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**Northwest Forest Council v. Dan  
Glickman and Bruce Babbitt  
[Binder] [3]**

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE	)	
COUNCIL, an Oregon corporation,	)	Civil No. 95-6244-HO
	)	
Plaintiff,	)	<b>PLAINTIFF'S MOTION FOR</b>
	)	<b>SUMMARY JUDGMENT</b>
vs.	)	
	)	
DAN GLICKMAN, in his capacity	)	
as Secretary of Agriculture;	)	
BRUCE BABBITT, in his capacity	)	
as Secretary of the Interior,	)	
	)	
Defendants.	)	

Plaintiff Northwest Forest Resource Council moves for summary judgment on the First and Second Claims For Relief in its complaint pursuant to Fed. R. Civ. P. 56(a) on the ground that there is no genuine issue as to any material fact and plaintiff is entitled to judgment as a matter of law.

In support of this motion the court is respectfully referred to plaintiff's Memorandum In Support of Motion For Summary Judgment and exhibits thereto filed herewith, plaintiff's Concise

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1 - PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON FIRST AND SECOND CLAIMS FOR RELIEF

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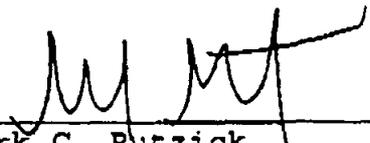
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Statement of Material Facts Not In Dispute filed herewith, the Declaration of Robert E. Ragon, filed August 9, 1995, Defendants' Notice of Filing of Agencies' Interpretation, dated August 22, 1995, and the entire record in this case.

Dated this 25th day of August, 1995.

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2 - PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON FIRST AND SECOND CLAIMS FOR RELIEF

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE )  
COUNCIL, an Oregon corporation, )  
Plaintiff, )

Civil No. 95-6244-HO

vs.

DAN GLICKMAN, in his capacity )  
as Secretary of Agriculture; )  
BRUCE BABBITT, in his capacity )  
as Secretary of the Interior, )  
Defendants. )

PLAINTIFF'S MEMORANDUM IN SUPPORT OF  
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**INTRODUCTION**

1  
2 Plaintiff Northwest Forest Resource Council ("NFR"),  
3 representing several dozen timber companies, seeks declaratory  
4 and injunctive relief to enforce § 2001(k)(1) of the emergency  
5 salvage timber law enacted July 27, 1995, Pub. L. 104-19, 109  
6 Stat. 240, which imposes the duty on defendants Dan Glickman,  
7 Secretary of Agriculture, and Bruce Babbitt, Secretary of the  
8 Interior, to award and release by September 10, 1995 all timber  
9 sales offered prior to July 27, 1995 in the national forests of  
10 Oregon and Washington and the Bureau of Land Management ("BLM")  
11 administrative districts in western Oregon.<sup>1</sup>

12 Despite the clear and absolute terms of this new law,  
13 defendants Glickman and Babbitt announced on August 22, 1995 that  
14 the only timber sales they intend to award and release by  
15 September 10, 1995 are certain sales that were offered in fiscal  
16 year 1990 under the terms of Section 318(b)-(j) of Pub. L. 101-  
17 121. They will not release at least 42 currently unawarded or  
18 inoperable timber sales offered in fiscal years 1991-95 in  
19 national forests of Oregon and Washington or BLM districts in  
20 western Oregon that contain at least 170 million board feet of  
21 timber. The single issue in this motion is whether § 2001(k)(1)  
22 requires the award and release of Forest Service sales in Oregon  
23 and Washington and BLM sales in western Oregon that were offered  
24

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25 <sup>1</sup> The single statutory exception, for sale units where a  
26 threatened or endangered bird species is known to be nesting,  
§ 2001(k)(2), is not at issue in this motion.

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1 after fiscal year 1990.<sup>2</sup>

2 NFRC is entitled to summary judgment granting the declarato-

3 ry and injunctive relief it seeks. Section 2001(k)(1) requires

4 the award and release of "all timber sale contracts offered or

5 awarded before th[e] date [of enactment] in any unit of the

6 National Forest System or district of the Bureau of Land Manage-

7 ment subject to section 318." It contains no limitation to

8 fiscal year 1990 sales -- it applies to all timber sales offered

9 before July 27, 1995, and uses Section 318 to define the geo-

10 graphic region that is subject to the new law. Defendants'

11 reading of the statute as limited to fiscal year 1990 sales makes

12 no textual sense, and is contrary to three recognized rules of

13 statutory interpretation.

14 If there were any doubt about the meaning of § 2001(k)(1),

15 the legislative history authoritatively resolves it in favor of

16 NFRC's position:

17 1. The Conference Report on the bill, the most persuasive

18 piece of legislative history, explicitly confirms that the

19 statute releases all sales offered up to the date of enactment

20 within the geographic area defined by Section 318, stating that

21 § 2001(k) "releases all timber sales which were offered for sale

22 beginning in fiscal year 1990 to the date of enactment which are

23 located in any unit of the National Forest System or District of

24

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25 <sup>2</sup> On August 23, 1995 defendants issued direction on other

26 issues relating to § 2001(k), including the interpretation of

§ 2001(k)(2). That direction is not at issue in this motion.

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2 - PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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1 the Bureau of Land Management within the geographic area encom-  
2 passed by Section 318." H. Conf. Rep. 104-124 at 137, reprinted  
3 at 141 Cong. Rec. H5013 (daily ed. May 16, 1995) (Exhibit 1 here-  
4 to) (emphasis added). Senator Hatfield, the floor manager of the  
5 Rescissions Act in the Senate, co-authored the Conference Report.

6 2. The Senate Report on the Rescissions Act, also authored  
7 by Senator Hatfield, similarly states that the timber sale  
8 release provision applies in "the region affected by section 318"  
9 to release "all sales." S. Rep. 104-17 at 123 (daily ed. March  
10 24, 1995) (Exhibit 2 hereto).

11 3. Representative Charles Taylor, the sponsor of the bill  
12 in the House of Representatives, who drafted § 2001(k)(1),  
13 explained to the House that "[m]any of these sales were mandated  
14 by Congress in Section 318 . . . ; others were offered in fiscal  
15 year 1991 and some more recently. . . . [The bill] . . . applies  
16 to all national forests and BLM districts that were subject to  
17 Section 318." 141 Cong. Rec. H3233 (daily ed. March 15, 1995)  
18 (Exhibit 3 hereto) (emphasis added). His views are "authorita-  
19 tive" under controlling law.

20 4. On the date the President signed the bill, six sponsors  
21 and committee chairman in both houses of Congress wrote the  
22 Secretaries of Agriculture and Interior to address the very issue  
23 in this case:

24 We want to make it clear that subsection (k)  
25 of the salvage legislation applies within the  
26 geographic area of National Forest units and  
BLM districts that were subject to Section  
318 . . . , and within that geographic area

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requires the release of all previously offered or awarded timber sales, including Section 318 sales as well as all sales offered or awarded in other years (such as Fiscal Years 1991-95) that are not subject to Section 318. The reference to Section 318 in subsection (k) (1) defines the geographic area that is subject to subsection (k).

Letter to Secretary Dan Glickman and Secretary Bruce Babbitt from Senators Frank Murkowski, Larry Craig and Slade Gorton and Representatives Don Young, Charles Taylor and Pat Roberts (daily ed. July 27, 1995) (attached as Exhibit 4) (emphasis added).

The government's contrary position is plainly at odds with the statute and legislative history. The explanation of that position issued August 22, 1995 substitutes ill-informed ipse dixit for reasoned analysis of the statute or its legislative history. The government's position is entitled to no weight, and should be rejected.

**STATEMENT OF FACTS**

There are few facts involved in this case, and none are in dispute.

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

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

- (1) AWARD AND RELEASE REQUIRED. --Notwithstanding any other provision of law, within 45 days

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after the date of the enactment of this Act, the Secretary concerned shall act to award, release, and permit to be completed in fiscal years 1995 and 1996, with no change in originally advertised terms, volumes, and bid prices, all timber sale contracts offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318 of Public Law 101-121 (103 Stat. 745). The return of the bid bond of the high bidder shall not alter the responsibility of the Secretary concerned to comply with this paragraph.

§ 2001(k) (1) (emphasis added). Subsections (k) (2) and (3) provide that if a threatened or endangered bird species is known to be nesting within a sale unit area, alternative volume of like kind and value must be provided to the sale owner in place of the sale unit where the nesting is occurring.

**2. Section 318.**

Section 318 of Pub. L. 101-121, 103 Stat. 745 (1989) (attached as Exhibit 5), referred to in the new law, was enacted by Congress in 1989 to mandate timber sales in specified volumes in fiscal year 1990 in Oregon and Washington. See *Robertson v. Seattle Audubon Society*, 503 U.S. 429, 430 (1992). Section 318(a) directed:

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

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

1 administrative districts in western Oregon.  
2 *Id.* By its terms Section 318 expired on September 30, 1990,  
3 except it continues to apply to timber sale contracts for their  
4 duration. Section 318(k); *Robertson v. Seattle Audubon Society*,  
5 503 U.S. at 430.

6 Thus, the "unit[s] of the National Forest System or dis-  
7 trict[s] of the Bureau of Land Management subject to section 318  
8 of Public Law 101-121 (103 Stat. 745)" referred to in  
9 § 2001(k)(1) are "the national forests of Oregon and Washington"  
10 and the BLM "administrative districts in western Oregon."<sup>3</sup>

11 **3. Timber sales in dispute.**

12 In the national forests of Oregon and Washington, the Forest  
13 Service has, to NFRC's knowledge, approximately 15 administra-  
14 tively suspended or deferred timber sale contracts, three awarded  
15 and 12 unawarded, containing approximately 47 million board feet  
16 of timber that were offered between October 1, 1990 and July 27,  
17 1995 ("FY 1991-95 sales").<sup>4</sup> Declaration of Robert E. Ragon, ¶ 6.  
18 There may well be additional sales not yet known to NFRC.

19 In its western Oregon administrative districts, the BLM has  
20 approximately 27 unawarded timber sale contracts containing  
21 approximately 125 million board feet of timber that were offered  
22

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23 <sup>3</sup> These districts are Salem, Eugene, Roseburg, Coos Bay,  
24 Medford and Lakeview.

25 <sup>4</sup> The term "FY 1991-95 sales" as used in this memorandum  
26 also includes any remaining sales offered before fiscal year  
1990, and any fiscal year 1990 sales in the national forests of  
Oregon and Washington or BLM district of western Oregon that were  
not offered under the terms of Section 318(b)-(j).

1 between October 1, 1990 and July 27, 1995. *Id.*, ¶ 5.

2 On August 22, 1995 the Departments of Agriculture and  
3 Interior issued an Instruction Memorandum asserting that  
4 § 2001(k)(1) does not require them to release sales offered after  
5 fiscal year 1990. See Notice of Filing of Agencies' Interpreta-  
6 tion (August 22, 1995).

7 **4. Plaintiff's injury.**

8 NFRC is a nonprofit corporation representing several hundred  
9 timber and logging companies, including most of the companies  
10 that have the right to award and release of the 42 or more sales  
11 at issue in this case. Ragon Dec. ¶¶ 1-2.<sup>5</sup> NFRC and the compa-  
12 nies it represents are the specific intended beneficiaries of  
13 § 2001(k).

14 **ARGUMENT**

15 **SECTION 2001(K) REQUIRES THE AWARD AND RELEASE OF ALL**  
16 **TIMBER SALES OFFERED BEFORE JULY 27, 1995 IN THE**  
17 **GEOGRAPHIC REGION SUBJECT TO SECTION 318, INCLUDING**  
18 **SALES OFFERED IN FISCAL YEARS 1991-95.**

19 **A. Standard for summary judgment.**

20 Summary judgment is appropriate where "there is no genuine  
21 issue as to any material fact and . . . the moving party is  
22 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).  
23 Once the moving party shows the absence of any genuine issue of

---

24 <sup>5</sup> Among the companies represented by NFRC that are statuto-  
25 rily entitled to the award and release of one of more timber  
26 sales under § 2001(k) are Rosboro Lumber Co., Douglas County  
Forest Products Co., D.R. Johnson Lumber Co., Croman Corp., Rough  
& Ready Lumber Co., Boise Cascade Co., Thomas Creek Lumber Co.,  
Scott Timber Co., Lone Rock Timber Co. and CLR Timber Holdings  
Inc. Ragon Dec., ¶ 2.

1 material fact, the burden shifts to the opponent to demonstrate  
2 through probative evidence that there is an issue of fact to be  
3 tried. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

4 **B. NFRC is entitled to summary judgment.**

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

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

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8 - PLAINTIFF'S MEMORANDUM IN SUPPORT OF  
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1           **1. The plain meaning of the statute releases FY 1991-95**  
2           **sales.**

3           **a. The plain meaning of the statute is**  
4           **clear.**

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

11           There is no ambiguity to this phrase. All contracts offered  
12           or awarded before July 27, 1995 in the national forest units and  
13           BLM districts subject to Section 318 must be awarded and re-  
14           leased. The phrase "subject to section 318" modifies the phrase  
15           "any unit of the National Forest System or district of the Bureau  
16           of Land Management," and defines the geographic range of  
17           § 2001(k). Within the defined geographic region, all timber  
18           sales offered before July 27, 1995 must be awarded and released  
19           within 45 days.

20           **b. The government's interpretation is**  
21           **implausible, and violates three separate**  
22           **rules of statutory construction.**

23           The Interpretation Memorandum issued August 22 offers no  
24           construction of the text of the statute to support its assertion  
25           that only timber sales offered in fiscal year 1990 under Section  
26           318(b)-(j) must be awarded and released. Thus, there is no  
            official government explanation of the words in the statute. In  
            opposing the restraining order, the government's lawyers suggest-

1 ed that "subject to Section 318" does not modify the phrase it  
2 follows (i.e., "any unit of the National Forest System or  
3 district of the Bureau of Land Management") but instead modifies  
4 the earlier phrase "all timber sale contracts." In this view,  
5 the statute only releases "all timber sale contracts . . .  
6 subject to section 318."

