 short period in the event that plaintiff is correct in its
11 interpretation of subsection 2001(k). In any event, even if it
12 were to later be determined that the additional sales are covered
13 by the Section, Congress expressly provided an alternative remedy
14 in the statute. Also, as explained, while plaintiff may not have
15 available to it the entire universe of sales it would like, the
16 agencies are making every effort to prepare for award and release
17 of the section 318 sales by the September 10 date.

18 Weighed against plaintiff's alleged harm is the significant
19 harm that the agencies will suffer if the Court were to issue a
20 mandatory injunction. First, issuance of the mandatory
21 injunction would require a substantial allocation of agency
22 resources to prepare sales that ultimately may not go forward.
23 Also, to the extent sales are awarded that subsequently are
24 determined not to fall within the parameters of subsection
25 2001(k) as defined by plaintiffs, the agencies could incur
26 substantial contractual liabilities. In addition, the release of

1 additional sales as defined by plaintiffs, many of which would be
2 located in areas subject to various environmental protections,
3 could result in potentially irreversible environmental damage.
4 Indeed, release of additional sales pursuant to plaintiff's
5 interpretation of subsection 2001(k) could require replanning of
6 the Pacific Northwest Forest Plan which contemplated that such
7 sales would conform to the planning documents as amended by the
8 Record of Decision (ROD) for Amendments to Forest Service and
9 Bureau of Land Management Planning Documents Within the Range of
10 the Northern Spotted Owl (April 20, 1994).

11 Under plaintiff's strategy, all of these consequences would
12 be triggered before the 45-day period in which the agencies may
13 act has even expired. Directing the agencies to act before they
14 have had the time allotted to them to make a final decision as to
15 how the statute is to be implemented results in harm which in
16 itself weighs heavily against issuance of the injunction.

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1 CONCLUSION

2 For the reasons set forth above, plaintiff's motion for a
3 temporary restraining order and preliminary injunction should be
4 denied.

5 Dated this 14th day of August, 1995.

6 Respectfully submitted,

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