NLWJC - Kagan

Counsel - Box 029 - Folder 001

Northwest Forest Council v. Dan Glickman and Bruce Babbitt [Binder] [2]

4

LOIS J. SCHIFFLER
Assistant Attorney General
WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA BERLOWE
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 2004-0663
Telephone: (202) 272-6217

IN THE UNITED STATES DISTRICT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL, Plaintiff, v. DAN GLICKMAN, in his capacity as Secretary of Agriculture, BRUCE BABBITT, in his capacity as Secretary of Interior Defendants	Civil No. 95-6244-HO Declaration of Stephen J. Paulson

I, Stephen J. Paulson, hereby declare the following to be true and correct:

1. I am the Group Leader, Forest Products, Region Six of the Forest Service. I have held this position since 1988. In this position I am responsible for tracking the overall accomplishments of the Regional forest products program. As part of my duties, I am familiar with the regulations and procedures governing the award and performance of timber sale contracts.

2. I have read the Rescission Act, Public Law 104-19 (109 Stat. 194), including the provisions regarding "Award and Release of Previously Offered and Unawarded Timber Sale Contracts," Section 2001(k).

DEFENSE EXHIBIT
A

3. Following signing of the legislation by President Clinton on July 27, 1995, and pursuant to Section 2001(k) of the Act, the National Forests of Region Six, responsible for particular contracts which were subject to Section 318 of Public Law 101-121 (103 Stat. 745), have reviewed their timber sales files and are identifying affected Section 318 timber sales. The Forests reviewed the sales to determine whether the contracts had been awarded, whether the bid bonds had been returned to the purchasers, and whether any sale had been suspended. The Forests also performed a preliminary assessment of whether any additional field work would be necessary before proceeding with a Section 318 sale.

4. The Region is awaiting issuance of a final decision providing a definitive interpretation of Section 2001(k) and describing how the Section is to be implementated as a whole. Upon issuance of the final decision, the Region will proceed with the additional steps necessary to award and release the affected sales as quickly as possible.

5. Some sales offered pursuant to Section 318 were awarded after September 30, 1990. Some Section 318 sales have yet to be awarded.

6. To require the Forest Service to award and release sales in addition to Section 318 sales would require additional Forest Service work.

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

STEPHEN J. PAULSON
GROUP LEADER, FOREST PRODUCTS

Dated this 14th day of August 1995

KRISTINE OLSON
United States Attorney
888 SW Fifth Avenue
Suite 1000
Portland, OR 97204-2024
503-727-1008
OSB #73254

LOIS J. SCHIFFER
Assistant Attorney General
WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA L. BERLOWE
EDWARD BOLING
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
Telephone: 202-272-6217

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL, Plaintiff, v. DAN GLICKMAN, in his capacity as Secretary of Agriculture, BRUCE BABBITT, in his capacity as Secretary of Interior Defendants.	Civil No. 95-6244-HO DECLARATION OF WILLIAM L. BRADLEY

I, William L. Bradley, do hereby depose and say that:

1. My name is William L. Bradley. Since November 1994, I have been the Deputy State Director for the Division of Resource Planning, Use and Protection in the Oregon/Washington State Office of the Bureau of Land Management. In my current posiction, my

DEFENSE EXHIBIT B

responsibilities include all of the renewable, and non-renewable resource programs that the BLM administers in the States of Oregon and Washington. The BLM timber sale program in Oregon is specifically one of those responsibilities.

2. I am familiar with the Rescissions Act, Public Law 104-19 (109 Stat. 194), including the provisions regarding "Award and Release of Previously Offered and Unawarded Timber Sale contracts," Section 2001(k).

3. Following signing of the legislation by President Clinton on July 27, 1995, the State Director verbally instructed BLM staff to begin preparation for commencing implementation of Section 2001(k) of the Rescissions Act as it pertained to lands managed by the BLM in Oregon. There are no BLM timberlands in Washington.

4. In connection with Section 2001(k) of the Rescissions Act, the BLM districts responsible for particular contracts which were subject to Section 318 of Public Law 101-121 (103 stat. 745), have reviewed each Section 318 timber sale and other timber sales offered prior to July 27, 1995 to assess the status, including whether the sale contract had been awarded, whether the bid bonds had been returned to the purchaser, whether the contract was subject to any outstanding judicial order or administrative decision, whether there is knowledge of a nesting threatened or endangered species present on the sale, and whether any additional field work would be necessary before proceeding with the sale.

5. For contracts that had not been awarded previous to July 27, 1995, we are preparing award letters to the highest bidders,

including contracts for which the bid bond had been returned to the highest bidder. If and when directed, the BLM will be prepared to issue these letters by September 10, 1995. BLM has no awarded contracts which have been suspended. We also have been performing field work including reestablishing sale boundaries and returning sales to their original configuration, on numerous sales.

6. Since enactment of the Rescissions Act, we have devoted time and resources to taking the actions necessary to have as many of the affected sales as possible awarded and released by September 10, 1995. We are making every reasonable effort to comply with Section 2001(k) and based upon our efforts, we expect that all of the Section 318 timber sales will be awarded and released on or about September 10, 1995. If directed, we would also be able to complete award by that date of almost all, if not all, of the other unawarded timber sales.

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

Executed at Portland, Oregon on August 14, 1995.

William L. Bradley

William L. Bradley

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

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

PLEASE DELIVER TO:

To:	Bob Baum	208-3877
	Ted Boling	514-4231
	Peter Coppelman	514-0557
	Karen Mouritsen	219-1792
	Tim Obst	690-2730
	Lois Schiffer	514-0557
	David Shilton	514-4240
	Jim Simon	514-0557

NUMBER OF PAGES: 10

DATE: August 25, 1995

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

MESSAGE: Please see attached Federal Defendants' Answer to Complaint and Second Notice of Filing of Agencies' Interpretation, being filed today by the U.S. Attorney's office in NFRC v. Glickman.

U.S. Department of Justice

Environment and Natural Resources Division

General Litigation Section *Washington, D.C. 20530*

August 24, 1995

Donald Cinnamond, Clerk
United States District Court
District of Oregon
102 U.S. Courthouse
211 East 7th Avenue
Eugene, OR 97401

Re: Northwest Forest Resource Council v. Glickman, Civil No. 95-6244-HO

Dear Mr. Cinnamond:

Enclosed please find for immediate filing the original and two copies of Federal Defendants' Answer to Complaint and the Second Notice of Filing of Agencies' Interpretation.

Thank you for your assistance.

Sincerely,

/S/

Michelle Gilbert
Attorney
General Litigation Section
P.O. Box 663
(202) 272-6213

Enclosures

KRISTINE OLSON
United States Attorney
888 SW Fifth Avenue
Suite 1000
Portland, OR 97204-2024
(503) 727-1008

LOIS J. SCHIFFER
Assistant Attorney General
WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA L. BERLOWE
EDWARD A. BOLING
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
Telephone: (202) 272-6217

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL, Plaintiff, v. DAN GLICKMAN, in his capacity as Secretary of Agriculture, BRUCE BABBITT, in his capacity as Secretary of Interior, Defendants.	Civil No. 95-6244-HO DEFENDANTS' ANSWER

Pursuant to Fed. R. Civ. P. 8(b), Dan Glickman, Secretary of Agriculture, and Bruce Babbitt, Secretary of the Interior (collectively, defendants), through undersigned counsel, answer the allegations in the Complaint in this matter as follows:

UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES DIVISION
GENERAL LITIGATION SECTION
P.O. BOX 663
WASHINGTON, D.C. 20044-0663
(202) 272-8056

The numbered paragraphs of this Answer correspond to the numbered paragraphs of the Complaint.

Introduction

1. Paragraph 1 is plaintiffs' characterization of this action and thus no response is required.

Jurisdiction and Venue

2. Paragraph 2 contains allegations which are conclusions of law and thus no response is required.

Parties

3. Federal defendants lack knowledge or information sufficient to form a belief about the truth or falsity of the allegations contained in Paragraph 3.

4. Federal defendants lack knowledge or information sufficient to form a belief about the truth or falsity of the allegations contained in Paragraph 4.

5. Federal defendants admit the allegations contained in Paragraph 5.

6. Federal defendants admit the allegations contained in Paragraph 6.

Background

7. The allegations contained in Paragraph 7 are descriptions of Pub. L. 104-19, the Rescissions Act of 1995, which speaks for itself, and thus no response is required.

8. The allegations contained in the first sentence of Paragraph 8 are descriptions of Section 318 of Pub. L. 101-121,

UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES DIVISION
GENERAL LITIGATION SECTION
P.O. BOX 663
WASHINGTON, D.C. 20044-0663
(202) 272-8056

which speaks for itself, and thus no response is required. Defendants deny the allegations contained in the second sentence of Paragraph 8.

9. The allegations contained in the first sentence of Paragraph 9 assume conclusions of law which are at issue in this case; thus, they are not susceptible of a clear and concise answer, and therefore are denied. The allegations contained in the second sentence of Paragraph 9 refer to plaintiff's knowledge, and thus defendants lack knowledge or information sufficient to form a belief about the truth or falsity of the allegations contained therein.

10. The allegations contained in the first sentence of Paragraph 10 assume conclusions of law which are at issue in this case; thus, they are not susceptible of a clear and concise answer, and therefore they are denied.

11. The allegations contained in the first sentence of Paragraph 11 and the allegations contained in the first clause of the second sentence of Paragraph 11 are so vague and non-specific as to be not susceptible of a clear and concise answer, and therefore they are denied; the allegations contained in the second clause of the second sentence in Paragraph 11 are denied.

12. Defendants deny the allegations of paragraph 12.

13. The allegations of Paragraph 13 are conclusions of law and thus no response is required.

Claims for Relief

UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES DIVISION
GENERAL LITIGATION SECTION
P.O. BOX 663
WASHINGTON, D.C. 20044-0663
(202) 272-8056

14. Federal defendants incorporate by reference the responses to Paragraphs 1 through 13 herein.

Claim One

15. The allegations contained in Paragraph 15 are conclusions of law and thus no response is required. To the extent a response is required, the allegations are denied.

16. The allegations contained in Paragraph 16 are conclusions of law and thus no response is required. To the extent a response is required, the allegations are denied.

Claim Two

17. Federal defendants incorporate by reference the responses to Paragraphs 1 through 16 herein.

18. The allegations contained in paragraph 18 are conclusions of law and thus no response is required. To the extent a response is required, the allegations are denied.

The remaining paragraphs of the Complaint constitute plaintiff's request for relief. Federal defendants deny that plaintiff is entitled to the relief that it has requested or to any relief whatsoever.

Federal defendants deny any allegations of the Complaint, whether express or implied, that are not specifically admitted, denied, or qualified herein.

Affirmative Defense

1. Plaintiffs fail to state a claim upon which relief can be granted.

UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES DIVISION
GENERAL LITIGATION SECTION
P.O. BOX 663
WASHINGTON, D.C. 20044-0663
(202) 272-8056

WHEREFORE, federal defendants request that this Court dismiss the Complaint, enter judgment for them, and award them court costs and any such further relief that this Court deems just and appropriate.

Respectfully submitted,

KRISTINE OLSON ROGERS
United States Attorney

LOIS J. SCHIFFER
Assistant Attorney General

/s/
WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA L. BERLOWE
EDWARD A. BOLING
United States Department of Justice
Environment and Natural
Resources Division
General Litigation Section
P.O. Box 663
Washington, DC 20044-0663
(202) 272-6217

Attorneys for Defendants

Of Counsel:

TIM OBST
JAY McWHIRTER
Office of the General Counsel
United States Department of Agriculture
Washington, DC

KAREN MOURITSEN
Office of the Solicitor
United States Department of the Interior
Washington, DC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 24, 1995, she caused one copy of the foregoing **FEDERAL DEFENDANTS' ANSWER TO COMPLAINT** to be served via Federal Express upon the counsel of record hereinafter named:

MARK RUTZICK
500 Pioneer Tower
888 S.W. Fifth Avenue
Portland, OR 97204-2089
Telephone: (503) 499-4573
Fax : (503) 295-0915

PATTI A. GOLDMAN
ADAM J. BERGER
KRISTEN L. BOYLES
Sierra Club Legal Defense Fund
705 Second Avenue, Suite 203
Seattle, WA 98104
Telephone: (206) 343-7340
Fax : (206) 343-1526

MARIANNE DUGAN
DEBORAH N. MAILANDER
Western Environmental Law Center
1216 Lincoln Street
Eugene, OR 97401
Telephone: (503) 485-2471
Fax : (503) 485-2457

Michelle Gilbert

KRISTINE OLSON
United States Attorney
888 SW Fifth Avenue
Suite 1000
Portland, OR 97204-2024
(503) 727-1008

LOIS J. SCHIFFER
Assistant Attorney General
WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA L. BERLOWE
EDWARD A. BOLING
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
Telephone: (202) 272-6217

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL, Plaintiff, v. DAN GLICKMAN, in his capacity as Secretary of Agriculture, BRUCE BABBITT, in his capacity as Secretary of the Interior, Defendants.	Civil No. 95-6244-HO DEFENDANTS' SECOND NOTICE OF FILING OF AGENCIES' INTERPRETATION

Pursuant to this Court's Order dated August 15, 1995, and as indicated in federal defendants' Notice of Filing dated August 22, 1995, defendants hereby file the attached agencies' interpretation of other subsections of 2001(k) of the 1995 Rescissions Act (Public Law 104-19).

Dated this 23rd day of August, 1995.

Respectfully submitted,

KRISTINE OLSON ROGERS
United States Attorney

LOIS J. SCHIFFER
Assistant Attorney General

/S/
WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA L. BERLOWE
EDWARD BOLING
United States Department of Justice
Environment and Natural
Resources Division
General Litigation Section
P.O. Box 663
Washington, DC 20044-0663
(202) 272-6217

Attorneys for Defendants

Of Counsel:

MICHAEL GIPPERT
Office of the General Counsel
United States Department of Agriculture
Washington, DC

KAREN MOURITSEN
Office of the Solicitor
United States Department of the Interior
Washington, DC

5

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

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

PLEASE DELIVER TO:

To:	Bob Baum	208-3877
	Ted Boling	514-4231
	Peter Coppelman	514-0557
	Karen Mouritsen	219-1792
	Tim Obst	690-2730
	Lois Schiffer	514-0557
	David Shilton	514-4240
	Jim Simon	514-0557

NUMBER OF PAGES: 68

DATE: August 28, 1995

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

MESSAGE: Please see attached Federal Defendants' Motion for Summary Judgment, filed 8/25 in NFRC v. Glickman.