7 This is not a reasonable or even plausible interpretation of  
8 the law, and creates no ambiguity. This argument ignores the  
9 words used in the statute, and requires a tortured, ungrammatical  
10 twisting of the sentence. Further, it violates three rules of  
11 statutory interpretation:

12 (1) The government position violates the rule that "a  
13 modifying phrase applies only to its immediate antecedent."  
14 *Huffman v. C.I.R.*, 978 F.2d 1139, 1145 (9th Cir. 1992); *First*  
15 *Charter Financial Corp. v. U.S.*, 669 F.2d 1342, 1350 (9th Cir.  
16 1982); *Azure v. Morton*, 514 F.2d 897, 900 (9th Cir. 1975); see  
17 *Pacificorp v. Bonneville Power Administration*, 856 F.2d 94, 97  
18 (9th Cir. 1988) (rule applies unless it leads to "absurd re-  
19 sult"). "The last antecedent is the last word, phrase, or clause  
20 that can be made an antecedent without impairing the meaning of  
21 the sentence. . . ." *Zogbi v. Federated Dept. Store*, 767 F.  
22 Supp. 1037, 1039 (C.D. Cal. 1991) (quoting 2A *Sutherland on*  
23 *Statutes* § 47.33 at 245 (4th ed. 1984)).

24 (2) The government argument also violates the rule that a  
25 statute must be interpreted to give significance to all of its  
26 parts:

1 Under accepted canons of statutory interpretation,  
2 we must interpret statutes as a whole, giving effect to each word and making  
3 every effort not to interpret a provision in a manner that renders other provisions of the  
4 same statute inconsistent, meaningless, or superfluous.

5 *Boise Cascade Corp. v. U.S.E.P.A.*, 942 F.2d 1427, 1432 (9th Cir.  
6 1991); *Fidelity Federal S. & L. Assn. v. de la Cuesta*, 458 U.S.  
7 141, 163 (1982); *Bresgal v. Brock*, 843 F.2d 1163, 1166 (9th Cir.  
8 1987).

9 Contrary to this rule, the government argument renders two  
10 phrases in § 2001(k)(1) completely meaningless: (1) "offered or  
11 awarded before that date [of enactment of the law]" and (2) "in  
12 any unit of the National Forest System or district of the Bureau  
13 of Land Management."

14 (a) "offered or awarded before that date [of enactment of  
15 the law]." All Section 318 sales were offered in fiscal year  
16 1990, which ended September 30, 1990.<sup>6</sup> Timber sales offered  
17 after fiscal year 1990 "do not carry section 318 protections."  
18 *Gifford Pinchot Alliance v. Butruille*, 752 F. Supp. 967, 972 (D.  
19 Or. 1990). If § 2001(k)(1) only releases sales offered by  
20 September 30, 1990 and no others, the phrase "offered or awarded  
21 before that date [of enactment of the law]" in § 2001(k)(1) is  
22 meaningless and unnecessary. The phrase "offered or awarded  
23 before that date" only makes sense if the statute has ongoing  
24

25 <sup>6</sup> The Department of Justice has stated in court pleadings  
26 that "[a]ll sales the Forest Service sold pursuant to Section  
318(g) were offered prior to October 1, 1990." Exhibit 6 hereto.

1 application to sales after fiscal year 1990 since the phrase  
2 serves to exclude sales offered after July 27, 1995.

3 (b) "in any unit of the National Forest System or district  
4 of the Bureau of Land Management." This phrase is also meaning-  
5 less and unnecessary if the statute is limited to "all timber  
6 sale contracts . . . subject to section 318," since all the  
7 Section 318 sales would be released even if this phrase were  
8 absent, and thus the phrase would add nothing to the law. The  
9 only possible meaning of the phrase "in any unit of the National  
10 Forest System or district of the Bureau of Land Management" is,  
11 along with "subject to section 318," to modify the prior phrase  
12 "all timber sale contracts offered or awarded before that date"  
13 to provide a geographic definition of the area in which sales are  
14 released. The court must give the statute this meaning to give  
15 effect to every word of the law. *Boise Cascade Corp. v.*  
16 *U.S.E.P.A.*, 942 F.2d at 1432.<sup>7</sup>

17 (3) The government position violates the rule that Congress  
18

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19  
20 <sup>7</sup> Amicus Oregon Natural Resource Council's argument that  
21 "unit of the National Forest System" in § 2001(k)(1) refers to  
22 timber sale units is not only nonsensical from a textual and  
23 grammatical standpoint (the whole sentence would make no sense if  
24 "unit" meant timber sale unit), but ignores the fact that in the  
25 National Forest Management Act ("NFMA") -- the general land  
26 management law governing Forest Service activities -- Congress  
repeatedly used the phrase "unit of the National Forest System"  
to refer to geographic units, e.g., national forests, 16 U.S.C.  
§ 1604(a), (b), (c), (e), (f), and defined the "National Forest  
System" as "units of federally owned forest, range and related  
lands throughout the United States and its territories," 16  
U.S.C. § 1609. The phrase "any unit of the National Forest  
System" in § 2001(k)(1) has the same geographic meaning as in the  
NFMA.

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1 is not deemed to have silently adopted a position it previously  
2 rejected. Senator Murray offered an amendment to the salvage  
3 timber bill in the Senate in March 1995 which, along with scaling  
4 back the salvage program, would have limited the release of  
5 previously offered sales to "each timber sale awarded pursuant to  
6 section 318." 141 Cong. Rec. S4870 (daily ed. March 30, 1995)  
7 (Exhibit 7 hereto). The Senate rejected the Murray amendment on  
8 a vote of 48-46. 141 Cong. Rec. S4882 (daily ed. March 30, 1995)  
9 (Exhibit 7).

10 "Few principles of statutory construction are more compel-  
11 ling than the proposition that Congress does not intend sub  
12 silentio to enact statutory language that it has earlier discard-  
13 ed in favor of other language." *INS v. Cardoza-Fonseca*, 480 U.S.  
14 421, 442-43 (1987); *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S.  
15 186, 200 (1974) (deletion of language from bill in Congress  
16 "strongly militates against a judgment that Congress intended a  
17 result that it expressly declined to enact"). Where "Congress  
18 had before it, but failed to pass, just such a scheme," courts  
19 will reject an interpretation of the statute that effectuates the  
20 rejected scheme. *John Hancock Life Insurance Co. v. Harris Trust*  
21 *& Sav. Bank*, -- U.S. --, 114 S. Ct. 517, 126 L. Ed. 2d 524, 540  
22 (1993). Contrary to this rule, the government now asks the court  
23 to adopt an interpretation of § 2001(k) like Senator Murray's  
24 amendment that was rejected by the Senate.

25 The Murray amendment illustrates that if Congress had wanted  
26 to limit relief to Section 318 timber sales, it could have used

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1 the language offered by Senator Murray -- "each timber sale  
2 awarded pursuant to section 318" -- rather than the much differ-  
3 ent language actually included in § 2001(k)(1) -- "all timber  
4 sale contracts offered or awarded before th[e] date [of enact-  
5 ment] in any unit of the National Forest System or district of  
6 the Bureau of Land Management subject to section 318."

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

9 **a. The Conference Report.**

10 In the hierarchy of legislative history, a congressional  
11 conference report is universally recognized as the most reliable  
12 evidence of congressional intent:

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

18 *Dept. of Health & Welfare, State of Idaho v. Block*, 784 F.2d 895,  
19 901 (9th Cir. 1986), quoting *Demby v. Schweiker*, 671 F.2d 507,  
20 510 (D.C.Cir. 1981); *RJR Nabisco, Inc. v. U.S.*, 955 F.2d 1457,  
21 1463 (11th Cir. 1992) (collecting cases to same effect). "[T]he  
22 expressed understanding of the Conference Committee, commended to  
23 the full Congress in the Conference Report and subsequently  
24 adopted, is not lightly to be disregarded . . . ." *League To*  
25 *Save Lake Tahoe, Inc. v. Trounday*, 598 F.2d 1164, 1172 (9th  
26 Cir.), cert. denied 444 U.S. 943 (1979).

The conference report on the Rescissions Act, H. Rep. 104-  
124, was submitted to both houses of Congress by the managers of

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1 the bill, led by Senator Hatfield, chairman of the Senate  
2 Appropriations Committee, and Rep. Livingston, chairman of the  
3 House Appropriations Committee. H. Rep. 104-124, 141 Cong. Rec.  
4 H5053 (daily ed. May 16, 1995) (Exhibit 8). Both houses of  
5 Congress approved the conference report. 141 Cong. Rec. H5013,  
6 H5353-54 (daily ed. May 18, 1995) (House approval) (Exhibit 9);  
7 141 Cong. Rec. S7407 (daily ed. May 25, 1995) (Senate approval)  
8 (Exhibit 10).

9 The conference report expressly confirms the plain reading  
10 of § 2001(k)(1):

11 The bill releases all timber sales which were  
12 offered for sale beginning in fiscal year  
13 1990 to the date of enactment which are  
14 located in any unit of the National Forest  
15 System or District of the Bureau of Land  
16 Management within the geographic area encom-  
17 passed by Section 318 of the Fiscal Year 1990  
Interior and Related Agencies Appropriations  
Act. Included are all sales offered, award-  
ed, or unawarded, whether or not bids have  
subsequently been rejected by the offering  
agency, with no change in original terms,  
volumes, or bid prices.

18 141 Cong. Rec. H5050 (daily ed. May 16, 1995) (emphasis added)  
19 (Exhibit 1). The conference report expressly interprets the law  
20 to apply to "all sales offered, awarded, or unawarded" in "the  
21 geographic area encompassed by Section 318." Nothing could be  
22 clearer.<sup>6</sup>

23  
24 <sup>6</sup> After the President vetoed the original rescissions bill,  
25 141 Cong. Rec. H5686 (daily ed. June 7, 1995), Congress modified  
26 the law, making four very minor changes in the salvage program  
including extending the release time on § 2001(k) sales from 30  
days to 45 days, 141 Cong. Rec. S10464 (daily ed. July 21, 1995).

(continued...)  
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**b. The Senate Report.**

The Senate Report on the Rescissions Act, authored by Senator Hatfield as the chairman of the Senate Appropriations Committee, also states clearly that the timber sale release provision applies to all sales in "the region affected by section 318":

*Released timber sales.*--The Committee also includes language to release a group of sales that have already been sold in the region affected by section 318 of the Fiscal Year 1990 Interior and Related Agencies Appropriations Act. Included are all sales offered, awarded, or unawarded, whether or not bids have subsequently been rejected by the offering agency.

S. Rep. 104-17 (daily ed. March 24, 1995) (Exhibit 2) (emphasis added). Like the Conference Report, the Senate Report shows Congress' intent for the phrase "subject to section 318" to define the geographic reach of the law rather than the fiscal year of the sales that are to be released.

**c. The author's interpretation.**

The emergency salvage timber bill originated in the House of Representatives as an amendment to the rescissions bill in the House Appropriations Committee. 141 Cong. Rec. H3152 (daily ed. March 14, 1995). The author of the bill was Rep. Charles Taylor of North Carolina, a member of the Interior Appropriations

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<sup>8</sup> (...continued)

In enacting the revised bill Congress specifically adopted and ratified Conference Report 104-124. 141 Cong. Rec. H6622 (daily ed. June 29, 1995) (statement of floor manager Rep. Livingston) (Exhibit 11).

1 Subcommittee of the Appropriations Committee. 141 Cong. Rec.  
 2 H6637 (daily ed. June 29, 1995) (Exhibit 11) (appropriations  
 3 committee chairman describes Rep. Taylor as "the author of the  
 4 portion of the amendment relating to timber); 141 Cong. Rec.  
 5 H3232 (daily ed. March 15, 1995) (Exhibit 3) (Rep. Taylor says  
 6 timber bill was "co-authored by myself and Mr. Dicks [of Washing-  
 7 ton]." Rep. Taylor, the only forester serving in Congress, is  
 8 Congress' leading expert at forestry matters. See 141 Cong. Rec.  
 9 H5558 (daily ed. May 24, 1995) (Exhibit 12) (House Resources and  
 10 Agriculture committee member John Doolittle describing Rep.  
 11 Taylor as "the only licensed forester in the United States  
 12 Congress, so the gentleman has an expertise no one else really  
 13 does").

14 The section of the original House bill releasing previously  
 15 offered or awarded sales (then called "\$ 307(i)") contains the  
 16 identical language ultimately enacted in § 2001(k)(1) that is at  
 17 issue in this case. 141 Cong. Rec. H3218 (daily ed. March 15,  
 18 1995) (Exhibit 3). Before the House voted on the bill, Rep.  
 19 Taylor offered an explanation of this section on the floor of the  
 20 House which confirms its plain meaning:

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

23 Previously-offered timber sales in the  
 24 Northwest cannot be operated due to adminis-  
 25 trative delays and reviews. **Many of these**  
 26 **sales were mandated by Congress in Section**  
 318 of the Department of interior and Related  
 Agencies Appropriations Act, Fiscal Year  
 1990, Pub. L. 101-121; others were offered in

fiscal year 1991 and some more recently. . . .

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

141 Cong. Rec. H3233 (daily ed. March 15, 1995) (emphasis added) (Exhibit 3).

The Supreme Court has repeatedly held that the remarks of the sponsor of a bill "are particularly valuable in determining the meaning of [the bill]" and provide "an authoritative guide to the statute's construction." *Rice v. Rehner*, 463 U.S. 713, 728 (1983); *Bowsher v. Merck & Co.*, 460 U.S. 824, 832 (1983); *North Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 526-27 (1982). "[A] statement of one of the legislation's sponsors . . . deserves to be accorded substantial weight in interpreting the statute." *FEA*

\* Extended to 45 days in final enactment. 141 Cong. Rec. S10464 (daily ed. July 21, 1995).

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1 v. *Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976); *Church of*  
 2 *Scientology v. U.S. Department of Justice*, 612 F.2d 417, 424 n.13  
 3 (9th Cir. 1979).<sup>10</sup>

4 d. *The sponsors' contemporaneous letter.*

5 On the day the President signed the bill, the congressional  
 6 sponsors of the bill wrote a letter to Secretaries Glickman and  
 7 Babbitt again confirming that the reference to Section 318  
 8 defines the geographic scope of § 2001(k)(1), and that FY 1991-95  
 9 sales are to be released:

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

19 <sup>10</sup> Other cases, cited by the government and *amicus* Oregon  
 20 Natural Resources Council, do not diminish the force of this  
 21 interpretive principle in this case. The court need not find  
 22 that Rep. Taylor's remarks are "controlling in analyzing legisla-  
 23 tive history," *Consumer Product Safety Commission v. GTE*  
 24 *Sylvania*, 447 U.S. 102, 118 (1980), as those remarks are in  
 25 agreement with the Conference Report, the Senate Report and other  
 26 reliable indicia of congressional intent, and therefore "provide  
 evidence of Congress' intent." *Brock v. Pierce County*, 476 U.S.  
 253, 263 (1986). Nor is this a case where a legislator's remarks  
 are cited to "override the plain meaning of a statute." *U.S. v.*  
*Tabacca*, 924 F.2d 906, 911 (9th Cir. 1991). Rep. Taylor's  
 remarks are entirely consistent with the plain meaning of  
 § 2001(k)(1). In these circumstances they remain "authorita-  
 tive." *Rice v. Rehner*, 463 U.S. at 728.

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1                   This interpretation is vital to the  
2 policies intended in Section 2001. The  
3 legislation directs all sales referenced in  
4 subsection (k) to be released promptly to  
5 local mills to avoid further economic dislo-  
6 cation in rural timber-dependent communities.

7 Letter to Secretary Dan Glickman and Secretary Bruce Babbitt from  
8 Senators Frank Murkowski, Larry Craig and Slade Gorton and  
9 Representatives Don Young, Charles Taylor and Pat Roberts.  
10 (Exhibit 4) (emphasis added).

11                   These six members of Congress are the chairmen of the  
12 appropriations and authorizing committees for forestry legisla-  
13 tion in both houses of Congress:

14                   Senator Murkowski: Chairman of the Senate Energy and  
15 Natural Resources Committee.

16                   Senator Craig: Chairman of the Forestry, Conservation and  
17 Rural Revitalization subcommittee of the  
18 Senate Agriculture, Nutrition and Forestry  
19 Committee.

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

Rep. Young: Chairman of the House Resources Committee.

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

1 tees." 141 Cong. Rec. H6638 (daily ed. June 29, 1995) (Exhibit  
2 11). As sponsors and relevant committee and subcommittee chair-  
3 men, the contemporaneous interpretation by these six legislators  
4 is another highly persuasive expression of legislative intent.  
5 *North Haven Bd. of Ed. v. Bell*, 456 U.S. at 526-27.

6 The government and amicus cannot deny the content of the  
7 letter, so they ask the court to dismiss it as meaningless post-  
8 enactment comments of individual legislators. Neither the facts  
9 nor the law are on their side. This was not a "post-enactment"  
10 letter; it was signed the day the law took effect when the  
11 President signed it. It expresses the contemporaneous views of  
12 six of the most influential members of Congress involved in the  
13 passage of the bill.

14 In any event, "[w]hile post-enactment legislative history is  
15 not by any means conclusive, it cannot merely be ignored."  
16 *Religious Technology Center v. Wollersheim*, 796 F.2d 1076, 1086  
17 n.10 (9th Cir. 1986), cert. denied 479 U.S. 1103 (1987). In  
18 *Montana Wilderness Ass'n v. U.S. Forest Service*, 655 F.2d 951,  
19 957 (9th Cir. 1981), cert. denied 455 U.S. 989 (1982), the Ninth  
20 Circuit found a conference report issued three weeks after  
21 legislation was passed was entitled to "significant weight," and  
22 was "decisive" in interpreting the law. In *United States v.*  
23 *Stauffer Chemical Co.*, 684 F.2d 1174, 1187 (6th Cir. 1982), *aff'd*  
24 *on other grounds*, 464 U.S. 165 (1984), the court gave "great  
25 weight" to a Senate report issued "a scant ten months after  
26 passage" of the statute.

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1 e. **No legislative history contradicts the**  
2 **Conference Report, the Senate Report,**  
3 **Rep. Taylor's interpretation or the**  
4 **contemporaneous sponsors' letter.**

5 Neither the government nor *amicus* has pointed to anything in  
6 the legislative history that contradicts the Conference Report,  
7 the Senate Report, Rep. Taylor's interpretation or the July 27  
8 letter from the six sponsors of the bill. No member of Congress  
9 ever stated that § 2001(k) was limited to fiscal year 1990 sales,  
10 or excluded sales offered in other years.

11 Instead, the government and *amicus* try to create the  
12 impression of conflict in the legislative history by quoting  
13 Senator Hatfield's comments and Senator Gorton's comments on the  
14 floor of the Senate. Yet nothing either senator said on the  
15 floor of the Senate contradicts the Conference Report, which  
16 Senator Hatfield co-authored as the Senate floor manager on the  
17 rescissions act and Senator Gorton signed, the Senate Report,  
18 which Senator Hatfield also authored and Senator Gorton signed,  
19 or the letter Senator Gorton signed on July 27, 1995. This is  
20 not a case, like *Montana Wilderness Ass'n v. U.S. Forest Service*,  
21 655 F.2d 951, where some legislators expressed one interpretation  
22 of a law and others expressed the opposite interpretation.

23 (1) **Senator Hatfield.**

24 Senator Hatfield never described the amendment as applying  
25 to "Section 318 sales." Quite the opposite, he accurately stated  
26 that "the Gorton amendment releases 375 million board feet of  
timber sales in western Oregon that were previously sold to

1 timber purchasers." He described "[m]ost of these sales" (not  
2 all of them) as "originally authorized by the Northwest timber  
3 compromise amendment of 1989 [i.e., Section 318]." 141 Cong.  
4 Rec. S4881 (daily ed. March 30, 1995).

5 In addition, Senator Hatfield's "375 million board feet of  
6 timber sales in western Oregon" volume figure conflicts with the  
7 government's position in this case, and is consistent with NFRC's  
8 plain meaning interpretation. In the Interpretation Memorandum,  
9 the government claims § 2001(k) only applies to "the few remain-  
10 ing 318 sales, totaling approximately 300 million board feet" in  
11 Oregon and Washington together. Interpretation Memorandum at 2.

12 According to the U.S. Fish and Wildlife Service biological  
13 opinion dated June 12, 1995 on the Section 318 murrelet sales,  
14 there is about 255 million board feet of timber in the 57  
15 remaining suspended Section 318 sales with murrelet habitat.  
16 Exhibit 13 at 8-9. Of this total, the FWS approved the release  
17 of 20-70 million board feet of unoccupied units. Exhibit 13 at  
18 19. Thus, the suspended volume is 185-235 million board feet in  
19 both states. In addition, the BLM has about 70 million board  
20 feet of unawarded Section 318 sales. Ragon Declaration, Table 1  
21 (chart provided by BLM in March 1995). In sum, the remaining  
22 Section 318 volume in the two state region is 255-305 million  
23 board feet or, as the Interpretation Memorandum suggests,  
24 "approximately 300 million board feet."

25 However, about 40 million board feet of the Section 318  
26 murrelet sales are in Washington national forests, Exhibit 13 at

1 9, and thus only about 215-265 million board feet of Section 318  
2 sales remain to be released in western Oregon. This falls 110-  
3 160 million board feet short of the 375 million board foot figure  
4 for western Oregon used by Senator Hatfield.

5 Senator Hatfield's figure is almost exactly accurate if it  
6 includes the 125 million board feet of BLM FY 1991-95 sales that  
7 are involved in this case. With the FY 1991-95 sales, the  
8 western Oregon total rises to about 335-385 million -- almost  
9 exactly matching his 375 million board foot number. Some of the  
10 Forest Service FY 1991-95 sales may also be in western Oregon.  
11 Thus, Senator Hatfield's volume number seems much more likely to  
12 include the FY 1991-95 sales at issue here.

13 Senator Hatfield's understanding of the effect of § 2001(k)  
14 expressed on the floor of the Senate on March 30 seems consistent  
15 with the broader view of the law he expressed in the Senate  
16 Report he authored on March 24 and the Conference Report he  
17 authored on May 16. Were there any doubt, the Conference Report  
18 and the Senate Report would be much more reliable indicators of  
19 Senator Hatfield's views than an inference from the volume figure  
20 he used in his floor statement. *Dept. of Health & Welfare, State*  
21 *of Idaho v. Block*, 784 F.2d at 901.

22 (2) *Senator Gorton.*

23 On several occasions Senator Gorton described the amendment  
24 (accurately) as relating to "Section 318" sales (i.e., fiscal  
25 year 1990 sales). He never stated the amendment did not apply to  
26 sales in other years. It is understandable that Senator Gorton

1 gave his greatest emphasis to fiscal year 1990 sales since few of  
2 the FY 1991-95 unreleased sales are in his state of Washington  
3 (the BLM, which has most of the unreleased FY 1991-95 volume, has  
4 no commercial timber program in the state of Washington). Any  
5 uncertainty about Senator Gorton's view of the amendment is  
6 resolved in the Conference Report, the Senate Report and in his  
7 precise explanation in the July 27 letter.<sup>11</sup>

8       3.    **The BLM Oregon state office was aware in March 1995**  
9            **that FY 1991-95 sales are released under the salvage**  
            **law.**

10       The government's current position is also contradicted by  
11 the actions of the BLM Oregon state office as far back as March  
12 1995 when the House of Representatives first passed § 2001(k)  
13 (then known as § 307(i)) with identical language. Back in March  
14 the BLM Oregon state office prepared, and later distributed to  
15 NFRC, two tables listing by name the 27 FY 1991-95 timber sales  
16 that would be released by the new law. Ragon Dec., ¶ 5 and  
17 Exhibit 1, Tables 2 and 3. There is no reason the BLM would have  
18 prepared these tables unless it thought these sales were to be  
19 released under the then-proposed law.

20       The BLM Oregon state office has understood since March that  
21 the FY 1991-95 sales were to be released. The BLM's actions in  
22

23       <sup>11</sup> Similarly, Rep. Taylor's precise floor statement on March  
24 15 and his reiteration of that position in the July 27 letter  
25 reflect his view of the statute far more authoritatively than an  
26 extemporaneous shorthand remark he made in a brief moment of  
debate on the President's veto threat in May 1995, 141 Cong. Rec.  
H5557 (daily ed. May 24, 1995), or a similar shorthand reference  
in the House Report written a week before his March 15 floor  
statement.

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1 9, and thus only about 215-265 million board feet of Section 318  
2 sales remain to be released in western Oregon. This falls 110-  
3 160 million board feet short of the 375 million board foot figure  
4 for western Oregon used by Senator Hatfield.

5 Senator Hatfield's figure is almost exactly accurate if it  
6 includes the 125 million board feet of BLM FY 1991-95 sales that  
7 are involved in this case. With the FY 1991-95 sales, the  
8 western Oregon total rises to about 335-385 million -- almost  
9 exactly matching his 375 million board foot number. Some of the  
10 Forest Service FY 1991-95 sales may also be in western Oregon.  
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17 authored on May 16. Were there any doubt, the Conference Report  
18 and the Senate Report would be much more reliable indicators of  
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24 (accurately) as relating to "Section 318" sales (i.e., fiscal  
25 year 1990 sales). He never stated the amendment did not apply to  
26 sales in other years. It is understandable that Senator Gorton

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24 - PLAINTIFF'S MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT

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March make the government's current position untenable.

**4. The error-filled Interpretation Memorandum is entitled to no weight.**

The government can be expected to argue that its Interpretation Memorandum issued August 22, 1995 should be accorded "substantial deference" or "great weight" or some similar significance. The document is entitled to no weight at all. "If the intent of Congress is clear, that is the end of the matter . . . . The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent." *Chevron*, 467 U.S. at 843 and n.9.

Nor does the Interpretation Memorandum merit any deference. Remarkably, it quotes neither the language of the statute it is interpreting nor any part of its legislative history. Rather than utilize those accepted sources, it rests its position on the fact that "we<sup>[12]</sup> have been involved in the debate over the federal forests in the Pacific Northwest for a long time, as have members of Congress." Interpretation Memorandum at 1-2. While "a long time" no doubt means different things to different people, Clinton Administration political appointees could not have taken office until January 20, 1993 -- hardly "a long time."

However long their involvement, the authors in fact have considerable ignorance about their subject matter:

---

<sup>12</sup> Since neither of the signatories whose names are printed on the Memorandum actually signed it, it is not even clear who the "we" refers to.

1 (1) While they say "about 4 billion board feet of timber  
2 was sold subject to section 318," the actual volume sold under  
3 section 318 was 7.333 billion board feet. *Gifford Pinchot*  
4 *Alliance v. Butruille*, 752 F. Supp. at 972.