KRISTINE OLSON
United States Attorney
888 SW Fifth Avenue
Suite 1000
Portland, OR 97204-2024
(503) 727-1008

LOIS J. SCHIFFER
Assistant Attorney General
WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA L. BERLOWE
EDWARD A. BOLING
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
Telephone: (202) 272-6217

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL, Plaintiff, v. DAN GLICKMAN, in his capacity as Secretary of Agriculture, BRUCE BABBITT, in his capacity as Secretary of Interior, Defendants.	Civil No. 95-6244-HO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56(b), defendants Dan Glickman, as Secretary of United States Department of Agriculture, and Bruce Babbitt, as Secretary of United States Department of the Interior, move for entry of summary judgment in defendants' favor on all counts of plaintiff's complaint and dismissal of the complaint with prejudice. As demonstrated by

the accompanying memorandum and exhibits, no genuine issue of material fact exists and defendants are entitled to judgment as a matter of law.

DATED this 25th day of August, 1995.

Respectfully submitted,

KRISTINE OLSON ROGERS
United States Attorney

LOIS J. SCHIFFER
Assistant Attorney General

WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA L. BERLOWE
EDWARD A. BOLING
United States Department of Justice
Environment and Natural
Resources Division
General Litigation Section
P.O. Box 663
Washington, DC 20044-0663
(202) 272-6217

Attorneys for Defendants

Of Counsel:

MICHAEL GIPPERT
Office of the General Counsel
United States Department of Agriculture
Washington, DC

KAREN MOURITSEN
Office of the Solicitor
United States Department of the Interior
Washington, DC

KRISTINE OLSON
United States Attorney
888 SW Fifth Avenue
Suite 1000
Portland, OR 97204-2024
(503) 727-1008

LOIS J. SCHIFFER
Assistant Attorney General
WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA L. BERLOWE
EDWARD A. BOLING
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
Telephone: (202) 272-6217

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL, Plaintiff, v. DAN GLICKMAN, in his capacity as Secretary of Agriculture, BRUCE BABBITT, in his capacity as Secretary of Interior, Defendants.	Civil No. 95-6244-HO DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

INTRODUCTION 1

STATUTORY BACKGROUND 3

A. Section 318 Sales 3

B. The Pacific Northwest Forest Plan 7

C. The 1995 Rescissions Act 8

ARGUMENT 10

I. The Agencies Correctly Interpreted Section 2001(k) To Apply To Remaining Section 318 Sales, Not To All Sales Previously Offered In The States Of Washington And Oregon 10

A. The Plain Language Of The Act Is Consistent With The Agencies' Interpretation That Subsection 2001(k) Applies To The Release Of Remaining Section 318 Sales 10

B. Alternatively, If The Language Of The Act Is Deemed Ambiguous, The Agencies' Interpretation Is Entitled To Deference 14

C. The Agencies' Interpretation Is Supported By The Legislative History 18

II. Plaintiff is not entitled to a Mandatory Injunction 23

CONCLUSION 24

TABLE OF AUTHORITIES

CASES

Alcarez v. Block, 746 F.2d 593 (9th Cir. 1984) 17

Bankers Life & Casualty Co. v. Holland, 346 U.S. 379 (1953) 23

Blanchard v. Bergeron, 489 U.S. 87 (1989) 22

Chemical Mfrs. Ass'n v. Natural Resources Defense Council, Inc., 470 U.S. 116 (1985) 14

Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 822 (1984) 14

Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102 (1980) 22

Croman Corp. v. Untied States, No. 94-48C (Ct. Cl. Aug. 16, 1994) 6

D.R. Johnson Lumber Co. v. Zielinski, No. 94-6371-TC (D. Or.) 7

Estate of McAlpine v. Commissioner, 968 F.2d 459 (5th Cir. 1992) quoting Prussner v. U.S., 896 F.2d 218 (7th Cir. 1990) 21

Gifford Pinchot Alliance v. Butruille, 742 F. Supp. 1077 (D. Or. 1990) 4, 5, 23

Lane County Audubon Soc'y v. Jamison, 958 F.2d 290 (9th Cir. 1992) 7

Lone Rock Timber Co. v. United States Dept. of Interior, 842 F. Supp. 433 (D. Or. 1994) 6

Montana Wilderness Ass'n v. U.S. Forest Service, 655 F.2d 951 (9th Cir. 1981), cert. denied, 455 U.S. 989 (1982) 22, 23

Pacificorp v. Bonneville Power Administration, 856 F.2d 94 (9th Cir. 1988) 14

Pescosolido v. Block, 765 F.2d 827 (9th Cir. 1985)..... 24

Portland Audubon Soc. v. Lujan, 795 F. Supp. 1489 (D. Or. 1992) 5, 7

Ratzlaf v. United States, 114 S. Ct. 655 (1994) 21

Robertson v. Seattle Audubon Soc'y, 503 U.S. 429 (1992) 5, 11

Seattle Audubon Soc'y v. Lyons, 871 F. Supp. 1291 (W.D. Wash. 1994), appeal pending 8

Seattle Audubon Soc'y v. Robertson, Civ. No. 89-160 (W.D. Wash.) 5

Udall v. Tallman, 380 U.S. 1 (1965) 17

STATUTES AND REGULATIONS

16 U.S.C. §1536(a)(2) 5

55 Fed. Reg. 26189 (June 26, 1990) 5

57 Fed. Reg. 45328 (Oct. 1, 1992) 5

58 Fed. Reg. 40,444-40,445 (July 30, 1993) 7

Pub. L. 101-121 (Section 318)..... 3, 9

Pub. L. 104-19 §2001 (1995) 8, 24

H.R. 1158 22

H.R. 1159 18

H.R. 1944 22

MISCELLANEOUS

Black's Law Dictionary, 1594 (4th ed. 1966) 12

2A Sutherland Statutory Construction, § 47.28, 47.30 (5th ed. 1992) 12, 13

141 Cong. Rec. 5050 21

141 Cong. Rec. H3232 19

104 H.Rept. 71 ..... 16, 18

KRISTINE OLSON
United States Attorney
888 SW Fifth Avenue
Suite 1000
Portland, OR 97204-2024
(503) 727-1008

LOIS J. SCHIFFER
Assistant Attorney General
WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA L. BERLOWE
EDWARD A. BOLING
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
Telephone: (202) 272-6217

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL, Plaintiff, v. DAN GLICKMAN, in his capacity as Secretary of Agriculture, BRUCE BABBITT, in his capacity as Secretary of the Interior, Defendants.	Civil No. 95-6244-HO DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Plaintiff requests this Court to declare that subsection 2001(k)(1) of the 1995 Rescissions Act requires defendants to award and release all timber sales offered or awarded anytime prior to July 27, 1995 on any national forest or Bureau of Land

Mangement (BLM) lands in all of Oregon and Washington. Plaintiff further seeks a mandatory injunction directing defendants to immediately take all actions to award and release all such sales by September 10, 1995. Complaint, Prayer for Relief ¶¶ 1 and 2. The wholesale release of timber sought by plaintiff runs contrary to the comprehensive forest management strategy -- designed to provide a balance between ensuring a steady and sustained supply of timber and other resources, and protection of the long-term health of the federal forests -- that the agencies have struggled for years to adopt and only just now have been able to begin implementing. Neither the plain language of the statute nor the legislative history support the interpretation urged by plaintiff.

Plaintiff's entire argument is built on the untenable theory that when Congress used the phrase "subject to section 318" in subsection 2001(k)(1), it really meant "the States of Washington and Oregon."[1] Section 318 was an emergency measure, introduced by Senators Hatfield and Adams in 1989, which was designed to address a shortfall in timber that year while at the same time preserving old growth forest stands. Section 318 authorized the expedited release of sales in portions of Oregon and Washington and expired by its own terms at the end of fiscal year 1990. After years of fierce battles in Congress and the courts, "section 318" became known as a short-hand reference to a

---

[1] Plaintiff's claims in its complaint are limited to subsection 2001(k)(1).

discrete set of section 318 sales that had been offered prior to the expiration of the statute. For a variety of reasons, certain remaining section 318 sales have yet to be released.

The plain language of the statute, as confirmed by the legislative history, demonstrates that the agencies responsible for implementing section 2001(k), the Departments of Agriculture and Interior, have correctly interpreted subsection 2001(k)(1) to require the expedited release of these remaining section 318 sales. It was the agencies' understanding during negotiations and at the time the bill was signed that in subsection 2001(k) Congress intended to authorize the completion of this discrete set of congressionally planned 318 sales. This interpretation is consistent with the overall purpose of the statute. Defendants' interpretation represents a permissible construction of the Act by the agencies charged with administration of the statute and as such, is entitled to deference. Accordingly, defendants are entitled to summary judgment.

FACTUAL AND STATUTORY BACKGROUND

A. Section 318 Sales

Section 318 of the Department of the Interior and Related Agencies appropriations Act, Fiscal year 1990, Pub. L. 101-121 (Section 318), also referred to as the Hatfield/Adams Amendment, was signed into law on October 23, 1989. See 135 Cong. Rec. S 8762, 8795-8797 (July 26, 1989)(relevant portions attached hereto as Ex. A). The intent of section 318 was:

> to balance the goal of ensuring a predictable flow of public timber for fiscal years 1989 and 1990 with the goal of preserving significant old growth forest stands as the habitat of the northern spotted owl.

Gifford Pinchot Alliance v. Butruille, 742 F.Supp. 1077, 1079 (D.Or. 1990). To achieve these goals, subsection 318(a) set an overall target level of timber from national forests and BLM lands in Oregon and Washington for fiscal years 1989 and 1990. The substance of the statute was set out in subsections 318(b) - (k), which set forth procedures for expedited review, prohibitions on injunctions and restraining orders[2] and numerous environmental safeguards.[3] These procedures applied exclusively to "all timber sales from the thirteen national forests in Oregon and Washington and [BLM] Management districts in western Oregon known to contain northern spotted owls [NSOs]." See Subsection 318(i).[4]

---

[2] See Section 318 (d),(f)(1),(g).

[3] For example, subsection 318(b) directed the Forest Service to sell ecologically significant old growth within the 13 forests known to contain spotted owl only as necessary and in a manner designed to minimize the effects of fragmentation within each sale. Section 318(b)(1),(2). Section 318(e) provided that nothing was to affect interagency cooperation under the ESA and its regulations.

[4] Section 318(i) reconfirms that:

> Except for provisions of subsection (a)(1) of this section, the provisions of this section apply solely to the thirteen national forests in Oregon and Washington and Bureau of Land Management districts in western oregon known to contain northern spotted owls.

Some section 318 sales subsequently were delayed or suspended for a number of reasons. Section 318 was the subject of extensive litigation, with the Supreme Court ultimately affirming the constitutionality of the law in Robertson v. Seattle Audubon Soc'y, 503 U.S. 429 (1992). A number of section 318 sales were enjoined during a period while this issue was being litigated. See generally Portland Audubon Soc. v. Lujan, 795 F.Supp. 1489, 1496 (D.Or. 1992). Other sales were affected by litigation over compliance with various terms of section 318, such as the requirement to minimize fragmentation of ecologically significant old growth. See Seattle Audubon Soc'y v. Robertson, Civ. No. 89-160 (W.D.Wash.).

Many section 318 sales did not go forward as a result of concerns about significant impacts to species listed under the Endangered Species Act (ESA). In June 1990, after enactment of Section 318, the United States Fish and Wildlife Service (FWS) listed the northern spotted owl as a threatened species under the ESA. See 55 Fed. Reg. 26189 (June 26, 1990). Because of the listing of the NSO as threatened species, a number of Forest Service section 318 sales were "modified, eliminated or held in abeyance." See Gifford Pinchot, 742 F.Supp. at 1080.

On September 28, 1992, the FWS listed the marbled murrelet as a threatened species. 57 Fed. Reg. 45328 (Oct. 1, 1992). As a result of the listing, the Forest Service reinitiated consultation with the FWS under ESA § 7(a)(2), 16 U.S.C. § 1536(a)(2), regarding the effects on murrelets of continuing to

harvest section 318 sales that had already been awarded. In June 1995, the FWS subsequently concluded that further logging of a number of the Forest Service section 318 sales would likely jeopardize the continued existence of the marbled murrelet. As a result, these section 318 sales were suspended pending further survey work.

The BLM experienced similar delays in completing the contracting process for its section 318 sales. The successive listing of proposed spotted owl critical habitat and the listing of the marbled murrelet delayed finalization of several sales. See Lone Rock Timber Co. v. United States Dept. of Interior, 842 F. Supp. 433 (D. Or. 1994).

The contracting process was further delayed by litigation. After it was determined, in development of the Forest Plan, that sales could go forward as modified in conformity with the FWS's biological opinion, timber companies brought suit in the Federal Claims Court to prevent BLM from awarding the modified sales. The Claims Court issued a declaratory judgment that the award letter for the modified contract was null and void because the agency lacked authority to negotiate a sale od the particular quantity of timber outside the competitive bidding process. See Croman Corp. v. Untied States, No. 94-48C (Ct. Cl. Aug. 16, 1994). As a consequence, the BLM withdrew all of the outstanding award letter and was in the process of negotiating with the high

bidders on the unawarded contracts when the subject legislation was introduced.[5]

B. The Pacific Northwest Forest Plan

In April 1993, in response to a number of judicial decisions that together halted logging in essentially all federal late successional and old growth (LSOG) forests within the range of the spotted owl,[6] the Clinton Administration convened the Forest Conference in Portland, Oregon. As a result of the conference, which was chaired by the President, on July 28, 1993, the Forest Service and the BLM published and circulated to the public a proposed strategy and range of reasonable alternatives for forest plan amendments for forests managed by the Forest Service and the BLM. 58 Fed. Reg. 40,444-40,445 (July 30, 1993). The affected forests included the national forests in Washington and Oregon within the range of the spotted owl where the 318 sales were located. ROD at 11 - 12 (relevant portions attached hereto as Ex. B)

---

[5] Another timber company brought suit in the U.S. District Court of Oregon seeking a declaratory judgment and injunction requiring the BLM to reinitiate consultation on a section 318 timber sale in light of information in the Forest Plan. Action in this litigation was stayed because of the pendency of the subject legislation. See D.R. Johnson Lumber Co. v. Zielinski, No. 94-6371-TC (D.Or.).

[6] See Lane County Audubon Soc'y v. Jamison, 958 F.2d 290 (9th Cir. 1992); Portland Audubon Society v. Lujan, 795 F. Supp. 1489 (D. Or. 1992), aff'd, Portland Aubudon Society v. Babbitt 998 F.2d 705 (9th Cir. 1993).

On April 13, 1994, the Secretaries for the Department of Agriculture and the Department of the Interior issued the Record of Decision ("ROD") for Amendments to FS and BLM Planning Documents Within the Range of the Northern Spotted Owl (the Forest Plan), as supported by the Final Supplemental Environmental Impact Statement (FSEIS). ROD at 65-73. The Forest Plan was designed with the section 318 sale program expressly in mind.[7] The April 13, 1994 ROD consists of extensive standards and guidelines and land allocations that comprise a comprehensive ecosystem management strategy.

In May 1994, several environmental groups and industry groups, including NFRC, brought a series of actions challenging the legality of the Pacific Northwest Forest Plan. By order entered on December 21, 1994, Judge Dwyer rejected all of plaintiffs' challenges and declared the ROD and standards and guidelines to be lawful under applicable environmental laws. Seattle Audubon Soc'y v. Lyons, 871 F. Supp. 1291 (W.D. Wash. 1994), appeal pending. Upon the Court's approval, the agencies commenced implementation of the Forest Plan.

C. The 1995 Rescissions Act

The Rescissions Act of 1995 (the Act) was signed into law by President Clinton on July 27, 1995. See Pub. L. 104-19 §2001

---

[7] See Memorandum dated August 22, 1995 from James R. Lyons, Under Secretary of Agriculture, Natural Resources and Environment, and Mike Dombeck, Director, BLM, to Jack Ward Thomas, Chief of the Forest Service and Elaine Zielinski, Oregon State Director, BLM (hereafter "Agencies' Interpretation") (attached hereto as Ex. C).

(1995). The Act essentially contains three primary parts. Subsection 2001(b) describes procedures for proceeding with salvage timber sales. Subsection 2001(d) directs the expedited implementation of the Pacific Northwest Forest Plan. Both subsections (b) and (d) provide for expedited judicial review, borrowing extensively from Section 318 as a model for design of the expedited procedure. Compare subsections 2001(f)(1)-(7)(providing for expedited judicial review and prohibiting restraining orders and injunctions) with subsections 318(g)(1)(-(3)(setting forth procedures for expedited judicial review and restrictions on injunctions). Subsection 2001(k) seeks to resolve continuing delays in the release of the remaining section 318 sales. In particular, subsection 2001(k)(1) of the Act directs the Secretaries of the Interior and Agriculture to, inter alia:

> 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).

Throughout negotiations of Section 2001 and at the time the bill was signed into law, it was the agencies' understanding that subsection 2001(k) applied to a discrete set of remaining section 318 sales. See Ex. C. The Forest Service's April 27, 1995 effects statement, that was transmitted to Congress prior to conference between the House and Senate, confirms the administration's understanding of the section as "requiring the

award and release of all timber sale contracts subject to Section 318." Id.

Since enactment of Section 2001, the agencies have been reviewing section 318 sales to determine which sales can be released, as per the requirements of subsection 2001(k). See Declarations of William Bradley and Stephen Paulson, submitted in opposition to Plaintiff's Motion for Temporary Restraining Order. In fact, in accordance with the Agencies' Interpretation, BLM is already prepared to release approximately 47 million board feet pursuant to section 318 sales. See Declaration of Elaine Zielinski, Oregon State Director, BLM, attached hereto as Ex. D.

ARGUMENT

I. The Agencies Correctly Interpreted Section 2001(k) To Apply To Remaining Section 318 Sales, Not To All Sales Previously Offered In The States Of Washington And Oregon

A. The Plain Language Of The Act Is Consistent With The Agencies' Interpretation That Subsection 2001(k) Applies To The Release Of Remaining Section 318 Sales

Subsection 2001(k)(1) requires the Secretaries of Agriculture and the Interior, within 45 days of enactment, to act to award, release and permit to be completed:

> 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 . . . .

Pub. L. 104-19 ¶ 2001(k)(1) (1995) (emphasis added). Contrary to plaintiff's theory, Congress did not use the phrase "subject to section 318" as a short-hand geographic descriptor of the States

of Washington and Oregon.[8] If Congress had meant that, it could simply have said so. Instead, Congress chose to refer to section 318. The issue, then, is what Congress meant in referring to section 318. Applying well-established rules of statutory construction to the Act's plain language reveals that Congress intended to require the implementing agencies to address the continuing delay in the completion of remaining section 318 timber sales, either through award under their original terms or provision of alternative timber.

Section 318 applied exclusively to sales offered in fiscal years 1989 and 1990 in the thirteen national forests in Oregon and Washington and BLM districts in western Oregon known to contain northern spotted owls. See Subsection 318(i); Robertson, 503 U.S. at 433. Subsection 318(k) provided that timber sales offered to meet the target requirements of subsection (a) would continue "to be subject to the terms and conditions of" section 318 for the duration of the contracts. "All other provisions of this section shall remain in effect until September 30, 1990." Subsection 318(k). Accordingly, Section 318 expired at the end of fiscal year 1990. See Robertson, 503 U.S. at 433.

Rules of statutory construction require words to be accorded their common meaning and proscribe interpretations that produce

---

[8] In other sections of 2001, Congress made it clear when it meant "as described in" by simply saying so. See e.g. subsection 2001(b)(authorizing salvage sales from Federal lands "described in" subsection (a)(4); subsection 2001(d)(directing expeditious implementation of sale contracts on Federal lands "described in" the ROD).

absurd or illogical results. 2A Sutherland Statutory Construction, § 47.28, 47.30 (5th ed. 1992). Because Section 318 expired almost five years ago, only sales offered prior to the statute's expiration remain "subject to section 318," according to the common meaning of the phrase "subject to." "Subject" is defined as "likely to be conditioned, affected, or modified in some indicated way: having a contingent relation to something and usu[ally] dependent on such relation for final form, validity, or significance . . . ." Webster's Third New International Dictionary, 2275.[9] The fiscal year 1989 and 1990 sales depend on section 318 in the most basic sense to define their very form and validity. On the other hand, the national forest and BLM lands in Washington and Oregon are not dependent on section 318 for their definition. After fiscal year 1990, sales could be offered and other activities could occur in the relevant forests without being affected or otherwise governed by section 318.

Plaintiff's interpretation depends on acceptance of the assumption that Congress prefers to rely on oblique statutory references to define the geographic scope of two states. Plaintiff, however, presents no evidence of why, if Congress had intended to use section 318 to actually mean Washington and Oregon, it did not simply say so. Indeed, the problems inherent in converting "subject to section 318" into a geographic

---

[9] Black's defines "subject to" as "liable, subordinate, subservient, inferior, obedient to; governed or affected by; . . ." Black's Law Dictionary, 1594 (4th ed. 1966).

descriptor are underscored by plaintiff's inability even to correctly identify the area in which section 318 sales had been located. While plaintiff claims that section 318 applied to all of Washington and Oregon, actually section 318 applied only to the western portions of the two states. While subsection 318(a) described target volumes for sales in the two states, all remaining provisions, which provide the real substance of the statute, expressly apply only to those thirteen national forests and BLM lands known to contain spotted owl, located in the western portion of the two states. See Section 318(i).[10]

Plaintiffs argues that its interpretation of "subject to" to mean "Washington and Oregon" is required by the interpretive rule that a qualifying phrase generally modifies only what immediately precedes it. However, that interpretative rule "is not inflexible or uniformly binding." 2A Sutherland Statutory Construction, § 47.33 ("Where the sense of the entire act requires that a qualifying word or phrase apply to several preceding or even succeeding sections, the word or phrase will not be restricted to its immediate antecedent"). Limiting the phrase "subject to section 318" to the antecedent description of national forests and BLM lands, and adopting plaintiff's

---

[10] Thus, even assuming arguendo that, as plaintiff claims, "subject to section 318" was intended to be a geographic descriptor, the language certainly does not support the expansive geographic area defined by plaintiff. Indeed, if the phrase were deemed to be a geographic descriptor, it would more logically be read to mean those limited areas of national forest and BLM lands actually encompassed by section 318 sales, as those are the only possible areas that remain "subject to" section 318.

definition of "subject" as solely a geographic description, would lead to the absurd result of applying subsection 2001(k) to every timber sale offered prior to the date of enactment, including timber sales offered prior to section 318, in all of Washington and Oregon. Such an absurd result is not permitted by the terms of the rule. Pacificorp v. Bonneville Power Administration, 856 F.2d 94, 97 (9th Cir. 1988).

B. Alternatively, If The Language Of The Act Is Deemed Ambiguous, The Agencies' Interpretation Is Entitled To Deference

Assuming arguendo that the Court were to find the statute ambiguous, the Court should then turn to the agencies' interpretation to determine if it is a permissible construction of the statute. As the Supreme Court has held, this Court must decide "whether Congress has directly spoken to the precise question at issue" and, "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 822, 842-43 (1984) (footnote omitted). The scope of review of the construction of a statute by the agency charged with administering the statute is circumscribed. The agency's interpretation is entitled to considerable deference and need not be the only permissible construction which the agency might have adopted. Id. at 844; Chemical Mfrs. Ass'n v. Natural Resources Defense Council, Inc., 470 U.S. 116, 125 (1985).

In the Agencies' Interpretation, the agencies in charge of implementing Section 2001(k) detail the rationale supporting their interpretation that the statute applies solely to section 318 sales. See Ex. C. As the agencies explain, section 318 sales have been the subject of extensive and fierce debate in Congress and the Courts. Such sales are well-known and constitute a discrete set of sales known to have been developed based on specific ecological criteria and subject to expedited judicial review procedures developed by Congress. Id. In fact, Congress used section 318 as a model in drafting much of section 2001. Compare (subsections 2001(f)(1)-(7) with (subsections 318(g)(1)-(3). Congress had specific knowledge of the extent and circumstances causing the delays in completing section 318 sales through the quarterly reports from the agencies prepared pursuant to subsection 318(h). It was the agencies' understanding that, consistent with the overall framework of the statute, subsection 2001(k) addressed resolution of this discrete set of remaining 318 sales. This understanding is unambiguously reflected in the Forest Service's effects statement on the proposed legislation that was transmitted to Congress and then used by members of Congress in their floor statements and debates. See Exhibit E (Forest Service effects statement dated April 27, 1995)(interpreting paragraph 1 of the House and Senate predecessors to 2001(k) as "requiring the award and release of all timber sale contracts subject to Section 318").

The agencies' interpretation is consistent with, and gives meaning to, the overall purpose of the statute. An analysis of section 2001 as a whole reveals that Congress intended to reach an accommodation between expediting the release of timber while acknowledging the overall forest planning strategies that have taken years to develop and put into place.[11] Subsection 2001(d) expressly directs expedited implementation of the Pacific Northwest Forest Plan. See Subsection 2001(d). The Forest Plan consists of extensive standards and guidelines and land allocations that comprise a comprehensive ecosystem management strategy, designed to accommodate the need for sustained yield of timber and protection of forest resources.[12] Section 318 sales were considered in development of the Forest Plan.[13] Applying

---

[11] For example, in connection with salvage sales, while the Act provides an expedited procedure for proceeding with such sales, at the same time, the Act expressly authorizes the Secretary to consider the environmental effects of any salvage timber sale, the effects on threatened or endangered species, and consistency with any management plans standards and guidelines, including those set forth in the Forest Plan. See Subsection 2001(c); see also 141 Cong. Rec. S 4881.

[12] ROD at 3-4 (Ex. B). The two primary categories of land allocations in the Forest Plan include (1) "Reserve Areas" within which possible timber sales and related ground-disturbing activities are severely limited or prohibited and (2) remaining unreserved areas designated as Matrix, in which programmed timber harvest may go forward subject to restrictions intended to preserve conservation objectives. ROD at 6-11.

[13] The legislative history confirms that Congress understood that sales to be released under subsection 2001(k) had already undergone environmental review and would that their release would be consistent with the Forest Plan. See 141 Cong. Rec. H 3233 (statement by cosponsor Representative Taylor explaining his understanding that the preponderance of the sales

(continued...)

subsection 2001(k) to release section 318 sales as contemplated by the Forest Plan allows the expedited release of millions of board feet of timber[14] without undermining forest planning strategies.

Under plaintiff's expansive interpretation, plaintiff urges the release of all previously offered sales from the states of Washington and Oregon without conformance with forest planning documents. Adopting plaintiff's interpretation requiring the release of such a vastly expanded volume of sales could potentially require replanning of the Forest Plan which contemplated that such sales would conform to the planning documents as amended by the April 24, 1994 ROD. Such a result runs contrary to Congress's clearly expressed intent in section 2001(d) that the Forest Plan be expeditiously implemented and must be rejected.

Given the strong rationale enunciated by the agencies in support of their interpretation of subsection 2001(k) to apply to remaining section 318 sales, the agencies' interpretation is entitled to deference and should not be rejected in favor of plaintiff's self-serving and potentially destructive construction. See Udall v. Tallman, 380 U.S. 1, 16 (1965); Alcarez v. Block, 746 F.2d 593, 606 (9th Cir. 1984)("[d]eference

---

[13](...continued)
had been approved for harvest in the ROD for the Forest Plan); see also 104 H.Rept. 71 (harvest of sales was assumed under Forest Plan); 141 Cong. Rec. S 4881.

[14] See e.g., Zielinski Dec., Ex. D.

requires affirmance of any interpretation within the range of reasonable meanings the words permit, comporting with the statute's clear purpose").

C. The Agencies' Interpretation Is Supported By The Legislative History

Analysis of the legislative history confirms that Congress enacted subsection 2001(k) to require the Forest Service and BLM to address the continuing delay in the completion of section 318 timber sales, either through award or through provision of replacement timber. Section 2001 of Public Law 104-19 was originally introduced as Section 307 of H.R. 1159, a bipartisan effort known as the Taylor-Dicks Amendment, and what became subsection 2001(k) originally contained only the language of paragraph 2001(k)(1) with 30 days provided for compliance. H.R. 1159, § 307(i). The description of subsection 307(i) in the Report of the House Appropriations Committee makes clear that subsection 307(i) was intended "to release a group of sales that have been already sold under the provisions of section 318 . . . The harvest of these sales was assumed under the President's Pacific Northwest Forest Plan . . . ." 104 H. Rept. 71. The provision's cosponsor, Representative Taylor, described the potential contract liability that this provision was designed to

address, and that he believed the sales were previously approved for harvest.[15]

In the Senate, the language of section 2001 was modified to provide the current provisions for protection of nesting birds and to require alternative timber volume where timber contracts could not be released. While debating an alternative amendment sponsored by Senator Murray, Senator Gorton, the author of section 2001, described subsection 2001(k) only as applying to section 318 sales.[16] Senator Hatfield, the Chairman of the Senate Appropriations Committee and the floor manager of the

---

[15] "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." 141 Cong. Rec. H 3233.