5 (2) While they imply that the FY 1991-95 timber sales were  
6 subject to ~~less~~ judicial review than Section 318 sales, the  
7 opposite is true: the FY 1991-95 timber sales were subject to  
8 unrestricted judicial review while review of the Section 318  
9 sales was severely limited and in fact almost never occurred.

10 (3) While they claim "the Supreme Court approved section  
11 318's limitation of judicial review," in fact that issue was not  
12 before the Supreme Court, which instead reviewed a different part  
13 of Section 318 that changed substantive law. *Robertson v.*  
14 *Seattle Audubon Society*, 503 U.S. at 434-35.

15 (4) While they claim that "Congress used section 318 as its  
16 model in drafting section 2001," in fact the only parts of  
17 section 318 that Congress used were the judicial review provi-  
18 sions from section 318(g) that appear in § 2001(f). None of the  
19 substantive direction in § 2001 -- for salvage sales, Option 9  
20 sales or the award and release of previous sales -- has any  
21 similarity to the substantive provisions of section 318.

22 (5) While they claim a Forest Service "effects statement"  
23 assuming the narrower interpretation of § 2001(k) was transmitted  
24 to Congress on April 27 "and then used by members of Congress in  
25 their floor statements and debates," no member of Congress ever  
26 referred to such an effects statement, and there is no indication

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1 any member of Congress ever saw such a statement.

2 For these reasons, the Interpretation Memorandum is not even  
3 credible, let alone worthy of deference. It smacks of rational-  
4 ization rather than reason.

5 **C. NFRC has standing.**

6 A plaintiff has standing to seek mandamus under 28 U.S.C.  
7 § 1361 if he is within the "zone of interests" protected by the  
8 underlying statute. *Silveyra v. Moschorak*, 989 F.2d 1012, 1014  
9 n.1 (9th Cir. 1993). NFRC's members are the specific intended  
10 beneficiaries of § 2001(k). A nonprofit corporation like NFRC  
11 devoted to furthering the interests of its members who are the  
12 beneficiaries of the underlying statute has standing to maintain  
13 a mandamus suit to compel an agency to act in accordance with the  
14 statute. *Greater Los Angeles Council on Deafness, Inc. v.*  
15 *Baldrige*, 827 F.2d 1353, 1358 (9th Cir. 1987).

16 **D. NFRC is entitled to mandamus relief.**

17 Mandamus relief is available when "(1) the plaintiff's claim  
18 is clear and certain, (2) defendant official's duty to act is  
19 ministerial, and so plainly prescribed as to be free from doubt,  
20 and (3) no other adequate remedy is available." *Barron v. Reich*,  
21 13 F.3d 1370, 1374 (9th Cir. 1994), quoting *Fallini v. Hodel*, 783  
22 F.2d 1343, 1345 (9th Cir. 1986). Mandamus jurisdiction exists  
23 "when a plaintiff has a clear right to relief, a defendant has a  
24 clear duty to act and no other adequate remedy is available."  
25 *Piledrivers' Local Union No. 2375 v. Smith*, 695 F.2d 390, 392  
26 (9th Cir. 1982).

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

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

18 The proper inquiry is whether the government  
19 has any intention of attempting to complete  
20 the administrative process before [the statu-  
21 tory deadline]. Let there be all the time in  
the world, if the government has expressed an  
intention to proceed in a manner that will  
violate the statute, mandamus may lie.

22 *Id.*

23 Mandamus will also lie even where an official's responsi-  
24 bilities are in some respects discretionary, where there exist  
25 "statutory or regulatory standards delimiting the scope or manner  
26 in which such discretion can be exercised." *Barron v. Reich*, 13

29 - PLAINTIFF'S MEMORANDUM IN SUPPORT OF  
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1 F.3d at 1376; *Silveyra v. Moschorak*, 989 F.2d at 1014. In these  
2 cases "mandamus will lie when the standards have been ignored or  
3 violated." *Barron v. Reich*, 13 F.3d at 1376.

4 This case is proper for mandamus relief prior to the  
5 September 10, 1995 statutory deadline since the government has  
6 officially announced that it does not intend to release the FY  
7 1991-95 sales by September 10, or ever.

8 **E. The statute provides no alternative remedy.**

9 In opposition to the motion for a restraining order, the  
10 government argued that mandamus relief is not available in this  
11 case because "the statute provides an adequate alternative  
12 remedy." Gov't Opp. to Motion For TRO at 10. Thus, the govern-  
13 ment argues that it does not have to comply with the statute even  
14 if, as NFRC has shown, Congress directed in § 2001(k)(1) that the  
15 FY 1991-95 sales must all be awarded and released by September  
16 10.

17 The section cited by the government, § 2001(k)(3), has no  
18 relevance here, and does not excuse deliberate violation of  
19 § 2001(k)(1) as the government suggests. Section 2001(k)(3)  
20 requires replacement timber to be provided "if for any reason a  
21 sale cannot be released and completed under the terms of this  
22 subsection within 45 days after the date of the enactment of this  
23 act." There is only one statutory reason a sale could not be  
24 released within 45 days under the statute -- if a threatened or  
25 endangered bird species "is known to be nesting" on a sale unit.  
26 § 2001(k)(2). Thus § 2001(k)(3) should only be triggered if a

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1 bird "known to be nesting" in a sale unit prevents release of the  
2 unit.

3 As the Interpretation Memorandum makes clear, the government  
4 does not argue here that it "cannot" release the FY 1991-95 sales  
5 by September 10 -- it claims that the statute does not require it  
6 to.<sup>13</sup> Section 2001(k)(3) does not apply where the government  
7 simply chooses not to comply with the law.

8 After the veto of the original bill, the Administration  
9 asked Congress to extend the release time on these sales from 30  
10 days to 45 days, and Congress agreed. 141 Cong. Rec. S10464  
11 (daily ed. July 21, 1995) (Exhibit 14). Congress would not have  
12 extended the deadline, and the Administration would not have  
13 requested the 15 day extension, unless everyone understood that  
14 action is required by the mandated deadline. Rendering the  
15 statutory deadline meaningless is contrary to the understood  
16 intent of the statute.

17 The reason this law was needed was, in large part, that the  
18 executive branch of the government had voluntarily withheld and  
19 refused to release many of these sales for years. It would be  
20 irrational to suggest that Congress enacted § 2001(k)(3) to allow  
21 the executive branch to ignore the mandatory terms of the new law  
22 simply by deciding not to comply with the 45 day trigger.

23 If the court determines that § 2001(k)(1) requires the  
24

25  
26 <sup>13</sup> In their answer filed August 25, 1995 defendants denied  
that they are unable to award these sales by September 10.  
Answer, ¶ 12.

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1 government to release the FY 1991-95 sales, the court is empow-  
 2 ered to grant declaratory and injunctive relief to enforce the  
 3 terms of the statute. "Mandamus jurisdiction under 28 U.S.C.  
 4 § 1361 permits flexibility in remedy," *Crawford v. Cushman*, 531  
 5 F.2d 1114, 1126 (2d Cir. 1976), including injunctive and declara-  
 6 tory relief. *Tagupa v. East-West Center, Inc.*, 642 F.2d 1127,  
 7 1129 (9th Cir. 1981) (mandatory injunction may properly issue  
 8 along with mandamus, compelling federal defendants to carry out  
 9 their duties); *National Treasury Employees v. Nixon*, 492 F.2d  
 10 586, 616 and n.65 (D.C. Cir. 1974) (appropriate to issue declara-  
 11 tory relief after mandamus jurisdiction established).

12 In any event, the technical issue of whether mandamus relief  
 13 is available need not even be reached since the court can and  
 14 should also grant summary judgment on NFRC's second claim under  
 15 the Administrative Procedure Act, 5 U.S.C. § 706 (1), and order  
 16 the government to award and release the sales under that statute  
 17 as a remedy for its unlawful withholding of the award and release  
 18 of the sales.

19 **F. NFRC and the companies need injunctive relief to avoid**  
 20 **irreparable harm.**

21 NFRC and the companies it represents face irreparable harm  
 22 if defendants violate the mandatory terms of § 2001(k). Congress  
 23 directed the release of these sales as part of the emergency  
 24 salvage program because of the timber supply shortage in the  
 25 Northwest produced by years of limited federal timber sale  
 26 offerings. 141 Cong. Rec. H3231 (daily ed. March 15, 1995)

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32 - PLAINTIFF'S MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT

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1 (Exhibit 3) (Rep. Taylor) (sales released by § 2001(k) will  
2 "immediately provid[e] substantial amounts of timber for mills  
3 hurt by Federal supply reductions"). The sponsors advised the  
4 Secretaries on July 27, 1995 that release of the FY 1991-95 sales  
5 "is vital to the policies intended in Section 2001 . . . to avoid  
6 further economic dislocation in rural timber-dependent communi-  
7 ties." Exhibit 4 at 2.

8 Defendants' failure to award and release the FY 1991-95  
9 sales by September 10 will frustrate and defeat Congress' very  
10 clearly expressed intent unless this court intervenes to grant  
11 injunctive relief to enforce the terms of the statute.

12 **G. Injunctive relief is in the public interest.**

13 A court must consider the public interest in determining  
14 whether to grant injunctive relief. *Sierra Club v. Penfold*, 857  
15 F.2d 1307, 1318 (9th Cir. 1988). There is no stronger public  
16 interest than in having government officials and agencies obey  
17 the law. *Seattle Audubon Society v. Evans*, 771 F. Supp. 1081,  
18 1096 (W.D. Wash.), *aff'd* 952 F.2d 297 (9th Cir. 1991). Flaunting  
19 the clearly expressed intent of Congress is highly injurious to  
20 the public interest.

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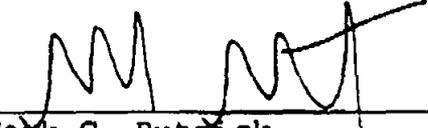
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**CONCLUSION**

NFRC's motion for summary judgment should be granted.

Dated this 25th day of August, 1995.

MARK C. RUTZICK LAW FIRM  
A Professional Corporation

By: 

Mark C. Rutzick  
Alison Kean Campbell  
Attorneys for Plaintiff

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1995 AUG 25 P 4: 12  
CLERK, U.S. DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND, OREGON  
BY \_\_\_\_\_

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE	)	
COUNCIL, an Oregon corporation,	)	Civil No. 95-6244-HO
	)	
Plaintiff,	)	<b>CONCISE STATEMENT OF</b>
	)	<b>MATERIAL FACTS NOT IN</b>
vs.	)	<b>DISPUTE</b>
	)	
DAN GLICKMAN, in his capacity	)	
as Secretary of Agriculture;	)	
BRUCE BABBITT, in his capacity	)	
as Secretary of the Interior,	)	
	)	
Defendants.	)	

For its concise statement of material facts not in dispute, plaintiff Northwest Forest Resource Council states as follows:

1. NFRC is a nonprofit corporation representing several hundred timber and logging companies, including most of the companies that have the right to award and release of the 42 or more sales at issue in this case. Declaration of Robert E. Ragon, ¶¶ 1-2.

2. Among the companies represented by NFRC that are

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

7 3. In March 1995 the Bureau of Land Management ("BLM")  
8 Oregon state office prepared a list of the specific timber sales  
9 that could be subject to the salvage bill. At a meeting on April  
10 4 with NFRC, the BLM staff agreed to provide NFRC with a list of  
11 the specific sales that would be released, and they faxed a copy  
12 of the list to NFRC on April 5, 1995. Ragon Dec., ¶ 5 and  
13 Exhibit 1 (Tables 1, 2 and 3) (showing fax date of 04/05/95).  
14 Tables 2 and 3 list 27 unawarded non-Section 318 timber sales  
15 offered in fiscal year 1991, totalling approximately 125 million  
16 board feet of timber. Table 1 lists 13 Section 318 sales with 70  
17 million board feet of timber that would be released under the  
18 statute.

19 4. Using information from the Forest Service and from  
20 Timber Data, Inc. of Eugene, Oregon, a company that collects  
21 Forest Service timber sale data, NFRC's best estimate is that  
22 there are 15 Forest Service contracts on national forests in  
23 Oregon and Washington from fiscal years other than 1990 (i.e.,  
24 non-Section 318 sales) that are uncompleted. Three of these  
25 sales have been awarded and 12 have not. The volume of timber in  
26 these 15 sales is approximately 47 million board feet. Ragon

1 Dec., ¶ 6.

2 5. According to the U.S. Fish and Wildlife Service  
3 biological opinion dated June 12, 1995 on the Section 318  
4 murrelet sales, there is about 255 million board feet of timber  
5 in the 57 remaining suspended Section 318 sales with murrelet  
6 habitat. Exhibit 10 at 8-9. Of this total, the FWS approved the  
7 release of 20-70 million board feet of unoccupied units. Exhibit  
8 10 at 19. Thus, the suspended volume is 185-235 million board  
9 feet in both states. Together with the 70 million board feet of  
10 unawarded Section 318 sales, Ragon Declaration, Table 1, the  
11 remaining Section 318 volume in the two state region is 255-305  
12 million board feet.

13 6. About 40 million board feet of the Section 318 murrelet  
14 sales are in Washington national forests, and thus about 215-265  
15 million board feet of Section 318 sales remain to be released in  
16 western Oregon. Exhibit 10 at 9.

17 7. The actual volume sold under section 318 of Pub. L.  
18 1001-121 was 7.333 billion board feet. *Gifford Pinchot Alliance*  
19 *v. Butruille*, 752 F. Supp. 967, 972 (D. Or. 1990).

20 8. The BLM administrative districts in western Oregon  
21 subject to section 318 are Salem, Eugene, Roseburg, Coos Bay,  
22 Medford and Lakeview. § 318 (a) (2), Pub. L. 101-121.