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.

[16] "The second and third elements in both amendments have to do with option 9 and with so-called section 318 sales. Section 318 was a part of the Appropriations Act of 1990, designed to provide some interim help for the forest in two Northwest States. But many of the sales directed by this Congress pursuant to that 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.

bill, also described Senator Gorton's amendment only in terms of applying to section 318 sales:

> The Gorton amendment releases 375 million board feet of timber sales in western Oregon that were previously sold to timber purchasers. Most of these sales, originally authorized by the Northwest timber compromise amendment of 1989, were 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.[17]

141 Cong. Rec. S 4881. While the legislative history of the 375 million board feet figure is unclear, the remaining references by Senator Hatfield confirm that he was referring to section 318 sales. The "Northwest timber compromise amendment of 1989" pursuant to which the sales were originally authorized, was Section 318, sponsored by Senator Hatfield. See Exhibit A., see also 141 Cong. Rec. S 4881 (referring to 1989 compromise sponsored by Senators Hatfield and Adams).

Prior to conference between the House and Senate, the Forest Service provided Congress with an assessment of the effects of both the House and Senate versions. See Exhibit E. In it, the Forest Service interpreted paragraph (1) of the House and Senate predecessors to 2001(k) only as "requiring the award and release of all timber sale contracts subject to Section 318." Id. The Forest Service estimated that the provision would release

---

[17] In fact Senator Hatfield was apparently operating under a misunderstanding of the assumptions made in the ROD. The ROD did not conclude that the section 318 sales then in consultation on marbled murrelet would not jeopardize continued existence.

approximately 270 to 300 million board feet that was proposed for cancellation or suspension. Id. at 5.

Plaintiff relies heavily on the Conference Report's description of 2001(k)(1) to support its interpretation that the statute releases all timber sales offered prior to the date of enactment within the area that allegedly had been encompassed by Section 318. Under the circumstances present here, the conference report description is not dispositive. As an initial matter, "[t]here are, we recognize, contrary indications in the statute's legislative history. But we do not resort to legislative history to cloud a statutory text that is clear." Ratzlaf v. United States, 114 S. Ct. 655, 662 (1994); Estate of McAlpine v. Commissioner, 968 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 Cir. 1990).[18]

The conference report referred to the "geographic area encompassed by section 318" - - at best this is ambiguous, and under plaintiff's interpretation, conflicts with the plain language of the statute. Moreover, the language inserted into the Conference Report is at odds with numerous statements by legislators debating the bill. As Justice Scalia has observed, "[a]s anyone familiar with modern-day drafting of congressional

---

[18] 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 . . .).

committee reports is well aware, their references . . . were inserted, at best by a committee staff member on his or her own initiative, and at worst by a committee staff member at the suggestion of a lawyer-lobbyist; and the purpose of those references was not primarily to inform the Members of Congress what the bill meant . . . but rather to influence judicial construction . . . ." Blanchard v. Bergeron, 489 U.S. 87, 98-99 (1989)(concurring opinion).

This warning should be heeded here, especially given that after the conference report was issued, the sponsor of the legislation, Senator Gorton, reconfirmed that subsection 2001(k) applied to section 318 sales. The Conference Committee reported section 2001 as part of H.R. 1158, which was vetoed by the President. After extensive negotiations and changes to other aspects of the rescissions bill, section 2001 was incorporated into H.R. 1944 with one change to subsection (k) -- extending the Secretaries' time for compliance from 30 to 45 days. Prior to the Senate vote on H.R. 1944, Senator Gorton described subsection 2001(k) using the Forest Service's estimate in its effects statement that the provision would release 300 million board feet of timber. 141 Cong. Rec. S 10464. Again, Senator Gorton described this provision only as intended to "release a group of timber sales that have already been sold under the provisions of

Section 318 of the fiscal year 1990 Interior and Related Agencies Appropriations Act."[19] Id.

Representative Taylor's statement, relied on by plaintiff, that section 307(i) would release section 318 timber sales and "others . . . offered in fiscal year 1991 and some more recently," 141 Cong. Rec. H 3233, also is not dispositive in favor of plaintiff's interpretation of the statute. First, given that some section 318 sales were awarded in fiscal year 1991 and later because they were delayed by litigation and administrative action, Representative Taylor's statement may have intended to simply encompass later-awarded section 318 timber sales. See Paulson Dec. at ¶ 5 (submitted in opposition to plaintiff's Motion for Temporary Restraining Order). Secondly, later statements by Representative Taylor, after the President announced that he would veto the rescissions bill, speak only in terms of the remaining section 318 timber sales:

> For instance, the section 318 timber, it is in Washington and Oregon, this area has already met all the environmental requirements. This is green timber but it has not yet been released. It has been waiting

---

[19] Plaintiff relies heavily on a post-enactment letter from a handful of Senators and Representatives as evidence that Congress intended subsection 2001(k) to apply to all of Washington and Oregon. A post-enactment letter, signed by six legislators, is entitled to little, if any weight. Post-hoc legislative history generally is entitled to little weight, particularly where it represents the views of only one or a few legislators. See Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 118 (1980); Montana Wilderness Ass'n v. U.S. Forest Service, 655 F.2d 951, 956 & n.8 (9th Cir. 1981), cert. denied, 455 U.S. 989 (1982). Moreover, off-the-record correspondence is not to be attributed to Congress as a whole. Montana Wilderness Ass'n at 956 n.10.

> since 1990, over 5 years. And this meets all the environmental requirements, and it meets, it has already been approved to move, but it has been held up for over 5 years while people in Washington and Oregon are without jobs.

141 Cong. Rec. H 5558. See also 141 Cong. Rec. H 5559 (reiterating his reference to "section 318 timber that has been approved.") Finally, even if the statement relied on by plaintiff is regarded as indicating a class of timber sales broader than the remaining section 318 sales, the "remarks of a single legislator who sponsors a bill are not controlling in analyzing legislative history." Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 118 (1980).

Finally, nowhere in the legislative history is there any explicit reference that section 318 was intended to mean the actual States of Washington and Oregon. In fact nowhere does the legislative history explain just what was the geographic scope of the area originally covered by section 318. [confirm] The absence of any references to the States of Washington and Oregon in connection with the release of sales under section 2001(k) strongly undercuts plaintiff's proffered interpretation.

II. Plaintiff Is Not Entitled To A Mandatory Injunction

In addition to declaratory relief, plaintiff requests a mandatory injunction ordering the agencies to act to award, release and permit to be completed all sales, as defined by plaintiffs, by September 10, 1995. A writ of mandamus is an extraordinary remedy and should issue only if the "petitioner

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

As an initial matter, as demonstrated above, plaintiff has not established that it has a "plain right" to have such acts performed. Moreover, plaintiff overlooks the fact that it has an alternative adequate remedy. Subsection 2001(k) expressly states that:

> If for any reason a sale cannot be released and completed under the terms of this subsection within 45 days after the date of the enactment of this act, the Secretary 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 . . . .

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

injunction, regardless of how the Court decides the issue of the scope of subsection 2001(k)(1).

CONCLUSION

For the reasons stated above, defendants' motion for summary judgment should be granted and plaintiff's complaint should be dismissed with prejudice.

Respectfully submitted,
KRISTINE OLSON ROGERS
United States Attorney

LOIS J. SCHIFFER
Assistant Attorney General

WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA L. BERLOWE
EDWARD A. BOLING
United States Department of Justice
Environment and Natural
Resources Division
General Litigation Section
P.O. Box 663
Washington, DC 20044-0663
(202) 272-6217

Attorneys for Defendants

Of Counsel:

MICHAEL GIPPERT
Office of the General Counsel
United States Department of Agriculture
Washington, DC

KAREN MOURITSEN
Office of the Solicitor
United States Department of the Interior
Washington, DC

Dated: August 25, 1995

KRISTINE OLSON
United States Attorney
888 SW Fifth Avenue
Suite 1000
Portland, OR 97204-2024
503-727-1008
OSB #73254

LOIS J. SCHIFFER
Assistant Attorney General
WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA L. BERLOWE
EDWARD BOLING
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
Telephone: 202-272-6217

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL, Plaintiff, v. DAN GLICKMAN, in his capacity as Secretary of Agriculture, BRUCE BABBITT, in his capacity as Secretary of Interior Defendants.	Civil No. 95-6244-HO DECLARATION OF ELAINE ZIELINSKI

I, Elaine Zielinski, do hereby depose and say that:

1. My name is Elaine Zielinski. I am the State Director in the Oregon/Washington State Office of the Bureau of Land Management. My responsibilities include administration of all of the renewable, and non-renewable resource programs that the Bureau

Attachment D

of Land Management (BLM) administers in the States of Oregon and Washington. The BLM timber sale program in Oregon is specifically one of those responsibilities.

2. I am familiar with the Rescissions Act, Public Law 104-19 (109 Stat. 194), including the provisions regarding "Award and Release of Previously Offered and Unawarded Timber Sale contracts," Section 2001(k). I am also familiar with the law commonly known as "§318", (i.e. §318 of the Department of Interior and Related Agencies Appropriations Act, Fiscal Year 1990, Pub. L. No. 101-121, 103 Stat. 745).

3. Since enactment of the Rescissions Act, we have devoted time and resources to taking the actions necessary to have as many of the affected sales as possible awarded and released by September 10, 1995. We are making every reasonable effort to comply with Section 2001(k) and based upon our efforts, we expect to award and release ten of the unawarded Section 318 timber sales before September 10. The volume of these ten sales is approximately 47 MMBF.

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

Executed at Portland, Oregon on August 25, 1995.

Elaine Zielinski

Elaine Zielinski

PAGE 1

PAGE 2

Congressional Record -- Senate

Wednesday, July 26, 1989;
(Legislative day of Tuesday, January 3, 1989)

101st Cong. 1st Sess.

135 Cong Rec S 8762

REFERENCE: Vol. 135 No. 102

MESSAGE: The TEXT of this document exceeds 5,000 lines.

TITLE: DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1990

SPEAKER: Mr. ADAMS; Mr. ARMSTRONG; Mr. BAUCUS; Mr. BINGAMAN; Mr. BUMPERS; Mr. BURNS; Mr. BYRD; Mr. CHAFEE; Mr. COATS; Mr. COCHRAN; Mr. CONRAD; Mr. CRANSTON; Mr. DASCHLE; Mr. DIXON; Mr. DODD; Mr. DOMENICI; Mr. DURENBERGER; Mr. EXON; Mr. FOWLER; Mr. GARN; Mr. GORTON; Mr. GRAMM; Mr. HARKIN; Mr. HATFIELD; Mr. HEINZ; Mr. HELMS; Mr. INOUYE; Mr. JEFFORDS; Mr. JOHNSTON; Mr. KENNEDY; Mr. LAUTENBERG; Mr. LEAHY; Mr. LEVIN; Mr. McCLURE; Mr. METZENBAUM; Ms. MIKULSKI; Mr. MITCHELL; Mr. MOYNIHAN; Mr. MURKOWSKI; Mr. NICKLES; Mr. PELL; Mr. PRYOR; Mr. REID; Mr. SANFORD; Mr. SASSER; Mr. SIMON; Mr. SPECTER; Mr. STEVENS; Mr. WALLOP; Mr. WILSON; Mr. WIRTH

[*S8795] way within the system, simply because the funds are not available.

I state that, having first stated the fine things I think the committee has done and the great attempts to satisfy the requests of many, many, and balance off the needs of the Nation, that we are not available at this time to add substantial amounts of money or add substantial acquisitions.

I state that so that I am hopeful, as the managers return, we will be able to complete this bill and return to the Department of Defense authorization bill. I thank the President for his time and indulgence, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WALLOP. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

Attachment A

ensure the continued viability of the northern spotted owl. Such report shall be completed and submitted to the Forest Service and Bureau of Land Management by November 1, 1989; once the report is completed, the Forest Service and the Bureau of Land Management shall consider the report recommendations, together with other relevant information, in the preparation, advertisement,

[*S8797] offer and award of the timber sales directed by this section.

Mr. HATFIELD. Madam President, basically these two amendments that we are asking to be considered en bloc do two very simple things: One is we change the word "all" relating to parties to a suit to just the word "parties" and we insert another word, the word "negotiated."

The second amendment is to clarify the role of the Fish and Wildlife Service in matters relating to the information that they gather on the spotted owl issue.

Those are basically the only things these two amendments do. I ask that they be agreed to.

The PRESIDING OFFICER. Is there further debate on the amendment?

PAGE 9

Mr. GORTON. Mr. President, I would like to take a moment to comment on the efforts of Senators Hatfield and Adams. Yesterday the Senate Appropriations Committee accepted an amendment sponsored by Senators Hatfield and Adams. It is an amendment which represents countless hours of time on the part of both those Senators and their staffs as well as the entire delegations from Oregon and Washington. I would also like to extend my deepest appreciation to my colleague and the chairman of the Senate Agriculture Committee, Senator Leahy. I thank Senator Leahy for working with the Northwest delegation in addressing his interest in this matter, and welcome his involvement in future discussions of a long-term resolution.

The effort represented in the Hatfield-Adams amendment is twofold: It strives to ensure timber to mills that are on the brink of complete shutdown; and it strives to prevent fragmentation of significant stands of old growth forest. In the midst of the Northwest timber crisis, this amendment is a breath of stability, however, brief. At the same time, this amendment merely maintains the status quo on the larger question -- to what extent do we allow our national forests to be open for multiple use? I hope that with some relief to the immediate crisis, we will all be able to address this long-term question with cooler heads.

The timber supply crisis we are facing in the Northwest is desperately serious. I have received thousands of letters from constitutents -- from mothers fearing for the livelihoods of their children and way of life -- and from others concerned about preserving the spotted owl species and the overall environmental quality of life dear to us in Washington State.

This conflict is over the use of the resources in our National Forest System and to the extent to which these forests provide jobs for our citizens. These citizens depend on sound forest management, on clean water, and clean air. Obviously, decisions made regarding the use of these resources must be thoughtful and balanced.

Today's amendment represents such a thoughtful and balanced process. For several months the Oregon and Washington delegations have met with constitutents dependent upon timber for their livelihoods and constitutents who are concerned for thestatus of the spotted owl species as well as the many interest groups concerned with these issues.

Mr. President, while the environmentalists may be disappointed with this short-term agreement, they are not the ones making the sacrifices. The hard-working people of our timber communities have already lost jobs and wages, and lost certainty as to whether their way of life will even continue to exist.

No one should doubt that this agreement forces upon these people continued sacrifice. There will be more jobs lost, and some mills and towns will remain in jeopardy, particularly on the Olympic Peninsula. I am deeply aware of that fact, and I cannot be satisfied, except for the short term. No one is made whole by this agreement, and in the opinion of this Senator, we must continue to seek greater timber supply and greater long-term stability.

The effort provided by Senators Hatfield and Adams is to be commended. It strives to return timber to the mills destined for closure as well as to prevent fragmentation of significant old growth areas. This is a short-term relief measure.

PAGE 10

Again, I would state that the effort on this appropriations legislation in this Senators view has been thoughtful and balanced. Congress does not want to overturn the Endangered Species Act, it does not want to harm the spotted owl and it does not want to promote unsound forest management. It does, however, need to address the crisis facing us as a result of the conflict over our national forests in region 6. This effort has been broadly inclusive of input from all parties, and is an important first step -- and not the final solution.

I look forward to working with all of my colleagues from Oregon and Washington as well as other interested parties and Members of Congress in seeking a resolution to our land use conflict in the Pacific Northwest.

Mr. BYRD. Madam President, the distinguished Senator has discussed these amendments with the managers. I certainly have no objection. I am willing to accept the amendments en bloc.

Mr. McCLURE. Madam President, we have no objection to the amendments.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendments en bloc of the Senator from Oregon, Mr. Hatfield.

The amendments (Nos. 416 and 417) were agreed to.

Mr. HATFIELD. Madam President, I move to reconsider the vote by which the amendments were agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Madam President, I personally wish to thank the managers of the bill for their assistance and the staff assistants to the managers.

EXCEPTED COMMITTEE AMENDMENT PERTAINING TO SECTION 119

Mr. BUMPERS. Madam President, what is the pending business?

The PRESIDING OFFICER. The pending business is the committee amendment. It is on page 52, line 23, through page 53, line 3.

Mr. BUMPERS. I thank the Chair.

Madam President, this is an amendment on which I will, as soon as we have an opportunity to discuss it, ask for a rollcall vote. I originally intended to make a point of order that it is legislation on an appropriations bill, which I think it clearly is, to which the Senator from Idaho would obviously raise a point of germaneness and we would be voting on the germaneness issue one way or the other.

I think it is better for the Senate and it is better for both the Senator from Idaho and the rest of us who oppose this committee amendment to just have a clear-cut up-or-down vote.

Madam President, yesterday in the Appropriations Committee, the Senator from Idaho offered this amendment, and I will not read the amendment, but I will

A-4

The President set forth five principles to guide the federal interagency effort to develop a management strategy to protect the old-growth related species and produce a sustainable level of timber:

> First, we must never forget the human and the economic dimensions of these problems. Where sound management policies can preserve the health of forest lands, sales should go forward. Where this requirement cannot be met, we need to do our best to offer new economic opportunities for year-round, high-wage, high-skill jobs.
>
> Second, as we craft a plan, we need to protect the long-term health of our forests, our wildlife, and our waterways. They are a ... gift from God, and we hold them in trust for future generations.
>
> Third, our efforts must be, insofar as we are wise enough to know it, scientifically sound, ecologically credible, and legally responsible.
>
> Fourth, the plan should produce a predictable and sustainable level of timber sales and nontimber resources that will not degrade or destroy the environment.
>
> Fifth, to achieve these goals, we will do our best, as I said, to make the federal government work together and work for you. We may make mistakes but we will try to end the gridlock within the federal government and we will insist on collaboration not confrontation.

President Clinton summed up the Forest Conference:

> We're here to begin a process that will ensure that you will be able to work together in your communities for the good of your businesses, your jobs, and your natural environment. The process we [have begun] will not be easy. Its outcome cannot possibly make everyone happy. Perhaps it won't make anyone completely happy. But the worst thing we can do is nothing.

The land allocations and standards and guidelines that are adopted here satisfy all of the objectives set forth by the President. They comply with the requirements of federal law, including the five statutes listed above. They are based on the best available science and are ecologically sound. They will protect the long-term health of the federal forests. They will provide for a steady supply of timber sales and nontimber resources that can be sustained over the long term without

Attachment B

degrading the health of the forest or other environmental resources. Moreover, they involve a commitment by the federal agencies to work together.

This decision marks the turning point from formulation to implementation. Initial standards and guidelines have been developed, subjected to public comment, modified slightly, and adopted by this decision. The next step is to apply the standards and guidelines and adapt management of federal forests to sustain both the old-growth ecosystem and a supply of timber. In order to coordinate the activities of the various federal agencies that are involved, we have established an interagency structure that includes the Regional Interagency Executive Committee (RIEC), the Regional Ecosystem Office (REO), and provincial teams. These groups will oversee the necessary monitoring and research to continuously seek new information and understanding of the complexities involved in managing the old-growth and late-successional forest ecosystem in the Pacific northwest.

We view the action of adopting these standards and guidelines as a beginning and not an end of the process of resolving the issues that have developed during the controversy over federal forest management. We expect and welcome the continuing involvement of the public in the management of these valuable resources.

III. Decision

In this Record of Decision, we jointly adopt Alternative 9 of the Final SEIS, as modified by this decision, and as amplified in the attachment to this Record of Decision entitled "Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl" (Attachment A). This decision, as spelled out in Attachment A (sometimes referred to herein as "the Standards and Guidelines"), is to be applied to lands administered by the USDA Forest Service and the USDI Bureau of Land Management within the range of the northern spotted owl, as provided in this Record of Decision. The following discussion explains the decision but is not intended to cover every aspect of the Standards and Guidelines, which set forth the management direction adopted by this decision in a single document and are intended to facilitate the agencies' implementation of our decision.

The Standards and Guidelines apply to the land allocations that are identified on the official maps of the Final SEIS, as corrected for minor mapping errors. These maps are stored electronically in the spatially unified database (SPUD) maintained by the interagency geographic information system (GIS) staff in the Regional Ecosystem Office at 333 S.W. First Avenue, Portland, Oregon 97204. Maps at 1/2-inch to the mile scale showing the land allocations are available for each Forest Service and BLM administrative unit at the respective unit offices.

Survey and Manage: The standards and guidelines require land managers to take certain actions relative to rare species of plants and animals, particularly amphibians, bryophytes, lichens, mollusks, vascular plants, fungi, and arthropods. These include: (1) manage known sites of rare organisms; (2) survey for the presence of rare organisms prior to ground-disturbing activities; (3) conduct surveys to identify locations and habitats of rare species; and (4) conduct general regional surveys for rare species.

For many species and taxonomic groups, adequate survey techniques may not exist. The standards and guidelines provide an implementation strategy that includes a time line for developing protocols for the surveys and conducting the necessary survey work.

D. Application of Decision

1. Application to Land and Resource Management Plans

This decision amends current land and resource management plans with additional land allocations and standards and guidelines. The management direction set forth in this decision is incorporated upon the effective date of our decision into all existing plans and regional guides and will also be incorporated in plans for forests and districts that do not currently have approved management plans. Development of future plans will be closely coordinated with other agencies and with the Regional Interagency Executive Committee.

a. Bureau of Land Management

Districts With Resource Management Plans -- This decision amends the resource management plans for those portions of BLM districts within the range of the northern spotted owl with approved resource management plans. The Redding Resource Area, the Arcata Resource Area, and the King Range National Conservation Area, all within the Ukiah District of California, have approved resource management plans.

Districts Without Resource Management Plans -- This decision amends management framework plans and timber management plans for those portions of BLM districts within the range of the northern spotted owl without approved resource management plans. The BLM districts without resource management plans are Coos Bay, Eugene, Medford, Roseburg, and Salem Districts and the Klamath Resource Area of the Lakeview District. The units that do not have approved resource management plans have issued draft resource management plans, and the draft environmental impact statements for those draft plans have

been supplemented by the Final SEIS. BLM will proceed with completing those plans in accordance with this decision.

b. Forest Service

Regional Guides -- This decision amends the regional guides for those portions of the Pacific Northwest Region (Region 6) and the Pacific Southwest Region (Region 5) within the range of the northern spotted owl.

National Forests With Forest Plans -- This decision amends the forest plans for those portions of National Forests within the range of the northern spotted owl that have approved forest plans. The National Forests with adopted plans within the range of the northern spotted owl are the Gifford Pinchot, Mount Baker-Snoqualmie, Mount Hood, Olympic, Rogue River, Siuslaw, Siskiyou, Umpqua, and Willamette National Forests. National Forests partially within the range include the Deschutes, Okanogan, Wenatchee, Winema, Lassen, and Modoc National Forests.

National Forests Without Forest Plans -- This decision amends the unit plans and resource management plans for those portions of National Forests without approved forest plans within the range of the northern spotted owl. The National Forests within the range of the northern spotted owl without approved forest plans are the Klamath, Shasta-Trinity, Mendocino, and Six Rivers National Forests. These forests have issued draft forest plans, and the draft environmental impact statements for these draft forest plans have been supplemented by the Final SEIS. The Forest Service will consider the management direction adopted in this decision when completing those plans.

2. Relationship of Standards and Guidelines to Existing Plans

The existing land management plans contain many standards and guidelines that are not amended by this decision. Only those existing plan standards and guidelines in conflict with this decision are replaced. Where existing plans are more restrictive or provide greater benefits to late-successional forest related species than Attachment A, the existing plan standards and guidelines will continue. (Four exceptions to this rule are listed in Attachment A, p. C-3.)

For both Forest Service and BLM lands, an estimate of the probable quantity of forest products that may be offered for sale is provided in the Final SEIS. The allowable sale quantity for the existing forest plans and approved BLM resource management plans will be recalculated at the time of the next plan revision. The resulting allowable sale quantity for National Forests and BLM districts without approved management plans will be recalculated when the respective plans are adopted.

11. **Concern:** The Northwest Forest Resources Council and other commenters suggested that additional alternatives based on the "constant change" theory of ecology be considered. In particular, they suggested a new alternative developed by Dr. Chad Oliver, of the University of Washington.

Response: The Final SEIS acknowledges that there is controversy in the scientific community regarding theories of ecosystem process and function. The Assessment Team discussed the more active approach to forest management with Dr. Oliver and others in formulating its alternatives. Each of the 10 alternatives that were considered in detail contain elements that are based on the constant change theory. The alternatives vary in the amount of acres allocated to reserves and to the matrix and in the degree of active management proposed in the various land allocations to achieve desired conditions. In the view of the Assessment Team, the need to provide late-successional and old-growth forest habitat requires a system of reserves on the federal lands. Early stages of forest succession are and will be well represented on non-federal ownerships. However, recognizing the uncertainty in current knowledge and the need to monitor, learn, and change, the selected alternative also relies on adaptive management and provides an opportunity in the matrix and particularly in adaptive management areas to test more aggressive landscape management approaches under the "constant change" theory. Given the limited amount of late-successional and old-growth forest presently within the range of the northern spotted owl at this time, it would not be prudent or reasonable to apply the active landscape management approaches suggested by the "constant change" theorists to the majority of the remaining late-successional and old-growth forest stands across the federal landscape.

D. Response to Comments on the Final SEIS

We have reviewed and considered all comments that were received during the 30-days following the Notice of Availability of the Final SEIS. The comments summarized here represent the major substantive ones that: (1) were not addressed in the Final SEIS as a comment received on the Draft SEIS, (2) addressed a change in the Final SEIS from the Draft SEIS, and (3) were received by the SEIS Team by April 4, 1994. A more comprehensive discussion of all comments received on the Final SEIS is available from regional offices.

- **Comment:** Northern California forests must not be sacrificed. Reinstate the 180-year harvest rotation. Allowing higher harvest levels from these forests will lead to logging in areas currently set aside for habitat protection.

  Response: The response to the last comment on page F-39 in Appendix F of the Final SEIS discusses the rationale for dropping the 180-year rotation in northern California and deferring to Forest Plan standards and guidelines. That response remains valid. The application of other standards and guidelines of the selected

alternative, plus the retention of all standards and guidelines from the Forest Plans, will result in lower, not higher, levels of harvest than envisioned in the Forest Plans. Further, PSQ levels are presented as an effect, not a goal, of the standards and guidelines. Therefore, harvests within areas specified for habitat protection will be greatly curtailed.

- Comment: Establish late-successional reserves between the Snow Mountain and Yolo-Bolly/Middle Eel Wilderness on the Mendocino National Forest to provide connectivity.

  Response: The standards and guidelines specify a network of late-successional reserves. Dispersal between those reserves is facilitated in part by the riparian reserves and the matrix standards and guidelines. The suggested changes are not needed to meet the objectives of Alternative 9. If management direction for these areas should be changed for other objectives, such changes should be pursued through the forest planning process now taking place on the Mendocino National Forest.

- Comment: Salvage logging is the most nebulous category in practice and agency standards and guidelines leave too much to be determined by whim. Therefore, confine all salvage logging to adaptive management areas.

  Response: To ensure that salvage in late-successional reserves is consistent with the intent of the standards and guidelines, salvage is subject to review by the Regional Ecosystem Office and approval by the Regional Interagency Executive Committee. Salvage is not required to be beneficial, but is designed to permit the recovery of timber volume in those instances where catastrophic events clearly kill more trees (resulting in more snags and down logs in the short and long term) than are needed to maintain late-successional conditions. For example, if a major blowdown event leaves dead trees 15 feet deep over the landscape, a determination could be made that only a portion of those logs are needed to meet the objectives of the reserve. The rest, after consideration of the impacts of the harvest systems themselves, including any required roading, might be available for salvage. Salvage of individual dead trees within the landscape is not intended within late-successional reserves under the salvage guidelines. Work of the Regional Ecosystem Office and adaptive management related to case-by-case examples will continue to define where salvage is appropriate.

- Comment: Amend standard and guideline LH-4 (p. B-127). This standard and guideline addresses issuance of leases, permits, rights-of-way, and easements to avoid adverse effects that retard or prevent attainment of aquatic conservation strategy objectives. It should be amended to allow more flexibility for Tier 2 key watersheds and non-key watersheds.