23 9. All Section 318 timber sales were offered in fiscal  
24 year 1990, which ended September 30, 1990. *Gifford Pinchot*  
25 *Alliance v. Butruille*, 752 F. Supp. at 972.

26 10. Fiscal year 1991-95 timber sales were subject to

Page

3 - CONCISE STATEMENT OF MATERIAL FACTS  
NOT IN DISPUTE

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1 unrestricted judicial review under the Administrative Procedure  
2 Act.

3 11. Less than 20 Section 318 timber sales, out of almost a  
4 thousand sales, were ever subjected to judicial review.

5 12. On July 27, 1995 six members of Congress signed the  
6 letter to Secretaries Glickman and Babbitt that is attached to  
7 plaintiff's Memorandum In Support of Motion For Partial Summary  
8 Judgment as Exhibit 4.

9 13. Senator Murkowski is Chairman of the Senate Energy and  
10 Natural Resources Committee. Senator Craig is Chairman of the  
11 Forestry, Conservation and Rural Revitalization subcommittee of  
12 the Senate Agriculture, Nutrition and Forestry Committee.  
13 Senator Gorton is Chairman of the Interior Appropriations  
14 subcommittee of the Senate Appropriations Committee. Rep. Young  
15 is Chairman of the House Resources Committee. Rep. Taylor is Me-  
16 mber of the Interior Appropriations subcommittee of the House  
17 Appropriations Committee. Rep. Roberts is Chairman of the House  
18 Agriculture Committee, which has jurisdiction over forestry.

19 14. The Congressional Record and Congressional Report  
20 excerpts attached to plaintiff's Memorandum In Support of Motion  
21 For Partial Summary Judgment as Exhibit 1-4, 6-12 and 14 are  
22 accurate copies of the referenced documents.

23 15. The excerpts from the U.S. Fish and Wildlife Service  
24 biological opinion on Section 318 marbled murrelet sales attached  
25 to plaintiff's Memorandum In Support of Motion For Partial  
26 Summary Judgment as Exhibit 13 are accurate copies of the

age 4 - CONCISE STATEMENT OF MATERIAL FACTS  
NOT IN DISPUTE

MARK C. RUTZICK LAW FIRM  
A Professional Corporation  
Attorneys at Law  
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888 S.W. Fifth Avenue  
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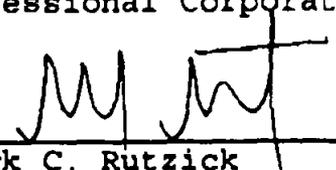
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referenced document.

Dated this 25th day of August, 1995.

MARK C. RUTZICK LAW FIRM  
A Professional Corporation

By: \_\_\_\_\_

  
Mark C. Rutzick  
Alison Kean Campbell  
Attorneys for Plaintiff

Page

5 - CONCISE STATEMENT OF MATERIAL FACTS  
NOT IN DISPUTE

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3

104TH CONGRESS  
1st Session

HOUSE OF REPRESENTATIVES

REPORT  
104-124

**MAKING EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR ADDITIONAL DISASTER ASSISTANCE AND MAKING RESCISSIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1995, AND FOR OTHER PURPOSES**

MAY 16, 1995.—Ordered to be printed

Mr. LIVINGSTON, from the committee of conference,  
submitted the following

**CONFERENCE REPORT**

(To accompany H.R. 1158)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1158) "making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

*That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to provide emergency supplemental appropriations for additional disaster assistance, for anti-terrorism initiatives, for assistance in the recovery from the tragedy that occurred at Oklahoma City, and making rescissions for the fiscal year ending September 30, 1995, and for other purposes, namely:*

## TITLE II—GENERAL PROVISIONS

## EMERGENCY TIMBER SALVAGE

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

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

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

*Forest Health*

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

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

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

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

### *Volume Levels*

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

Of particular interest in the Forest Service's assessment that 6.75 BBF of volume could be available during the next three years using the expedited procedures of this section, without violating the substantive requirements of existing environmental laws. This volume estimate was developed by Forest Service line managers and biologists. The Forest Service reports that there is a significant margin of error ( $\pm$  25%) in these estimates, and it is reasonable to expect that the volumes may increase somewhat as on-the-ground implementation gets underway. Given the margin of error in the estimates, it appears the Forest Service could meet the salvage volumes in the House bill without sacrificing the substantive objectives of all environmental laws. The Senate bill contained no sale volumes.

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

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

### *Process*

The managers intend that as the environmental processes are completed for individual sales, the Secretary concerned may choose

among the completed combined documents to determine how sales should go forward.

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

For emergency timber salvage sales, Option 9, and sales in Section 818 areas, the bill contains language which deems sufficient the documentation on which the sales are based, and significantly expedites legal actions and virtually eliminates dilatory legal challenges. Environmental documentation, analysis, testimony, and studies concerning each of these areas are exhaustive and the sufficiency language is provided so that sales can proceed.

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

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

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

#### *Reporting*

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

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

#### *Option 9*

The managers have retained bill language added by the Senate that provides the Forest Service and Bureau of Land Management the authority to expedite timber sales allowed under the President's forest plan for the Pacific Northwest, commonly known as

option 9. The managers are concerned that the administration has not made the necessary efforts to fulfill the commitment it made to the people of the region to achieve an annual harvest level of 1.1 billion board feet and have included bill language to assist the administration in this effort.

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

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

#### *Released Timber Sales*

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

#### FUNDS AVAILABILITY

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

the Federal Response Plan, and for modifying and expanding the Federal Response Plan.

**Emergency Management Planning and Assistance**

The conferees propose a supplemental appropriation for fiscal year 1995 of \$3,477,000. This amount, not included in either the House or Senate bills, was requested by the President in his May 2, 1995 message to address urgent needs arising from the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma. This amount will provide for the development of new plans and procedures for an efficient response to a terrorist event under the Federal Response Plan, as well as for increased training and exercises associated with such a response for State and local emergency personnel.

**CITATION**

The conference agreement amends the Senate citation of the bill to reflect the inclusion of emergency supplemental appropriations for the anti-terrorism initiatives and for the recovery assistance for the tragedy that occurred at Oklahoma City. The House bill did not contain a citation.

The conferees agreement amends the title of the bill to be compatible with the amended enacting clause and citation.

**CONFERENCE TOTAL—WITH COMPARISONS**

The total new budget (obligational) authority for the fiscal year 1995 recommended by the Committee of Conference, with comparisons to the fiscal year 1995 budget estimates, and the House and Senate bills for 1995 follow:

Budget estimates of new (obligational) authority, fiscal year 1995..	\$6,432,382,195
House bill, fiscal year 1995 .....	-11,745,362,239
Senate bill, fiscal year 1995 .....	-8,511,234,450
Conference agreement, fiscal year 1995 .....	-9,029,496,876
Conference agreement compared with:	
Budget estimates of new (obligational) authority, fiscal year 1995 .....	-15,461,879,071
House bill, fiscal year 1995 .....	+2,715,885,363
Senate bill, fiscal year 1995 .....	-618,262,426

BOB LIVINGSTON,  
 JOHN T. MYERS,  
 RALPH REGULA,  
 JERRY LEWIS,  
 JOHN EDWARD PORTER,  
 HAL ROGERS,  
 JOE SKEEN,  
 FRANK R. WOLF,  
 TOM DELAY,  
 BARBARA F. VUCANOVICH,  
 JIM LIGHTFOOT,  
 S. CALLAHAN,  
 RON PACKARD,  
*Managers on the Part of the House.*  
 MARK O. HATFIELD,

148

TED STEVENS,  
 THAD COCHRAN,  
 ARLEN SPECTER,  
 PETE V. DOMENICI,  
 P. GRAMM,  
 C.S. BOND,  
 SLADE GORTON,  
 MITCH MCCONNELL,  
 CONNIE MACK,  
 CONRAD BURNS,  
 RICHARD SHELBY,  
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 R.F. BENNETT,  
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 J. BENNETT JOHNSTON,  
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 DALE BUMPERS,  
 BARBARA A. MIKULSKI,  
 HARRY REID,  
 BOB KERREY,  
 HERB KOHL,  
 PATTY MURRAY,  
*Managers on the Part of the Senate.*

○

**Calendar No. 39**

104TH CONGRESS }  
*1st Session*

SENATE

{ REPORT  
104-17

**MAKING ADDITIONAL SUPPLEMENTAL APPROPRIATIONS  
AND RESCISSIONS FOR THE FISCAL YEAR ENDING SEP-  
TEMBER 30, 1995, AND FOR OTHER PURPOSES**

MARCH 24 (legislative day, MARCH 23), 1995.—Ordered to be printed

Mr. HATFIELD from the Committee on Appropriations,  
submitted the following

**REPORT**

[To accompany S. 617]

The Committee on Appropriations reports the bill (S. 617) mak-  
ing additional supplemental appropriations and rescissions for the  
fiscal year ending September 30, 1995, and for other purposes, re-  
ports favorably thereon and recommends that the bill do pass.

## TITLE II—GENERAL PROVISIONS

### TIMBER SUPPLY

Section 2001. The Committee is concerned about the impacts of current policies on timber supply and forest management issues on timber-dependent communities across the Nation. The Committee has included language in its bill to assist the administration in its commitment to conduct aggressive forest health operations, and to provide harvestable timber to the people who live and work in the region of option 9—western Washington and Oregon, and northern California. The Committee acknowledges that the administration is currently unable to take the prompt action needed on these important issues, in large part, because of duplicative environmental restrictions, and the filing of legal challenges. The Committee has included language to give the administration the opportunity to fulfill its commitment to the people of the Pacific Northwest to provide some level of harvest of timber from Federal lands, and to implement an aggressive program to restore health to our Nation's forests.

*Emergency salvage timber sales.*—The Committee has included bill language to address the emergency situation in our Nation's forests created by past wildfires, increased fuel load, or bug infested and diseased timber stands. In 1994 alone, nearly 4 billion board feet of timber on Federal lands was killed by fire, firefighters died fighting the summer fires, and Federal costs to fight the fires approached \$900,000,000.

Prompted by this Committee last year, the administration issued a report on the health of western forests and recognized the need to conduct salvaging, thinning, and other important forest health operations. The Committee is concerned, however, about the slow action by the administration to expedite the preparation and award of salvage timber sales nationwide. Quick action by the agencies is critical because of the short lifespan of burnt, dead, dying, blow down, and bug infested timber stands. Adding to the emergency situation is the need to act quickly to conduct these forest health operations before the start of the upcoming fire season.

The Committee notes that the House has included language on this subject in its bill. The Senate's language takes a similar approach with a few exceptions. The bill language directs the Forest Service and BLM expeditiously to prepare, offer, and award salvage timber sale contracts for the thinning and salvaging of dead, dying, bug infested, downed, and burnt timber on these Federal lands nationwide. The agencies are further directed to perform the appropriate revegetation and tree planting operations in the areas in which the salvage operations have taken place.

The Forest Service's planned timber salvage program for fiscal years 1995-96 is roughly 1.5 billion board feet for each fiscal year.

(122)

EXHIBIT 2

PAGE 2

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. Similarly, the Bureau of Land Management's programmed timber salvage program in fiscal year 1995 is 64 million board feet and 45 million board feet in fiscal year 1996. The Committee expects BLM to meet these programmed targets, and the bill further directs the Forest Service and BLM to undertake significant efforts to harvest additional salvage timber to the maximum extent feasible.

Due to the emergency situation in our Nation's forests, and in an effort to give each Secretary the ability to meet both the target volumes and to work toward to higher volume target, the bill language deems the salvage timber sales prepared under this section of the bill to satisfy the requirements of applicable Federal environmental laws. The Committee urges the agencies to expedite these timber sales, and does not believe that the issuance of regulations is necessary to implement this provision. 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.

*Released timber sales.*—The Committee also includes language to release a group of sales that have already been sold in the region affected by section 318 of the Fiscal Year 1990 Interior and Related Agencies Appropriations Act. Included are all sales offered, awarded, or unawarded, whether or not bids have subsequently been rejected by the offering agency. The harvest of these sales was assumed under the President's Pacific Northwest forest plan, but their release has been held up due to extended subsequent review by the U.S. Fish and Wildlife Service. Release of these sales will remove tens of millions of dollars of liability from the Government for contract cancellation. The only limitation on release of these sales is in the case of a nesting of an endangered bird species with a known nesting site in a sale unit. In this case, the Secretary must provide a substitute volume under the terms of subsection (e)(3).

*Option 9.*—The Committee has also included bill language to provide the Forest Service and Bureau of Land Management the authority to expedite timber sales allowed for under the President's forest plan for the Pacific Northwest, commonly known as option 9. Option 9 was selected by the Secretaries of Interior and Agriculture on April 13, 1994, and promised the people in the region of option 9 (Washington, Oregon, and California) an annual harvest of 1.1 billion board feet. Despite this commitment, in fiscal year 1994 only 247 million board feet of timber was offered from combined Forest Service and BLM lands from the region—this total is dramatically less than that promised to the region in option 9. The Committee is concerned that the administration has not taken the efforts necessary to fulfill the commitment it made to the people of the region to achieve an annual harvest level of 1.1 billion board feet and has included bill language to assist the administration in this effort.

On December 31, 1994, the Federal District Court issued an opinion upholding option 9 as valid under all present environmental laws. Other challenges to option 9 are pending and are not

prejudiced by this provision. The Committee wishes to make clear that the bill language does not independently validate option 9 and does not restrict pending or future challenges to option 9.

The bill language specifies that timber sales prepared under the provision satisfy the requirements of Federal environmental laws, provides for an expedited process for legal challenges, and limits administrative review of such sales.

The Committee urges the administration to impement promptly each of these provisions upon the date of enactment.