Response: LH-4 has been clarified to reflect that it applies to leases, permits, rights-of-way, and easements other than for surface water developments. LH-2 applies to surface water developments only, and the difference between the two standards and guidelines is intentional and appropriate.

- **Comment:** The language in the Final SEIS Summary leads the casual reader to believe that the aquatic conservation strategy does not apply to wild and scenic rivers. Please clarify this language.

  Response: We have clarified the management direction for wild and scenic rivers in the Record of Decision. Congressional requirements take precedence over the standards and guidelines, the same as for wilderness areas. However, where legislation defers to a site-specific management plan for management decisions, the standards and guidelines of the selected alternative will apply along with that management plan direction, whichever is more restrictive or provides greater benefits to late-successional conditions. This parallels the direction for national scenic areas.

- **Comment:** Standards and guidelines such as those for matrix, key watersheds, and riparian reserves in adaptive management areas should be permanent and not subject to local, politically pressured, change.

  Response: The primary purpose of the adaptive management areas is to encourage development of non-traditional techniques to meet management objectives. The standards and guidelines outside of the adaptive management areas represent our best effort to provide appropriate levels of protection for late-successional and old-growth forest related species. Inside the adaptive management areas, the activities and the standards and guidelines are presented essentially as a starting point, to help describe the objectives, and then local teams may either use such direction or develop something different. Matrix standards and guidelines for green-tree retention, snags and coarse woody debris need to be met in adaptive management areas.

- **Comment:** Late-successional reserve plans should include a road obliteration plan for the purpose of reducing fragmentation of the forest ecosystem within these reserves.

  Response: The 1992 Spotted Owl FEIS which this SEIS supplements states that "roads which are no longer needed are identified for restoring to a natural state through such methods as planting trees and shrubs, mulching and seeding grasses, or roadbed obliteration. Roads which are not needed for ongoing or short-term projects can be proposed for closure in order to reduce conflicts with other resources or to reduce use and hence maintenance needs." Since timber management-related funds are used for the maintenance of many existing roads,

we expect the obliteration of roads not needed for other management purposes. Those that remain, while perhaps distracting somewhat from late-successional reserve objectives, will be used for fire protection, beneficial silvicultural activities, watershed restoration, inventories, and other uses beneficial to objectives, as well as facilitating existing and new uses neutral to late-successional reserve objectives. Standards and guidelines for Alternative 9 require that new road construction be substantially limited. Any road construction associated with silvicultural treatments inside late-successional reserve would be subject to the overall "beneficial" requirement for such activities. That is, if the value of a thinning was negated by the habitat lost through road construction to the thinning, the activity should not proceed.

- **Comment:** The Record of Decision should require that an interim timber sale program be implemented that would direct activities to begin first in the least environmentally sensitive, least controversial areas, in order to minimize confrontation and expense.

  Response: We expect that the agencies will work first in areas that are least environmentally sensitive, and that initial sales offerings will be outside of key watersheds and inventoried roadless areas. However, the team sees a need to proceed with implementation of all of the standards and guidelines on all of the areas, which includes aggressive development of watershed analysis techniques, salvage where salvage is needed and consistent with the standards and guidelines, and aggressive planning for adaptive management areas. We believe the standards and guidelines appropriately protect all aspects of the environment.

- **Comment:** NFRC draws our attention to NFRC v. Espy, Civ. No. 93-1621 (D.D.C., March 21, 1994), and urges the Secretaries not to adopt Alternative 9 which is "irrevocably tainted by the illegality of the FEMAT process and report" and which would be unlawful.

  Response: We decided to proceed in decision-making on the alternatives presented in the SEIS because we believe that the results obtained by FEMAT would not have been any different had FEMAT been organized and conducted as an advisory committee under the Federal Advisory Committee Act (FACA). Judge Jackson said, "There is nothing in the record to suggest that the FEMAT Report, or its advice and recommendations to the President, would have in any way been altered had FACA been complied with to the letter."

  Furthermore, the contents of the FEMAT report were reviewed and commented upon in a subsequent open and public process, in which the federal government received over 100,000 comment documents. The

FEMAT report was incorporated by reference as Appendix A of both the Draft SEIS and Final SEIS. It was widely circulated prior to and during the 90-day comment period on the Draft SEIS.

The decisions being made at this time are based on the entire administrative record, which includes the FEMAT report and also the Draft SEIS, the comments received on the Draft, the Final SEIS, and additional elements of the administrative record obtained by government studies and the work product of government employees. The administrative record as a whole justifies a decision at this time. See also the discussion in section VIII.B.10 above.

- **Comment:** The conservation restrictions described on pages 3&4-316-317 in the Final SEIS apply to federal lands as well as state lands.

  Response: In response to these comments by the Confederated Tribes of the Warm Springs Reservation of Oregon, the SEIS Team has corrected the language in the Record of Decision to more accurately reflect the applicable legal standards in regard to the exercise of tribal treaty rights.

  Pages 51 and 52 of the ROD specifically address these issues.

- **Comment:** The Sweet Home decision illustrates that the cumulative effects analysis used in the Final SEIS was an inadequate treatment of the land that makes up nearly half of the land within the planning area.

  Response: We note the recent decision of the Court of Appeals for the District of Columbia in Sweet Home Chapter of Communities for a Greater Oregon v. Babbitt, No. 92-5255, ___ F.3d __ (D.C. Cir. March 11, 1994). The Secretary of the Interior has filed a motion seeking to stay issuance of the mandate in this matter and has recommended requesting rehearing by the full Court of Appeals. The Secretary believes that the case is wrongly decided and, most importantly, that it is contrary to the law in the Ninth Circuit, as set out in Palila v. Hawaii Department of Land and Natural Resources, 852 F.2d 1106 (1988). Thus, we have determined that the Sweet Home decision has no impact on Alternative 9.

- **Comment:** The Sweet Home decision will lead to less protection of spotted owl habitat on non-federal lands and therefore should be compensated by additional owl protection on federal lands.

  Response: Based on the response to the previous question, the owl habitat provided by the selected alternative will be adequate to meet the objectives of the decision. No change is necessary.

- **Comment:** The current situation for marbled murrelets would lead a decision-maker to protect all murrelet habitat on federal lands.

  Response: The Marbled Murrelet Recovery Team has continued its work on these topics. Since publication of the Final SEIS, preliminary demographic analysis of marbled murrelets has been completed as part of the ongoing conservation assessment of the species (Beissinger, pers. comm.). The possibility that such analysis might be completed prior to execution of the ROD was noted in the Final SEIS (page 3&4-246). The analysis has not yet been peer reviewed, and is subject to change. Because few quantitative population data are available for marbled murrelets, much of the analysis was based on studies of other species in the same family. The model is not specific to a particular period of time or a geographic area. However, the data specific to marbled murrelets that could be used in the analysis were taken from British Columbia in 1993 and from the central coast of Oregon in 1988 through 1991. Since none of the demographic rates for marbled murrelets are known with certainty, sensitivity analysis was used to look at the effect of the various assumptions.

  We have examined the results of the preliminary analysis. Under the parameters the author considers most likely, the analysis yielded estimates that murrelet populations are declining at a rate of at least 4 percent per year. The cause, or causes, for such a decline are not addressed by the modeling effort, so the role played by habitat can not be determined from this effort. The possibility of a population decline in this range was disclosed in the Final SEIS (page 3&4-245), and the likelihood that murrelet populations were generally in decline was a key consideration in the cumulative effects analysis in this SEIS and the Assessment Team report. Nevertheless, the rate of decline suggested by the results of the preliminary analysis is quite steep. We will continue to track this analysis as it is completed, and review the results as part of the adaptive management strategy that forms an important component of our decision.

- **Comment:** Some commenters attached a paper prepared by three respected scientists (Lande, Orians and Weins) who have interpreted the results of the demographic workshop (Burnham et al. 1994) and have concluded that the only appropriate response is to protect all remaining spotted owl habitat. In a related letter, nineteen scientists are on record as calling for protection of all remaining owl habitat.

  Response: Commenters criticize agency interpretations of owl population conditions. This continues to be a point of disagreement within the scientific community. Some scientists, including those who have been involved with this planning initiative, continue to express confidence that the owl

population is in a condition that will allow it to survive the transition period until it reaches a new stable equilibrium under the habitat levels projected to result from this decision. While not immune to the fact that the results of demographic analyses indicate the owl faces some degree of risk, including that of extirpation, they nevertheless take the view that strong reasons exist to believe that owl populations will stabilize widely distributed across federal lands under our decision. A useful analysis of the relevant factors is set forth at pages 3&4-229 - 3&4-235 of the Final SEIS. The new analyses have not led these scientists to change their opinions.

Conversely, other well respected scientists continue to express concern that federal land management proposals (including adoption of Alternative 9) are not an appropriate response to demographic results. While not directly involved in spotted owl population and habitat management, these scientists are qualified to review and comment on the technical aspects of the data and present an opposing viewpoint.

In consideration of this disagreement within the scientific community, we have greatly restricted the timber harvest in owl habitat. It should also be considered that the harvest will occur in a range of habitat types and prescriptions, from commercial thinning to regeneration harvest of old-growth.

- Comment: The Sierra Club Legal Defense Fund, Inc. attached to its comments a comparison by Schumaker and Doak of the use of the owl population simulator. Schumaker and Doak conducted an additional run of the model using different assumptions for demographic parameters. Their results conclude that the Forest Service "assumption of a 95% adult survival is impossibly optimistic, and regardless of the values assigned to other classes of territories, it artificially guarantees the owl's persistence."

  Response: The parameters used for the simulation analysis reported in the SEIS consisted of three alternative rule sets. In each, adult survival was varied as a function of habitat quality. Results of Bart and Forsman (1992) indicated that owl density and reproductive success rise with increasing percent of suitable habitat. Work by Bart and Earnst indicated this is also true of persistence.

  Although Bart and Earnst have inferred that adult survival is similarly related to percentage of suitable habitat, studies have not been done to determine this relationship. This lack of knowledge was, in part, the rationale for using alternative rule sets in the analysis for the SEIS.

  Schumaker and Doak are correct in noting that studies have not

demonstrated rates of survival as high as 95 percent. It is important to note that, while all three rule sets used in the SEIS analysis could pass a test for reasonableness, this analysis does not demonstrate that these or any other rule sets represent the true set of parameters. The rule set used by Schumaker and Doak could also be considered reasonable, and would yield a different weighted survival value for adult spotted owls.

- **Comment:** Ed Whitelaw and Ernie Niemi commented on the economic analysis of the Final SEIS in "Economic Critique of the Final SEIS on Management of Old-Growth Habitat." They point out that the Final SEIS overestimates economic impacts of reduced timber from federal lands by emphasizing negative impacts on rural timber-dependent communities and not accounting for the meaningful contribution of unlogged federal forests to the stability of local and regional economies.

  Response: Economists use a variety of assumptions to predict economic impacts of a proposed action. The Final SEIS uses a traditional forest resource approach to evaluate alternatives. The commenters prefer to use an approach that relies on less quantifiable terms and applies them over a broader regional base. Had we adopted their assumptions, a more positive regional economic impact would have been shown, but the fundamental analysis and assessment of Alternative 9 would not have changed.

- **Comment:** A member of the Assessment Team commented that in his view the changes made between Draft and Final SEIS to the matrix management prescription on green tree retention are contrary to the original intent of overall connectivity in the harvested environment.

  Response: The prescription has been rewritten to describe the intent of the green-tree retention, which is to leave a mixture of dispersed and aggregated retention to achieve a full array of ecological objectives (see p. 35 above).

- **Comment:** A Wilderness Society submission, written by four fisheries scientists, argues that refugia located within key watersheds are inadequately protected and that they will be subject both to a legacy of disturbance and to new disturbance through an untested watershed analysis process.

  Response: Key watersheds are one aspect of the aquatic conservation strategy. The other key components of the strategy include riparian reserves and their standards and guidelines, the watershed analysis process, and watershed restoration programs.

  The Assessment Team identified a network of 164 key watersheds. Alternative 9 as described in the Final SEIS establishes key watersheds on

over nine million acres, or 37 percent of the federal forest land within the range of the northern spotted owl. Recognizing the importance of these areas as refugia, any new human disturbance will be greatly restricted on over seven and a half million acres, or 84 percent of these key watersheds -- because those acres are co-located in Congressionally reserved areas, late-successional reserves, administratively withdrawn areas, or riparian reserves. This area comprises 31 percent of the federal forest land within the range of the northern spotted owl. Within the 16 percent of the key watersheds in matrix, AMAs or managed late-successional areas, the highest quality areas will also receive protection. No new roads will be constructed in inventoried roadless areas within key watersheds, the amount of existing system and nonsystem roads within key watersheds should be reduced (through decommissioning), and watershed analysis must be completed for all watersheds containing inventoried roadless areas before management activities can proceed. Over 50 percent of the inventoried roadless areas on National Forests within the range of the northern spotted owl occur in key watersheds.

Watershed restoration is designed to address past disturbances by treating roads (decommissioning, upgrading, modifying drainage, etc.), restoring riparian vegetation, and restoring instream habitat structure.

Watershed analysis is not designed to encourage new human disturbance, but is focused on the collection and compilation of information about the watershed, in areas where management activities are permitted, that is essential for making sound management decisions.

XI. Review and Approval

A. Administrative Review

A decision by the Secretary of Agriculture is not subject to administrative appeal under the Forest Service regulations. A decision by the Secretary of the Interior is not subject to administrative appeal under BLM regulations. Therefore, this decision is the final agency action for the amendment of these land allocations, standards and guidelines into the applicable formal planning documents.

This decision does not constitute the final agency action for any timber sale or other project. Before a decision document for a timber sale or other project is authorized, applicable procedures must be complied with, including applicable project-level NEPA analysis and administrative appeal procedures.

U.S. Department of Agriculture
Natural Resources & Environment

U.S. Department of the Interior
Land and Minerals Management

August 22, 1995

MEMORANDUM

TO: Jack Ward Thomas
Chief
Forest Service

Elaine Zielinski
Oregon State Director
Bureau of Land Management

FROM: for James R. Lyons
Under Secretary of Agriculture
Natural Resources and Environment

for Mike Dombeck
Director
Bureau of Land Management

SUBJECT: Section 2001(k) of the 1995 Rescission Act

Section 2001(k) of the 1995 Rescissions Act (Public Law 101-121) directs the Secretaries to award, release, and permit to be completed the remaining section 318 timber sales. Several parties have urged us to interpret section 2001(k) as applying to all timber contracts offered in the geographic area described in section 318 of the Fiscal Year 1990 Interior and Related Agencies Appropriations Act, in addition to the few remaining timber sales that were offered subject to section 318. The language of section 2001(k) is clear on its face, and applies only to the remaining section 318 timber sales.