#### AVAILABILITY PAY AMENDMENTS

Sections 2002-2005. The Committee has included several general provisions which technically alter section 633 of Public Law 103-329 with respect to availability pay. One change relates to Offices of Inspectors General. The Committee recognizes that the mission and caseloads of a number of Offices of Inspectors General have not demonstrated the need to employ significant numbers of 1811 series criminal investigators. Additionally, there has not been an historical basis for these criminal investigators to work unscheduled duty hours in excess of their required work hours. The Committee, therefore, has included language which provides for some discretion by the inspector general based upon the need in that Office for such additional duty and compensation. Should an inspector general exercise the discretion not to apply this compensation to his/her 1811 agents, those criminal investigators shall not be considered exempt from the Fair Labor Standards Act authorized in the Availability Pay Act.

Another change deals with scheduled and unscheduled duty. Scheduled and unscheduled duty have separate and distinct definitions for the purposes of compensation. The conflicting language in the law posed administrative difficulties for the agencies and created circumstances for potential litigation.

The technical amendment will provide flexibility and discretion to the agencies. While the Committee recognizes that agencies should compensate law enforcement officers for overtime hours scheduled in advance of an administrative work week, as provided in title 5, section 5542, criminal investigators must also recognize that agencies cannot always anticipate in advance the exact number of hours which may be required for such scheduled duty.

Criminal investigators must recognize that on days when overtime is scheduled, there may be the need for additional work hours in relation to the scheduled or other varied duties. Reasonable agency discretion in anticipating, estimating, and scheduling overtime duty is acceptable. Expecting or directing agents to work unscheduled duty hours during a work day which includes scheduled overtime is acceptable and is appropriately compensated through the availability pay legislation. The changes to the section 633 recognize the distinction between the two forms of overtime duty and, at the same time, provide some discretion to be applied in good faith by the agencies in order to consolidate overtime compensation and save agency funds.

The last technical change to section 633 will include U.S. Customs pilots (aircraft series 2181) under the Availability Pay Act provisions. This change will permit the uniform application of com-

March 15, 1995

CONGRESSIONAL RECORD—HOUSE

H 3217

TITLE VI  
GENERAL PROVISIONS

SEC. 301. None of the funds made available in any appropriations Act for fiscal year 1986 may be used to issue, implement, administer, or enforce any executive order, or other rule or order, that prohibits Federal contracts with companies that hire permanent replacements for striking employees.

SEC. 302. Hereafter, the requirement pursuant to section 18(b)(3) of the United States Housing Act of 1937, for the provision of an additional dwelling unit for each public housing dwelling unit to be demolished or disposed of under an application submitted by a public housing agency under section 18(a) of such Act, shall not apply to any such application approved by the Secretary of Housing and Urban Development in fiscal year 1986 or in any prior fiscal year. Provided, That no such application submitted by a public housing agency to implement a final order of a court issued, or a settlement approved by a court, before the effective date of this public law, shall be affected by this paragraph.

SEC. 303. None of the funds made available in any appropriations Act for fiscal year 1986 may be used by the Environmental Protection Agency to impose or enforce any requirement that a State implement trip reduction measures to reduce vehicular emissions.

SEC. 304. None of the funds made available in any appropriations Act for fiscal year 1986 may be used by the Environmental Protection Agency to impose or enforce any requirement that a State implement an inspection and maintenance program for vehicular emissions.

SEC. 305. The Congress finds that the 1980 amendments to the Clean Air Act (Public Law 101-549) superseded prior requirements of the Clean Air Act regarding the demonstration of attainment of national ambient air quality standards and eliminated the obligation of the Administrator of the Environmental Protection Agency to promulgate a Federal implementation plan under section 110(e) of the Clean Air Act for the South Coast, Ventura, or Sacramento areas of California. Upon the enactment of this Act, any Federal implementation plan that has been promulgated by the Administrator of the Environmental Protection Agency under the Clean Air Act for the South Coast, Ventura, or Sacramento areas of California pursuant to a court order or settlement shall be rescinded and shall have no further force and effect.

SEC. 306. EMERGENCY TWO-YEAR SALVAGE TIMBER SALES PROGRAM.

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

(1) The term "emergency period" means the two-year period beginning on the date of the enactment of this section.

(2) The term "Federal lands" means—  
(A) lands within the National Forest System, as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1608(a)); and  
(B) public lands, as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1703(e)).

(3) The term "land management plan" means—  
(A) a land and resource management plan (or, if no final plan is currently in effect, a draft land and resource management plan) prepared by the Forest Service pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) for a unit or units of the Federal lands described in paragraph (2)(A); or  
(B) a land use plan prepared by the Bureau of Land Management pursuant to section 302

of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712), or other multiple-use plan in effect, for a unit of the Federal lands described in paragraph (2)(B).

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

(5) The term "Secretary concerned" means—

(A) with respect to Federal lands described in paragraph (2)(A), the Secretary of Agriculture; and

(B) with respect to Federal lands described in paragraph (2)(B), the Secretary of the Interior.

(b) TWO-YEAR EMERGENCY PROGRAM OF SALVAGE TIMBER SALES FOR FEDERAL LANDS.—

(1) SALVAGE TIMBER SALES REQUIRED.—Using the expedited procedures provided in subsection (c), the Secretary concerned shall prepare, advertise, offer, and award contracts during the emergency period for salvage timber sales from Federal lands to satisfy the volume requirements of paragraph (2).

(2) SALVAGE TIMBER SALE VOLUMES.—The salvage timber sales sold under this subsection during the emergency period shall contain the following total timber volumes (programmed or otherwise):

(A) For Federal lands described in subsection (a)(2)(A)—

(i) not less than 3,000,000,000 board feet during the first year of the emergency period; and

(ii) not less than 3,000,000,000 board feet during the second year of the emergency period.

(B) For Federal lands described in subsection (a)(2)(B)—

(i) not less than 115,000,000 board feet during the first year of the emergency period; and

(ii) not less than 115,000,000 board feet during the second year of the emergency period.

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

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

(1) SALE DOCUMENTATION.—For each salvage timber sale conducted under subsection (b) to meet the minimum salvage timber sale volumes specified in paragraph (2) of such subsection, the Secretary concerned shall prepare a document that combines an environmental assessment under section 102(2) and implementing regulations of the National Environmental Policy Act of 1969 (42 U.S.C. 4322)(E) and a biological evaluation under section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2)), and other applicable Federal law and implementing regulations. The environmental assessment and biological evaluation must consider the environmental effects of the salvage timber sale and consider the effect, if any, on threatened or endangered species. In lieu of preparing a new document under this paragraph, the Secretary concerned may use a document prepared pursuant to the National Environmental Policy Act of 1969 before the date of the enactment of this section, a biological evaluation written before such date, or information collected for such

a document or evaluation if the document, evaluation, or information applies to the Federal lands covered by the proposed sale.

(2) TIMBER PRICES FOR AND STRUCTURE OF SALES.—

(A) FIRST YEAR.—For salvage timber sales conducted pursuant to subsection (b) during the first year of the emergency period, the Secretary concerned shall—

(1) offer sales which contain fifty percent of the total timber volume required pursuant to subsection (b)(2)(A)(i) or (b)(2)(B)(i), as the case may be, within the first 3 months of the year; and

(2) offer sales which contain the remaining volume required pursuant to subsection (b)(2)(A)(i) or (b)(2)(B)(i), as the case may be, evenly distributed throughout the remainder of the year.

(B) SECOND YEAR.—For salvage timber sales conducted pursuant to subsection (b) during the second year of the emergency period, the Secretary concerned shall—

(1) offer sales which contain fifty percent of the total timber volume required pursuant to subsection (b)(2)(A)(ii) or (b)(2)(B)(ii), as the case may be, within 15 months of the date of enactment of this Act; and

(2) offer sales which contain the remaining volume required pursuant to subsection (b)(2)(A)(ii) or (b)(2)(B)(ii), as the case may be, within the remainder of the year.

(3) Each Secretary shall report to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate 90 days after the date of enactment of this Act and on the final day of each 90-day period thereafter throughout the emergency period on the number of sales and volumes contained therein offered during such 90 day period and expected to be offered during the next 90 day period.

(4) SPECIAL RULES FOR SECOND YEAR SALES.—The Secretary concerned may begin salvage sales intended for the second year of the emergency period before the start of the second year if the Secretary concerned determines that the preparation, advertisement, offering, awarding, and operation of such sales will not interfere with salvage timber sales required during the first year of the emergency period.

(5) DECISIONS.—The Secretary concerned shall design and select the specific salvage timber sales to be offered under subsection (b) on the basis of the analysis contained in the document or documents prepared pursuant to paragraph (1) to satisfy the applicable volume requirement in subsection (b)(2) within the applicable schedule specified in paragraph (2).

(6) SALE PREPARATION.—The Secretary concerned shall make use of all available authority, including the employment of private contractors and the use of expedited fire contracting procedures, to prepare and advertise salvage timber sales under subsection (b) to meet the applicable schedule specified in paragraph (2). The provisions of section 3(d)(1) of the Federal Workforce Restructuring Act of 1984 (Public Law 100-226) shall not apply to any former employee of the Department of the Secretary concerned who received a voluntary separation incentive payment authorized by such Act or accepts employment pursuant to this paragraph.

(7) COST CONSIDERATIONS.—Salvage timber sales undertaken pursuant to this section shall not be precluded because the costs of such activities are likely to exceed the revenues derived from such activities.

(8) EFFECT OF OTHER LAWS.—The documents and procedures required by this section for the preparation, advertisement, offering, awarding, and operation of any salvage timber sale subject to subsection (b) shall be deemed to satisfy the requirements

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of all applicable Federal laws (and regulations implementing such laws) including but not limited to:

(A) The Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1800 et seq.).

(B) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(C) The National Environmental Policy Act of 1969 (43 U.S.C. 4321).

(D) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(7) **EFFECT OF SALVAGE SALES.**—The Secretary of Agriculture shall not substitute salvage timber sales conducted under subsection (b) for planned non-salvage timber sales.

(8) **EFFECT ON JUDICIAL DECISIONS.**—The Secretary concerned may conduct salvage timber sales under the authority of this section during the emergency period and the first year after the end of the emergency period notwithstanding any decision, restraining order, or injunction issued by a United States court issued before the date of the enactment of this section.

(4) **REFORESTATION OF SALVAGE TIMBER SALE PARCELS.**—The Secretary concerned shall plan and implement reforestation of each parcel of land harvested under a salvage timber sale conducted under subsection (b) as expeditiously as possible after completion of the harvest on the parcel, but in no case later than any applicable restocking period required by law or regulation.

(5) **ADMINISTRATIVE REVIEW.**—Salvage timber sales conducted under subsection (b), and any decision of the Secretary concerned in connection with such sales, shall not be subject to administrative review.

(6) **JUDICIAL REVIEW.**—

(1) **PLACE AND TIME OF FILING.**—A salvage timber sale to be conducted under subsection (b) shall be subject to judicial review only in the United States district court for the district in which the affected Federal lands are located. Any challenge to such sale must be filed in such district court within 15 days after the date of initial advertisement of the challenged sale.

(2) **EFFECT OF FILING ON AGENCY ACTION.**—For 45 days after the date of the filing of a challenge to a salvage timber sale to be conducted under subsection (b), the Secretary concerned shall take no action to award the challenged sale.

(3) **PROHIBITION ON RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS, AND RELIEF PENDING REVIEW.**—No restraining order or preliminary injunction shall be issued by any court of the United States with respect to any decision to prepare, advertise, offer, award, or operate a salvage timber sale pursuant to subsection (b). Section 705 of title 5, United States Code, shall not apply to any challenge to such a sale.

(4) **STANDARD OF REVIEW.**—The courts shall have authority to enjoin permanently, order modification of, or void an individual salvage timber sale if it is determined by a trial on the merits that the decision to prepare, advertise, offer, award, or operate such sale was arbitrary and capricious or otherwise not in accordance with applicable law (other than those laws specified in subsection (6)(F)).

(5) **TIME FOR DECISION.**—Civil actions filed under this subsection shall be assigned for hearing at the earliest possible date and shall take precedence over all other matters pending on the docket of the court at that time except for criminal cases. The court shall render its final decision relative to any challenge within 45 days from the date such challenge is brought, unless the court determines that a longer period of time is required to satisfy the requirement of the United States Constitution. In order to reach

a decision within 45 days, the district court may assign all or part of any such case or cases to one or more Special Masters, for prompt review and recommendations to the court.

(6) **PROCEDURE.**—Notwithstanding any other provision of law, the court may set rules governing the procedure of any proceeding brought under this subsection which set page limits on briefs and time limits on filing briefs and motions and other actions which are shorter than the limits specified in the Federal rules of civil or appellate procedure.

(7) **APPEAL.**—Any appeal from the final decision of a district court in an action brought pursuant to this subsection shall be filed not later than 30 days after the date of decision.

(8) **EXCLUSION OF CERTAIN FEDERAL LANDS.**—

(1) **EXCLUSION.**—The Secretary concerned may not select, authorize, or undertake any salvage timber sale under subsection (b) with respect to lands described in paragraph (2).

(2) **DESCRIPTION OF EXCLUDED LANDS.**—The lands referred to in paragraph (1) are as follows:

(A) Any area on Federal lands included in the National Wilderness Preservation System.

(B) Any roadless area on Federal lands designated by Congress for wilderness study in Colorado or Montana.

(C) Any roadless area on Federal lands recommended by the Forest Service or Bureau of Land Management for wilderness designation in its most recent land management plan in effect as of the date of the enactment of this Act.

(D) Any area on Federal lands on which timber harvesting for any purpose is prohibited by statute.

(b) **RULEMAKING.**—The Secretary concerned is not required to issue formal rules under section 553 of title 5, United States Code, to implement this section or carry out the authorities provided by this section.

(1) **AWARD AND RELEASE OF PREVIOUSLY OFFERED AND UNAWARDED TIMBER SALE CONTRACTS.**—

(1) **AWARD AND RELEASE REQUIRED.**—Notwithstanding any other provision of law, within 30 days after the date of the enactment of this section, the Secretary concerned shall act to award, release, and permit to be completed in fiscal years 1995 and 1996, with no change in originally advertised terms and volumes, 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 316 of Public Law 101-131 (103 Stat. 745).

(2) **EFFECT ON LAND MANAGEMENT PLANS.**—Compliance with paragraph (1) shall not require or prevent any change in any land management plan in existence on the date of the enactment of this Act.

The CHAIRMAN. The bill will be considered for amendment under the 5-minute rule for a period not to exceed 10 hours.

No amendment to the amendment in the nature of a substitute made in order as original text shall be in order unless printed as an amendment to H.R. 1158 or H.R. 1159 in the portion of the CONGRESSIONAL RECORD designated for that purpose in clause 6 of rule XXIII before March 14, 1995. Those amendments will be considered as having been read.

It shall not be in order to consider an amendment proposing to increase the

net level of budget authority in the bill.

It shall not be in order to consider an amendment proposing to redistribute budget authority within the net level of budget authority in the bill except within a chapter of the bill or, in the case of a title of the bill not organized by chapters, within such title. Any such amendment or any amendment thereto shall not be subject to a demand for a division of the question.

Debate on each amendment to the amendment in the nature of a substitute and any amendments thereto shall be limited to 30 minutes.

Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. LIVINGSTON

Mr. LIVINGSTON. Mr. Chairman, I offer amendment No. 68, the Roybal-Allard amendment, an amendment that the committee will support.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. Livingston: Page 50, strike line 18 through 21.

Page 54, line 18, strike "\$38,000,000" and insert "\$75,000,000".

The CHAIRMAN. Under the rule, the gentleman from Louisiana [Mr. Livingston] will be recognized for 15 minutes in support of the amendment, and a Member opposed will be recognized for 15 minutes.

The Chair recognizes the gentleman from Louisiana [Mr. Livingston].

Mr. LIVINGSTON. Mr. Chairman, I am delighted to yield 5 minutes to the gentlewoman from California [Ms. ROYBAL-ALLARD].

Ms. ROYBAL-ALLARD. Mr. Chairman, H.R. 1158, in its current form, includes a number of harmful rescissions that specifically target the most vulnerable segments of our Nation's population. These proposed rescissions disproportionately affect seniors and the disabled, among others, but barely touch the billions of dollars annually allocated for corporate subsidies.

My amendment attempts to bring balance to the rescission package by restoring \$37 million in funding for fiscal year 1996 to implement one of the most important supportive services programs administered by HUD: The Congregate Housing Services Program.

The Congregate Housing Services Program has successfully prevented or delayed the institutionalization of thousands of frail seniors and persons with disabilities by providing vital, nonmedical services. These services include meals, transportation, and personalized assistance to baths and dress, get in and out of bed, and to access wheelchairs. The program also funds the retrofitting of individual dwelling units and the renovation of facilities for supportive services that enhance independent living. The \$37 million to be restored by this amendment would provide services to over 8,300 elderly and handicapped persons throughout the country.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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provide forest health and to provide a 2-year amendment to this bill.

Chairman, I rise to address the provisions of section 307 of H.R. 1158, a measure authored by myself and Mr. DICKS, and supported strongly by a number of our colleagues on the Appropriations Committee and on the authorizing committees with jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMGRESS OF THE UNITED STATES,  
Washington, DC, March 15, 1995.

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

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

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

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

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

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

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

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

We appreciate your continuing assistance and cooperation on this matter.

Sincerely,

CHARLES H. TAYLOR,  
Member, U.S. Congress.  
DON YOUNG,  
Chairman.

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

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

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

The taxpayer loses under the Taylor Salvage Language because whatever profitable



1. We want to make it clear that subsection (k) of the salvage legislation applies within the geographic area of National Forest units and BLM districts that were subject to Section 318 of the Department of Interior and Related Agencies Appropriations Act, Fiscal Year 1990, Pub. L. 101-121, and within that geographic area requires the release of all previously offered or awarded timber sales, including Section 318 sales as well as all sales offered or awarded in other years (such as Fiscal Years 1991-95) that are not subject to Section 318. The reference to Section 318 in subsection (k)(1) defines the geographic area that is subject to subsection (k).

This interpretation is vital to the policies intended in Section 2001. The legislation directs all sales referenced in subsection (k) to be released promptly to local mills to avoid further economic dislocation in rural timber-dependent communities.

2. We have been informed that the Office of Forestry and Economic Development has suggested that subsection (k)(2) bars the release of any timber sale unit that has previously been determined to be "occupied" by a marbled murrelet. This interpretation of the law (1) directly contradicts the agreement reached between Congress and the Administration; (2) imposes language which we explicitly rejected; and (3) is flatly illegal.

Subsection (k)(2) bars the release of a timber sale unit only if a threatened or endangered bird species "is known to be nesting" within the unit. This approach is much narrower than all "occupied" units, for three reasons:

a) We were thoroughly informed and understand that the expert marbled murrelet biologist defines occupancy of an area as much broader than nesting. We have been informed that the 1994 Pacific Sealbird Group marbled murrelet protocol treats various subcanopy behaviors as evidence of occupancy even though they do not necessarily indicate nesting, and treats circling above the canopy as evidence of possible occupancy although murrelets also circle above non-nesting habitat. We discussed these matters during our negotiations with the Administration. At the conclusion of this discussion, we refused to agree that evidence of occupancy would qualify a timber sale unit as "known to be nesting" under subsection (k)(2). The legislative history is explicit on this point.

b) To the contrary, we intended the requirement that a threatened or endangered bird be "known" to be nesting to require actual direct evidence of nesting, and does not allow an inferential conclusion from possible occupancy. Actual direct evidence would be observation of an active nest, fecal ring or eggshell fragments.

c) We further intended the requirement that a threatened or endangered bird "is" known to be nesting to require information that nesting is currently occurring. Nesting in a prior year is not sufficient. Unless there is direct evidence of current nesting, the sale unit must be released.

3. In the event that subsection (k)(2) bars the release of a timber sale unit, subsection (k)(3) requires provision of an equal volume of timber, of like kind and value. The provision of alternative timber under subsection (k)(3), when required, is clearly a

component of compliance with subsection (k)(1), and therefore does not require compliance with environmental laws or other federal statutes in light of the "notwithstanding any other provision of law" language in subsection (k)(1). If your agencies were confused on this point, they should have raised it in our deliberations. Alternative volume under subsection (k)(3) must be provided promptly so that all sales requiring alternative volume can, like all the other released sales, be operated to completion in fiscal years 1995 and 1996.

4. We understand that concern has been expressed about the effect of the National Marine Fisheries Service's recent decision to propose listing the coho salmon in California and Oregon as threatened under the Endangered Species Act (ESA). The publication of such a proposal in the Federal Register may require "conferencing" of certain proposed agency actions under section 7(a)(4) of the ESA.

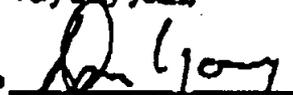
We were aware of the pendency of this listing. Nevertheless, we directed that the respective Secretaries shall act to award, release and permit to be completed in fiscal years 1995 and 1996 the sales described in subsection (k)(1) "[n]otwithstanding any other provision of law." Neither the conferencing requirements of the ESA, nor any other administrative provision of the ESA is a barrier to prompt and full compliance with subsection (k) (including subsection (k)(3)).

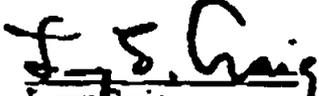
Thus, while the agencies may conduct such conferences under the ESA as they determine appropriate, the agencies may not in any way delay the award, release or completion of the sales described in subsection (k). The same would be true for consultations under section 7(a) of ESA that may otherwise be required for current or newly-listed species (for example, if the coho is listed as threatened at some time in the future).

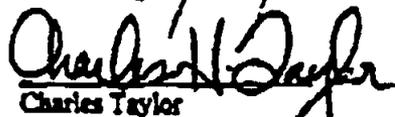
We hope that this letter provides thorough and complete direction on the issues contemplated when we negotiated and drafted the FY 1995 funding rescissions bill. We expect each of you to provide us with written assurances that your agencies intend to implement Section 2001 in accordance with the direction provided in this letter. You, in turn, can expect diligent and vigilant oversight from us beginning with hearings in early August. Please provide us with this written assurance within 10 days after enactment of the law.

Very truly yours,

  
Frank Murkowski

  
Don Young

  
Larry Craig

  
Charles Taylor

  
Slade Gorton

  
Pat Roberts

certain timber sales in the Upper Yaak Decision Area have been completed and are adequate, decision notices have been issued, no appeals have been filed, and the time period for appeals as specified in Forest Service regulations has expired: *Provided further*, That the Forest Service actions taken pursuant to this section shall comply with the Kootenai National Forest Plan: *Provided further*, That no construction of new system roads shall be permitted in the Upper Yaak River Drainage: *Provided further*, That this section does not in any manner represent a judgment upon the legal adequacy or in any way effect the final decision made in the development or implementation of the Upper Yaak Final EIS.

Sec. 317. Section 320 of Public Law 98-473 (98 Stat. 1974) as amended by section 316 of Public Law 100-446 (102 Stat. 1826) is further amended by deleting the period and inserting "*Provided*, That nothing contained herein shall prohibit an agreement between an Indian tribe or tribal organization and the Secretary of the Interior or the Secretary of Health and Human Services, pursuant to the Indian Self-Determination Act, as amended (25 U.S.C. 450 et seq.), under which such tribe or tribal organization may retain rents and charges for the operation, maintenance, and repair of such quarters."

Sec. 318. (a) From funds appropriated under this Act or otherwise made available—

(1) The Forest Service shall offer, notwithstanding the provisions of the Federal Timber Contract Payment Modification Act of 1984 (16 U.S.C. 618(a)(5)(C)), an aggregate timber sale level of seven billion seven hundred million board feet of net merchantable timber from the national forests of Oregon and Washington for fiscal years 1989 and 1990. Such timber sales shall be consistent with existing land and resource management plans or land and resource management plans as approved except, in the case of the Mapleton Ranger District of the Siuslaw National Forest, Oregon, such sales shall be consistent with the preferred alternative of the draft land and resource management plan and accompanying draft environmental impact statement dated October 1, 1986, pending approval of a final land and resource management plan for the Siuslaw National Forest: *Provided*, That of the seven billion seven hundred million board foot aggregate timber sale level for fiscal years 1989 and 1990, timber sales offered from the thirteen national forests in Oregon and Washington known to contain northern spotted owls shall meet an aggregate timber sale level for fiscal years 1989 and 1990 of five billion eight hundred million board feet of net merchantable timber: *Provided further*, That the sales volume shall be distributed in the same proportion between Oregon and Washington national forests known to contain northern spotted owls based on the average sale volume for fiscal years 1986 through 1988.

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

(b)(1) In accordance with subsection (b)(2) of this section, all timber sales from the thirteen national forests in Oregon and Washington known to contain northern spotted owls prepared or offered pursuant to this section shall minimize fragmentation of the most eco-

5 USC 5911 note.

National Forest System.  
Conservation.  
Forests and forest products.  
Oregon.  
Washington.  
Birds.

Oregon.  
Washington.

logically significant old growth forest stands. "Old growth forest stands" are defined as those stands meeting the criteria according to Forest Service Research Publication Numbered PNW-447. In those instances where the Forest Service, after consultation with the advisory boards established pursuant to subsection (c) of this section, determines that the definition in Forest Service Research Publication Numbered PNW-447 is not fully applicable in national forests known to contain northern spotted owls, the Forest Service shall use old-growth definitions contained in its Pacific Northwest Regional Guide.

(2) To the extent that fragmentation of ecologically significant old growth forest stands is necessary to meet the timber sale levels directed by subsection (a)(1) of this section, the Forest Service shall minimize such fragmentation in the ecologically significant old growth forest stands on a national forest-by-national forest basis based on the Forest Service's discretion in determining the ecologically significant stands after considering input from the advisory boards created pursuant to subsection (c) of this section. The habitat of nesting pairs of spotted owls which are not in the Spotted Owl Habitat Areas (SOHAs) described in subsection (b)(3) of this section shall be considered an important factor in the identification of ecologically significant old growth forest stands.

(3) No timber sales offered pursuant to this section from the thirteen national forests in Oregon and Washington known to contain northern spotted owls may occur within SOHAs identified pursuant to the Final Supplement to the Environmental Impact Statement for an Amendment to the Pacific Northwest Regional Guide—Spotted Owl and the accompanying Record of Decision issued by the Forest Service on December 8, 1988 as adjusted by this subsection:

(A) For the Olympic Peninsula Province, which includes the Olympic National Forest, SOHA size is to be 3,200 acres;

(B) For the Washington Cascades Province, which includes the Mt. Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford-Pinchot National Forests, SOHA size is to be 2,600 acres;

(C) For the Oregon Cascades Province, which includes the Mt. Hood, Willamette, Rogue River, Deschutes, Winema, and Umpqua National Forests, SOHA size is to be 1,875 acres;

(D) For the Oregon Coast Range Province, which includes the Siuslaw National Forest, SOHA size is to be 2,500 acres; and

(E) For the Klamath Mountain Province, which includes the Siskiyou National Forest, SOHA size is to be 1,250 acres.

(F) All other standards and guidelines contained in the Chief's Record of Decision are adopted.