The section 318 sales have a turbulent history, having been fiercely debated by Congress, by the press, by public advisory boards, and before the Supreme Court. It is this well-known and discrete set of sales, the sales offered in Fiscal Year 1990 under the procedures establishes in section 318(b)-(j) of Public Law 101-121, which Congress refers to in section 2001(k) of the 1995 Rescissions Act as "subject to section 318."

We have been involved in the debate over the federal forests in the Pacific Northwest for a long time, as have members of Congress. Our understanding of the section 2001(k) release of timber

Attachment C

DATE: April 27, 1995 FERM - 001

FOREST SERVICE
Timber Sale Amendments to FY 1995 Rescission
Effect of House Action

House Action: The House passed rescissions to the FY 1995 Appropriations Act including an emergency two-year salvage timber sale amendment, as well as provisions related to Section 318 of Public Law 101-121.

House Amendment Summary: The procedures under this amendment direct the preparation, advertisement, offer and award of contracts for 3 billion board feet of salvage timber sales in each of two years. An environmental assessment and a biological evaluation are required for each sale which are deemed to satisfy Federal environmental laws and regulations. The intent of the amendment appears to be that salvage sales with the least environmental impact will be offered first and sales with known impacts will be offered only if needed to meet the volume requirements of the bill. In addition, sales under this amendment would not be subject to administrative appeals. Deadlines for judicial review are set. Section (i)(1) of the amendment would require the release of all volume subject to Section 318 of Public Law 101-121 within 30 days of enactment.

Effect of House Action:
Background Discussion- The following describes the required timing and volumes of the amendment. The organization capability and environmental effects are described in the section following the table with the estimated timing and volume requirements.

The emergency salvage sale amendment will become effective upon passage and will be for a two year period. Assuming that the bill is passed by June, 1995, it will involve three fiscal years; the first year of the bill would take in the remainder of FY 1995 and the first half of FY 1996, and the second year of the bill would include the remainder of FY 1996 and the first eight months of FY 1997. This would split Fiscal Years 1995 and 1997, causing implementation concerns mainly in FY 1997 when the agency would need to make an adjustment back to current salvage direction. Additionally, to show effects of receipts and costs they must be considered on a fiscal year basis.

The three fiscal years total salvage program currently planned and required by the amendment is shown in the following table. The exact volume required for FY 1995 and FY 1997 can not be precisely specified because of the amendment requirements that 1.5 billion board feet be offered in the first 90 days of each of the two years. Typically, the bulk of the regular current program is offered in the second half of the year. The following table also reflects the time frame anticipated for the current program. For FY 1995, the exact volume that would be established would depend on the actual date of enactment and the volume that had been offered in the fiscal year to date. For FY 1997, it is assumed that after the end of the two year period that the program would return to its current level of about 1.5 billion board feet. Given these assumptions, the total volume for the three fiscal years would be 7.180 billion board feet.

For FY 1995 full implementation of the bill would add an additional salvage volume of 826 million board feet to the planned 1.574 billion board feet. In FY 1996 the bill would require an additional 1.552 billion board feet in addition to the planned 1.449 billion board feet. In FY 1997 the bill would require a [redacted]

Attachment E

additional 250 million board feet in addition to the 1.5 billion board feet planned. This would meet the two year volume requirement of 6 billion board feet as shown in the following table.

Estimated Timing and Volume Requirements

	FY 1995				FY 1996				FY 1997				
Qtrs.	1	2	3	4	1	2	3	4	1	2	3	4	
Language Requirement*			1.5	.5	3.0 .5	.5	1.5	3.0 .5	.5	.5			6.000
Current volume	.1	.3	1.074	.1	.362	.362	.362	.362	.375	.375	.375	.375	4.522
Addit. volume required by amend.			.426	.4	.138	.138	1.138	.138	.125	.125			2.628
Total	.1	.3	1.5	.5	.5	.5	1.5	.5	.5	.5	.375	.375	7.150

* The language sets the time frame for two years beginning with the date of enactment. As time moves closer to the end of FY 1995, the volume amount per fiscal year would shift to more in FY 1996 and FY 1997 and less in FY 1995.

The average annual salvage volume for the past five years has been 1.8 billion board feet so the amendment would nearly double that amount. The amendment also has a timing requirement for offering the salvage for sale. Half of the first year's volume of 3 billion board feet would have to be offered within 90 days of enactment of the bill. It is unlikely that this volume level could be achieved in 90 days.

The salvage volume physically available and the capability of the Regions and Forests to meet the volume requirement on an annual basis has been evaluated through an expedited process.

The following will discuss the organizational capability covering the FY 1995-1997 period with both the current organization using existing rules and the organizational capability with the assumption that the streamlining provisions of the amendment were available. The substantive requirements of applicable environmental laws will continue to be met. Also discussed are the effects of the mandated targets as expressed in the amendment. It should be noted that the figures used are estimates and until actual timber sale layout and volume determinations are completed, one can expect as much as 25% variance from the Regional estimates.

Organizational Capability, Existing Organization with Existing Rules

Current estimates from the field indicate that the salvage that could be produced from FY 1995 through the end of FY 1997 would be 4.5 billion board feet of salvage. This estimate assumes that our current organization continues and that the current laws and rules continue to exist as they are now. Estimated volumes by Region are shown in the table below.

Organizational Capability, Existing Organization with Existing Rules
Total for FY 1995-1997, Estimated Volume in Million Board Feet

	R1	R2	R3	R4	R5	R6	R8	R9	R10	Total
Roaded	764	132	75	572	850	1,204	160	258	21	4,036
Unroaded	49	4	0	288	17	50	5	2	0	415
Total	813	136	75	860	867	1,254	165	260	21	4,451

The estimated receipts are greater than the cost estimates for the 4.5 billion board feet program. The numbers by year are: FY 1995, $176 million in costs, $94 million in 25 percent payment to states, $375 million in receipts, for a net of $105 million; FY 1996, $139 million in costs, $82 million in 25 percent payment to states, $330 in receipts, for a net of $109 million, and FY 1997, $140 million in costs, $69 million in 25 percent payment to states, $275 million in receipts, for a net of $66 million. There should be sufficient salvage sale funds to meet the program needs if the timber values remain at the current level.

Organizational Capability With Streamlining Provisions of the Amendment Applied

Field estimates were based on the organizational capability with the assumption that the streamlining provisions of the amendment were available. Substantive requirements of applicable environmental laws will continue to be met. Current estimates from the field would indicate that it is not possible to achieve the entire amount proposed in the amendment, but that the salvage that could be produced from FY 1995 through the end of FY 1997 would be 5.4 billion board feet of salvage (see table below). This estimate assumes that "expedited fire contracting procedures" can be used, that the Federal Workforce Restructuring Act of 1994 will not apply to any employee that we might rehire, and that resource specialists will be available through contracting.

Since there is substantial uncertainty in the field about contracting this type of work, how many employees might be willing to return to work, and the availability of FTE's under the ceiling, the estimate of 5.4 billion board feet may or may not be conservative.

There is a significant loss through deterioration during the first year which accounts for a substantial amount of the difference between the volume physically available and the volume possible with our organizational capability. A salvage volume of 3.3 billion in FY 1995 would be required to "capture" this volume, however a maximum capability of around 2 billion is all that one could realistically expect with the time remaining in the fiscal year and the resources that are available to do the work, regardless of additional authorities which may be given. Additional losses occur when the size of the material is smaller since it becomes unmerchantable sooner.

Other factors such as limited availability of biologists have forced Regions to make decisions about what programs will have priority consideration. While salvage remains a high priority, in some instances biologists' time is allocated to renewal of range permits so that range permittees may continue their permits. The more durable species will be salvaged in years two and three along with new salvage that we expect to occur in a normal year. It also should be noted that the "expedited fire contracting procedures" do not exempt the Forest Service from personal service contract rules. An exemption would have allowed us to let one contract for individuals who could work on a number of different tasks rather than having to design a contract for each item covered.

Organizational Capability with Streamlining Provisions of the Amendment Applied
Total for FY 1995-1997, Estimated Volume in Million Board Feet

	R1	R2	R3	R4	R5	R6	R8	R9	R10	Total
Roaded	969	136	125	586	1,070	1,405	203	260	53	4,807
Unroaded	72	4	0	344	73	80	5	2	0	580
Total	1,041	140	125	930	1,143	1485	208	262	53	5,387

The timing of the 5.4 billion board feet would be as follows: FY 1995, 2.022 billion; FY 1996, 1.718 billion board feet; and FY 1997 (entire fiscal year) 1.647. Without the procedural changes, the administrative capability would be nearly a billion board feet less or 4.5 billion board feet. The estimate also assumes that while the procedures are relaxed or eliminated that the substantive requirements of applicable law will be met. Volume levels by Region are shown in the table above.

The estimated receipts are also greater than the cost estimates for the 5.4 billion board feet program. The numbers by year are: FY 1995, $11 million in net costs (additional cost minus the cost reduction from the current plan), $10 million in 25 percent payment to states, $38 million in receipts, for a net of $17 million; FY 1996, $8 million in net costs, $21 million in 25 percent payment to states, $82 million in receipts, for a net of $53 million. FY 1997, $(-8) million in net costs, $13 million in 25 percent payment to states, $50 million in receipts, for a net of $45 million; FY 1998, $3 million in net costs, $3 million in 25 percent payment to states, $13 million in receipts, for a net of $7 million. There should be sufficient salvage sale funds to meet the program needs if the timber values remain at the current level.

Volume Mandated by the Amendment:
Field estimates indicate that while the estimated salvage volumes are substantial, they fall short of the full amount of the amendment. The House action would require an addition of about 2.6 billion board feet (BBF) over two years to the base program. Since the two year period of the amendment would begin in FY 1995, three fiscal years would be involved. Starting with a base level of 4.5 BBF (for three years) and adding the additional volume needed to meet the amendment targets through the middle of FY 97 (2.6 BBF), would give a total program of about 7.1 BBF for the period FY 95 through the end of FY 1997. This amount is beyond the organizational capability, with the provisions applied, as estimated by the Regions. This amount is also beyond our estimate of the maximum economic operable salvage volume meeting the substantive provisions of Federal environmental laws.

Other Effects:
Increasing the supply of timber through expanded salvage sales has a number of complex economic and other effects beyond those measured by the price and quantity of an increase in volume sold. For example, increasing the supply of timber nationally reduces the price of all timber sales - both public and private. Longer term increases in revenue are possible due to increased sales helping retain more firms in business. These effects can be significant in some local areas although the markets for timber are rapidly becoming regional and even international in some instances. Increased sales also reduce consumer prices and reduce exports. Employment in areas with significant unemployment and excess mill capacity is increased along with resulting economic activity. Federal, State, and local tax revenues are increased. As a result of increased employment, public welfare and unemployment costs are reduced in those areas. Salvage sales are also an important tool for reducing heavy fuel concentrations and the associated risk of catastrophic fire and the cost of suppressing such fires. Fire suppression costs are on a steep upward trend and totalled about $750 million in FY 1994 for the Forest Service alone. It is not possible to evaluate each of these effects in detail.

The effect on other resources from the salvage action are not clearly identified at this time as the on ground assessment and salvage sale layout are not yet completed. It is possible there may be watershed thresholds which will reach

their capacity because of the salvage, thus having an effect on future green sales or other resource management activities. For example, salvage activities in riparian areas which by themselves may be within the limits of acceptable change for a watershed, may preclude other activities such as timber sales planned as a part of the regular sale program, grazing, or mining which may have also been planned for some part of the watershed. These impacts can only be fully realized during the assessment. While salvage is an urgent and desirable activity, it must be balanced against other resource management needs now and in the future. These effects will only be known as the assessments are completed.

In addition to the resource concerns identified above, there is concern that litigation may be prompted against other programs. For example environmental groups likely will argue that the President's Forest Plan should undergo new Endangered Species Act consultation if any significant (volume/area) salvage cutting is done in owl habitat, if such activity is inconsistent with the salvage that is allowed in the Plan.

Section 318 Sales. Section (i)(1) of the amendment would require the release of all volume subject to Section 318 of Public Law 101-121 within 30 days of enactment with no change in originally advertised terms and volumes. The current remaining volume under contract awarded during FY 89-90 subject to Section 318 is approximately 650 million board feet. Of this amount, there is approximately 270-300 million board feet proposed for cancellation or suspension as a result of a U.S. Fish and Wildlife Service biological opinion that indicates harvest of these units is likely to jeopardize the continued existence of the marbled murrelet, a species listed as threatened under the Endangered Species Act (ESA). The amendment provides a legislative exemption from provisions of the ESA and would reverse the proposed cancellation or suspension of this volume and the offer volume would increase accordingly. Receipts would increase by about $161,000,000 and the Agency would not incur approximately $60,000,000 of additional costs for sale cancellation.

Senate Report Statement: TITLE II - GENERAL PROVISIONS, Timber Supply, Section 2001. The Forest Service's planned timber salvage program for fiscal year 1995-96 is roughly 1.5 billion board feet for each fiscal year. The Committee fully expects the Forest Service to meet these programmed targets, and undertake significant efforts to harvest additional salvage timber to the maximum extent feasible. ... Furthermore, because of the emergency nature of these sales, the bill language also provides for an expedited process for legal challenges to any such timber sale, and limits administrative review of the sales.

Senate Bill Language: TITLE II-GENERAL PROVISIONS, Sec.2001. Timber Sales.
Effects of Senate Action: The Senate version gives the all the procedural directions of the House version while not specifying the additional volume that would be sold as salvage. It also does not have the rigid time requirements for the salvage offerings.

Range Amendments:
The amendments by Senators Burns and Pressler regarding range permit renewal and other analysis required by NEPA and other applicable laws would free up some biologist time to work on other priorities such as salvage. This would produce some increase in the organizational capability for salvage in FY 1996 and FY 1997 by an estimated 64 million board feet (32 MMBF in FY 1996 and 32 MMBF in FY 1997). This volume is gained in the following regions: R3, 12 MMBF; R4, 12 MMBF; R5, 40 MMBF.

Section 318 Sales. Subsection (e) of Section 2001 of the Senate bill concerns timber sales contracts that are subject to Section 318 of P.L. 101-121. The first provision, 2001 (e)(1), is virtually identical to Section (i)(1) of the House bill in requiring the award and release of all timber sale contracts subject to Section 318 (see discussion of 318 Sales in the House bill, above). However, the second and third provisions in the Senate bill are not part of the House language. Section 2001(e)(2) of the Senate bill prohibits the release or completion of a Section 318 sale unit "...if any threatened or endangered species is known to be nesting..." within the unit. Section 2001(e)(3) requires that if for any reason a sale cannot be released and completed within the terms of subsection (e) within 45 days of enactment, the Secretary "...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."

While the Senate version allows replacement of the volume for units with known nesting of a listed species, the biological and economic effects of the ammendment are nearly the same as the House version. It should be noted that the replacement volume will have an effect on the normal green sale program in that this volume will be drawn from other areas where sales are likely to be prepared in the future.

Option 9 Sales:
The Senate version also contains language relating to timber sales offered under Option 9 (April 13, 1994 ROD) of the President's Plan. Section 2001(b) This section directs the agencies to sell Section 2001(c) timber "notwithstanding any other law including a law under the authority which any judicial order is outstanding on enactment" as selected by the Secretaries of Interior and Agriculture on April 13, 1994, but does not require any specific volume to be sold. The ROD does not actually "specify" any timber sales.

Section 2001(b) declares that the April 13, 1994 ROD timber sales would satisfy all applicable Federal laws. Section 2001(c) prohibits courts from issuing preliminary injunctions or temporary restraining orders against such sales; empowers Federal courts to permanently enjoin timber sales that are found to be arbitrary, capricious, or otherwise not in accordance with law; requires legal challenges to be filed within 15 days of the initial sale advertisement; requires a court decision within 45 days of filing of the complaint; and prohibits administrative appeals.

Current legal challenges to the ROD in the 9th Circuit and D.C. District Court would continue because these cases challenge the law. Because of the provision in Section 2001(c) directing sale of this timber not withstanding any other law, including a law under the authority of which any judicial order is outstanding on enactment. Courts would be prevented from issuing an injunction before December 31, 1996 if they find a violation. New information might result in legal problems under the "arbitrary, capricious, or otherwise not in accordance with law" judicial review standard of Section 2001(c)(1). For example, Judge Dwyer stated that the ROD would have to be reconsidered if the Supreme Court rules against the government and upholds the Sweet Home decision (871 F.Supp. 1291, 1313), but he does not indicate whether it would be a violation of NEPA, ESA, or the arbitrary and capricious standard. If the Supreme Court rules against the government, a court may rule that timber sales consistent with ROD are arbitrary and capricious until analysis can be completed on how Sweet Home changes the assumptions underlying the ROD, and the court might issue an injunction against timber sales in the entire spotted owl region until the ROD is reconsidered.

National Summary of Costs and Receipts as Discussed Above
Volume in Million Board Feet, Costs & Receipts in Millions of Dollars

	FY 1995	FY 1996	FY 1997	FY 1998
Current Plan (base level)				
Volume Offered (MMBF)	1,574	1,449	1,500	
Volume Harvested (MMBF)	1,700	1,500	1,250	
Total Cost to offer/Sell (million $s)	176	139	140	
25% Payment to States	94	82	69	
Total Receipts from Harvest (million $s)	375	330	275	
Net Receipts	105	109	66	
Distribution of Receipts				
Salvage Sale Fund	176	159	132	
K-V	101	89	74	
NFF receipts	4	0	0	
House (Volumes Showing Organization Capability with House Provisions Applied)				
Additional Timber offered/sold (MMBF)	448	269	147	
Total additional volume harvested (MMBF)	250	550	225	89
Additional cost for timber offer/sold				
Mandatory (SSF) (million $s)	34	28	13	3
Discretionary/Appropriated	0	0	0	0
Cost reduction from current plan (million $s)	23	20	21	
25% Payment to States	10	21	13	3
Additional receipts from add. har. (million $s)	38	82	50	13
Net Receipts	17	53	45	7
Distribution of Receipts				
Salvage Sale Fund	18	39	24	7
K-V	10	22	13	3
Volumes mandated by the House Amendment (If organizationally capable)				
Additional Timber offered/sold (MMBF)	826	1,552	250	
Total additional volume harvested (MMBF)	250	1,447	1,031	150
Additional cost for timber offer/sold				
Mandatory (SSF) (million $s)	64	109	44	5
Discretionary/Appropriated	0	0	0	0
Cost reduction from current plan (million $s)	23	20	21	
Net Cost	41	89	23	5
25% Payment to States	10	53	43	6
Additional receipts from add. har. (million $s)	38	211	172	23
Net Receipts	-13	69	106	12
Distribution of Receipts				
Salvage Sale Fund	18	101	83	11
K-V	10	57	46	6

318 Sales- 700 million board feet with additional receipts of $161 million. (Does not include the $60 million which would be saved because of sale cancellations which would otherwise be necessary).

Option 9 sales- Estimates were not made since the language was ambiguous as to the intent of what was incuded.

KRISTINE OLSON
United States Attorney
888 SW Fifth Avenue
Suite 1000
Portland, OR 97204-2024
(503) 727-1008

LOIS J. SCHIFFER
Assistant Attorney General
WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA L. BERLOWE
EDWARD A. BOLING
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
Telephone: (202) 272-6217

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL, Plaintiff, v. DAN GLICKMAN, in his capacity as Secretary of Agriculture, BRUCE BABBITT, in his capacity as Secretary of the Interior, Defendants.	Civil No. 95-6244-HO DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACT PURSUANT TO LOCAL RULE 220-9

Defendants hereby submit their statement of undisputed material fact pursuant to Local Rule 220-9, in support of defendants' motion for summary judgment.

1. Section 318 of the Department of the Interior and Related Agencies appropriations Act, Fiscal year 1990, Pub. L. 101-121 (Section 318), also referred to as the Hatfield/Adams

Amendment, was signed into law on October 23, 1989. See 135 Cong. Rec. S 8762, 8795-8797 (July 26, 1989)(relevant portions attached to defendants' memorandum as Ex. A).

2. Subsection 318(a) set an overall target level of timber from national forests and BLM lands in Oregon and Washington for fiscal years 1989 and 1990. Subsections 318(b) - (k), set forth procedures for expedited review, prohibitions on injunctions and restraining orders and numerous environmental safeguards.

3. These procedures applied exclusively to "all timber sales from the thirteen national forests in Oregon and Washington and [BLM] Management districts in western Oregon known to contain northern spotted owls [NSOs]." See Subsection 318(i).

4. Some section 318 sales subsequently were delayed or suspended for a number of reasons. Section 318 was the subject of extensive litigation, with the Supreme Court ultimately affirming the constitutionality of the law in Robertson v. Seattle Audubon Soc'y, 503 U.S. 429 (1992). A number of section 318 sales were enjoined during a period while this issue was being litigated. See generally Portland Audubon Soc. v. Lujan, 795 F.Supp. 1489, 1496 (D.Or. 1992). Other sales were affected by litigation over compliance with various terms of section 318, such as the requirement to minimize fragmentation of ecologically significant old growth. See Seattle Audubon Soc'y v. Robertson, Civ. No. 89-160 (W.D.Wash.).

5. In June 1990, after enactment of Section 318, the United States Fish and Wildlife Service (FWS) listed the northern

spotted owl (NSO) as a threatened species under the ESA. See 55 Fed. Reg. 26189 (June 26, 1990). Because of the listing of the NSO as threatened species, a number of Forest Service section 318 sales were "modified, eliminated or held in abeyance." See Gifford Pinchot, 742 F.Supp. at 1080.

6. On September 28, 1992, the FWS listed the marbled murrelet as a threatened species. 57 Fed. Reg. 45328 (Oct. 1, 1992). As a result of the listing, the Forest Service reinitiated consultation with the FWS under ESA § 7(a)(2), 16 U.S.C. § 1536(a)(2), regarding the effects on murrelets of continuing to harvest section 318 sales that had already been awarded. In June 1995, the FWS subsequently concluded that further logging of a number of the Forest Service section 318 sales would likely jeopardize the continued existence of the marbled murrelet. As a result, these section 318 sales were suspended pending further survey work.

7. The BLM experienced similar delays in completing the contracting process for its section 318 sales. The successive listing of proposed spotted owl critical habitat and the listing of the marbled murrelet delayed finalization of several sales. See Lone Rock Timber Co. v. United States Dept. of Interior, 842 F. Supp. 433 (D. Or. 1994).

8. The contracting process was further delayed by litigation. After it was determined, in development of the Forest Plan, that sales could go forward as modified in conformity with the FWS's biological opinion, timber companies

brought suit in the Federal Claims Court to prevent BLM from awarding the modified sales. The Claims Court issued a declaratory judgment that the award letter for the modified contract was null and void because the agency lacked authority to negotiate a sale of the particular quantity of timber outside the competitive bidding process. See Croman Corp. v. United States, No. 94-48C (Ct. Cl. Aug. 16, 1994). As a consequence, the BLM withdrew all of the outstanding award letters and was in the process of negotiating with the high bidders on the unawarded contracts when the subject legislation was introduced.

9. In April 1993, in response to a number of judicial decisions that together halted logging in essentially all federal late successional and old growth (LSOG) forests within the range of the spotted owl, see Lane County Audubon Soc'y v. Jamison, 958 F.2d 290 (9th Cir. 1992); Portland Audubon Society v. Lujan, 795 F. Supp. 1489 (D. Or. 1992), aff'd, Portland Aubudon Society v. Babbitt 998 F.2d 705 (9th Cir. 1993), the Clinton Administration convened the Forest Conference in Portland, Oregon. As a result of the conference, which was chaired by the President, on July 28, 1993, the FS and the BLM published and circulated to the public a proposed strategy and range of reasonable alternatives for forest plan amendments for forests managed by the FS and the BLM. 58 Fed. Reg. 40,444-40,445 (July 30, 1993). The affected forests included the forests on Forest Service and BLM lands in Washington and Oregon within the range of the spotted owl where the 318 sales were located. Id.

10. On April 13, 1994, the Secretaries for the Department of Agriculture and the Department of the Interior issued the Record of Decision ("ROD") for Amendments to FS and BLM Planning Documents Within the Range of the Northern Spotted Owl (the Forest Plan), as supported by the Final Supplemental Environmental Impact Statement (FSEIS) (relevant portions attached to defendants' memorandum as Exh. B). ROD at 65-73. The Forest Plan was designed with the section 318 sale program expressly in mind. See Memorandum dated August 22, 1995 from James R. Lyons, Under Secretary of Agriculture, Natural Resources and Environment, and Mike Dombeck, Director, BLM, to Jack Ward Thomas, Chief of the Forest Service and Elaine Zielinski, Oregon State Director, BLM (attached to defendants' memorandum as Ex. C). The April 13, 1994 ROD consists of extensive standards and guidelines and land allocations that comprise a comprehensive ecosystem management strategy.

11. In May 1994, several environmental groups and industry groups, including NFRC, brought a series of actions challenging the legality of the Pacific Northwest Forest Plan. By order entered on December 21, 1994, Judge Dwyer rejected all of plaintiffs' challenges and declared the ROD and standards and guidelines to be lawful under applicable environmental laws. Seattle Audubon Soc'y v. Lyons, 871 F. Supp. 1291 (W.D. Wash. 1994), appeal pending. Upon the Court's approval, the agencies commenced implementation of the Forest Plan.

12. The Rescissions Act of 1995 (the Act) was signed into law by President Clinton on July 27, 1995. See Pub. L. 104-19 §2001 (1995). Subsection 2001(b) describes procedures for proceeding with salvage timber sales. Subsection 2001(d) directs the expedited implementation of the Pacific Northwest Forest Plan. Both subsections (b) and (d) provide for expedited judicial review.

13. Throughout negotiations of Section 2001 and at the time the bill was signed into law, it was the agencies' understanding that subsection 2001(k) applied to a discrete set of remaining section 318 sales. See Ex. C. The Forest Service's April 27, 1995 effects statement, that was transmitted to Congress prior to conference between the House and Senate, confirms the administration's understanding of the section as "requiring the award and release of all timber sale contracts subject to Section 318." Id.

14. Since enactment of Section 2001, the agencies have been reviewing section 318 sales to determine which sales can be released, as per the requirements of subsection 2001(k). See Declarations of William Bradley and Stephen Paulson, submitted in opposition to Plaintiff's Motion for Temporary Restraining Order. In accordance with the Agencies' Interpretation, BLM is prepared to release approximately 47 million board feet pursuant to section 318 sales. See Declaration of Elaine Zielinski, Oregon State Director, BLM, attached to defendants' memorandum as Ex. D.

15. On August 22, 1995, the Under Secretary of Agriculture and the Director of BLM issued a Memorandum to the Chief of the Forest Service and the Oregon State Director of the BLM setting forth the agencies' interpretation of Section 2001(k) of the Rescissions Act.

Respectfully submitted,

KRISTINE OLSON ROGERS
United States Attorney

LOIS J. SCHIFFER
Assistant Attorney General

/S/

WELLS D. BURGESS
MICHELLE L. GILBERT
ANDREA L. BERLOWE
EDWARD A. BOLING
United States Department of Justice
Environment and Natural
Resources Division
General Litigation Section
P.O. Box 663
Washington, DC 20044-0663
(202) 272-6217

Attorneys for Defendants

Of Counsel:

MICHAEL GIPPERT
Office of the General Counsel
United States Department of Agriculture
Washington, DC

KAREN MOURITSEN
Office of the Solicitor
United States Department of the Interior
Washington, DC

Dated: August 25, 1995

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 25, 1995, she caused one copy of the foregoing FEDERAL DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, supporting memorandum with exhibits, and proposed order to be served via telefacsimile machine and by U.S. mail upon the counsel of record hereinafter named:

MARK RUTZICK
500 Pioneer Tower
888 S.W. Fifth Avenue
Portland, OR 97204-2089
Telephone: (503) 499-4573
Fax : (503) 295-0915

PATTI A. GOLDMAN
ADAM J. BERGER
KRISTEN L. BOYLES
Sierra Club Legal Defense Fund
705 Second Avenue, Suite 203
Seattle, WA 98104
Telephone: (206) 343-7340
Fax : (206) 343-1526

MARIANNE DUGAN
DEBORAH N. MAILANDER
Western Environmental Law Center
1216 Lincoln Street
Eugene, OR 97401
Telephone: (503) 485-2471
Fax : (503) 485-2457

Michelle L. Gilbert