(4) In planning for the preparation and offer of timber sales authorized in subsection (a)(1) of this section, the Forest Service, to the extent possible in areas proximate to SOHA sites identified in subsection (b)(3) of this section, should exercise discretion in selecting sites and/or silvicultural prescriptions in order to retain spotted owl habitat characteristics in such areas. The Forest Service should consider the relative location and quality of such areas contiguous to the SOHAs and should give higher priority to preparing and offering sales in areas of lower quality and less important location than to areas of greater quality and more important location relative to the SOHAs.

(5) No timber sales offered pursuant to this section on Bureau of Land Management lands in western Oregon known to contain

northern spotted owls shall occur within the 110 areas identified in the December 22, 1987 agreement, except sales identified in said agreement, between the Bureau of Land Management and the Oregon Department of Fish and Wildlife. Not later than thirty days after enactment of this Act, the Bureau of Land Management, after consulting with the Oregon Department of Fish and Wildlife and the United States Fish and Wildlife Service to identify high priority spotted owl area sites, shall select an additional twelve spotted owl habitat areas. No timber sales may be offered in the areas identified pursuant to this subsection during fiscal year 1990.

(6)(A) Without passing on the legal and factual adequacy of the Final Supplement to the Environmental Impact Statement for an Amendment to the Pacific Northwest Regional Guide—Spotted Owl Guidelines and the accompanying Record of Decision issued by the Forest Service on December 8, 1988 or the December 22, 1987 agreement between the Bureau of Land Management and the Oregon Department of Fish and Wildlife for management of the spotted owl, the Congress hereby determines and directs that management of areas according to subsections (b)(3) and (b)(5) of this section on the thirteen national forests in Oregon and Washington and Bureau of Land Management lands in western Oregon known to contain northern spotted owls is adequate consideration for the purpose of meeting the statutory requirements that are the basis for the consolidated cases captioned *Seattle Audubon Society et al., v. F. Dale Robertson*, Civil No. 89-160 and *Washington Contract Loggers Assoc. et al., v. F. Dale Robertson*, Civil No. 89-99 (order granting preliminary injunction) and the case *Portland Audubon Society et al., v. Manuel Lujan, Jr.*, Civil No. 87-1160-FR. The guidelines adopted by subsections (b)(3) and (b)(5) of this section shall not be subject to judicial review by any court of the United States.

(B) The Forest Service is directed to review and revise as appropriate the decision adopted in the December 1988 Record of Decision referenced in subsection (b)(6)(A) of this section and shall consider any new information gathered subsequent to the issuance of the Record of Decision, including the interagency guidelines for conservation of northern spotted owls developed by the Interagency Scientific Committee to address conservation of the northern spotted owl. This review, and any resulting changes to the December 1988 decision determined to be necessary by the Forest Service are to be completed and in effect not later than September 30, 1990.

(c)(1) The Secretaries of Agriculture and the Interior shall name advisory boards on a national forest-by-national forest and Bureau of Land Management district-by-district basis which shall be comprised of not more than seven individuals who, in the appropriate Secretary's judgment, represent a diversity of views. In the process of selecting individuals to serve on the advisory boards, the Secretaries shall make every effort to recognize the diversity of views and perspectives and allow parties which represent a cross-section of those views to participate in making recommendations in the selection of board members, provided, that every effort will be made to ensure the advisory boards are comprised of an equal number of representatives of environmental and business concerns. The advisory boards shall be named not later than thirty days after enactment of this Act. The advisory boards shall provide recommendations to the Forest Service and the Bureau of Land Management in reviewing prospective timber sales which shall meet the timber sale levels directed by this section prior to their offer.

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The advisory boards shall present their advice within fifteen or forty-five days after receipt of the necessary review documents. The fifteen-day period applies to single sales and the forty-five-day period applies to multiple sales. The members of the advisory boards authorized by this section shall serve without compensation or reimbursement of expenses. The Forest Service and the Bureau of Land Management are authorized to use available funds for the services of professional, independent facilitators to assist in the work of the advisory boards.

(2) The Forest Service and Bureau of Land Management shall consider the recommendations of the advisory boards once such boards are established pursuant to this section, including any suggested modifications of individual sales. The Forest Service and Bureau of Land Management shall also consider recommendations made by the United States Fish and Wildlife Service on those timber sales conferred upon under section 7(a)(4) or, if the spotted owl is listed as a threatened or endangered species, consult under section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536(a)(2) and (a)(4)) prior to the offer of any subsequent timber sale in fiscal year 1990. These recommendations shall be considered regardless of whether the agreement provided in subsection (f)(1) of this section has been reached, entered into, and accepted by the relevant court. Adoption or rejection of such recommended modifications shall not require preparation of additional environmental documents, notwithstanding any other provision of law.

(d) Notwithstanding any other provision of law, there shall be not more than one level of administrative appeal of any decision by the Forest Service or the Bureau of Land Management to undertake any activity directed by this section for timber sales to be prepared, advertised, offered, and awarded during fiscal year 1990 from the thirteen national forests in Oregon and Washington and Bureau of Land Management lands in western Oregon known to contain northern spotted owls. If an administrative stay is granted in any such appeal the Regional Forester or the Interior Board of Land Appeals shall issue a final decision on the merits within forty-five days of the date of issuance of such stay. Notwithstanding any other provision of law, any party seeking to challenge a decision made after the date of enactment of this Act to prepare, advertise, offer, or award a timber sale in fiscal year 1990 from the thirteen national forests and Bureau of Land Management lands in western Oregon known to contain northern spotted owls need not exhaust their administrative remedies prior to filing suit. Nothing in this subsection shall alter the administrative appeal requirements of the Forest Service or Bureau of Land Management.

(e) Nothing in this section shall affect interagency cooperation among the Forest Service, the Bureau of Land Management, and the United States Fish and Wildlife Service under sections 7(a)(2) and 7(a)(4) of the Endangered Species Act and its regulations.

(f)(1) Not later than two days after enactment of this Act, the Forest Service shall submit to plaintiffs in the captioned case Seattle Audubon Society et al., v. F. Dale Robertson, Civil No. 89-160, a list of sales which had been prepared for offer in fiscal year 1989 and which contain at least 40 acres of suitable spotted owl habitat. Not later than fourteen days after receipt of such list, plaintiffs to the suit referenced in this subsection may enter into an agreement with the Forest Service releasing for sale not less than one billion one hundred million board feet of net merchantable timber. Such sales

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must be available for advertisement not later than fourteen days after the agreement required by this subsection is reached. Such timber sales selected shall not be subject to further judicial review by any court of the United States.

(2) If the agreement specified in subsection (f)(1) of this section is reached, then those timber sales described in the list submitted to plaintiffs pursuant to subsection (f)(1) of this section but not contained in the agreement authorized by subsection (f)(1) of this section shall not be offered for sale in fiscal year 1990.

(3) If the agreement authorized under subsection (f)(1) of this section is not implemented within the timeframes prescribed in subsection (f)(1) of this section, one billion one hundred million board feet of net merchantable timber from such sales submitted to plaintiffs pursuant to subsection (f)(1) of this section shall be selected and modified as appropriate by the Forest Service in accordance with the provisions of this section. Selected sales shall be prepared, advertised, offered, awarded and operated notwithstanding any provision of law that is a basis for any stay, injunction or order issued in the proceeding identified in subsection (f)(1) of this section: *Provided*, That nothing in this subsection shall affect rights available under the Contract Disputes Act (41 U.S.C. 601 et seq.).

(4) The Forest Service shall, for each respective timber sale, lift its own stay or apply to the appropriate court for the lifting of the restraining order or injunction whose basis has been withdrawn by this section.

(5) Timber sales selection pursuant to subsections (f)(1) or (f)(3) of this section shall be based on the following criteria: (1) proportional distribution between Oregon and Washington national forests known to contain northern spotted owls based on the average sale volumes for fiscal years 1986 through 1988; (2) proportional distribution to the extent possible among the thirteen national forests known to contain northern spotted owls in Oregon and Washington based on the average sale volumes for fiscal years 1986 through 1988; and (3) to the extent possible, selection of sales outside the habitat of nesting pairs of spotted owls which are not in the Spotted Owl Habitat Areas described in subsection (b)(3) of this section.

(g)(1) No restraining order or preliminary injunction shall be issued by any court of the United States with respect to any decision to prepare, advertise, offer, award, or operate a timber sale or timber sales in fiscal year 1990 from the thirteen national forests in Oregon and Washington and Bureau of Land Management lands in western Oregon known to contain northern spotted owls. The provisions of section 705 of title 5, United States Code, shall not apply to any challenge to such a timber sale: *Provided*, That the courts shall have authority to enjoin permanently, order modification of, or void an individual sale if it has been determined by a trial on the merits that the decision to prepare, advertise, offer, award, or operate such sale was arbitrary, capricious or otherwise not in accordance with law: *Provided further*, That any challenge to a timber sale must be filed in Federal District Court within fifteen days of the date of initial advertisement of the challenged timber sale: *Provided further*, That for forty-five days after the date of filing of a challenge to a timber sale the affected agency shall take no action to award a challenged timber sale. Civil actions filed under this section shall be assigned for hearing at the earliest possible date and shall take precedence over all other matters pending on the docket of the court at that time except for criminal cases: *Provided further*, That the

Courts, U.S.

Courts, U.S.

court shall render its final decision relative to any challenge within forty-five days from the date such challenge is brought, unless the court determines that a longer period of time is required to satisfy the requirements of the United States Constitution.

(2) Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding which set page limits on briefs and time limits on filing briefs and motions and other actions which are shorter than the limits specified in the Federal rules of civil or appellate procedure.

(3) In order to reach a decision within forty-five days, the Federal District Court may assign all or part of any such case or cases to one or more Special Masters, for prompt review and recommendations to the court.

Reports.

(h) The Forest Service, the Bureau of Land Management, and the United States Fish and Wildlife Service shall submit reports updating their findings and progress as determined by the process recognized under subsection (e) of this section on a monthly basis to the President of the Senate and the Speaker of the House of Representatives for appropriate referral. Such reports shall also include information on the extent to which recommendations of the advisory boards established pursuant to subsection (c) of this section were integrated into timber sale decisions as well as reasons for modifying or not adopting recommendations made by the advisory boards. Such reports shall be submitted as directed beginning on December 1, 1989, and ending on September 30, 1990.

(i) 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. Nothing contained in this section shall be construed to require the Forest Service or Bureau of Land Management to develop similar policies on any other forest or district in Oregon or Washington.

(j) The advisory boards established under this section shall not be subject to the Federal Advisory Committee Act (86 Stat. 770).

(k) Timber sales offered to meet the requirements of subsection (a) of this section shall be subject to the terms and conditions of this section for the duration of those sale contracts. All other provisions of this section shall remain in effect until September 30, 1990.

Sec. 319. (a)(1) Subchapter III of chapter 13 of title 31, United States Code, is amended by adding at the end thereof the following new section:

Grants  
Loans.

"§ 1352. Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions

"(a)(1) None of the funds appropriated by any Act may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action described in paragraph (2) of this subsection.

"(2) The prohibition in paragraph (1) of this subsection applies with respect to the following Federal actions:

- “(A) The awarding of any Federal contract.
- “(B) The making of any Federal grant.
- “(C) The making of any Federal loan.
- “(D) The entering into of any cooperative agreement.

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2 But application of the (g)(1) limitations period is  
3 straightforward in this action. All sales the Forest Service  
4 sold pursuant to subsection 318(g) were offered prior to October  
5 1, 1990. Declaration of Stephen J. Paulson at ¶7. This follows  
6 logically and necessarily from the fact that the Forest Service  
7 operates its timber sale program on the basis of a fiscal year  
8 calendar, which ends every year on September 30. Thus, under the  
9 plain meaning of subsection 318(g), any and all challenges to a  
10 section 318(g) timber sale would have had to have been brought,  
11 at the absolute latest, by October 15, 1990 -- nearly two years  
12 ago. Because plaintiffs filed their amended complaint to  
13 challenge timber harvest in which subsection 318(g) sales are  
14 implicated just more than a week ago -- on September 16, 1992 --  
15 their challenge obviously does not fit within the (g)(1)  
16 limitations period and therefore is barred to the extent it seeks  
17 to enjoin harvest within a subsection 318(g) sale.

18 Plaintiffs do not set forth a contrary view concerning  
19 how the limitations period should operate in this action with  
20 respect to subsection 318(g)(1) sales. Instead, plaintiffs  
21 proffer a contorted and strained interpretation of subsection  
22 318(g)(1) under which they contend that it simply does not apply  
23 to their claims. See Plaintiffs' Memorandum at 31-34. The  
24 linchpin of plaintiffs' argument is the reasoning the Ninth  
25 Circuit employed in Seattle Audubon Soc'y that Congress did not  
26 necessarily "immunize" section 318 sales from judicial review  
under all circumstances. 931 F.2d at 597. Plaintiffs have

EXHIBIT 6

STEPHEN J. ODELL  
CHRISTIANA P. PERRY  
U.S. Department of Justice  
P.O. Box 663  
Washington, D.C. 20044-0663  
(202) 272-6213

PAGE 2

Mr. HATFIELD. I am sorry, I did not hear the Senator.

Mr. MURRAY. Is it my understanding that the unanimous-consent language will agree that there will be no second-degree?

Mr. HATFIELD. And there will be no second-degree amendments to the Murray amendment. In other words, in the regular form.

Mr. DODD. Mr. President, reserving the right to object and I do not intend to object, but I just want to make it as clear as I possibly can that, while I am agreeing at this particular juncture to this approach to accommodate our colleagues from Montana and a colleague from the State of Washington as well, I hope we could come to closure on the D'Amato amendment. Because I do want to make it clear that this is a matter which I take very, very, very seriously. I understand the desire of everyone to move on to the resolution package.

This was not my intention to have this amendment come up. It is up before us. But I do not intend for it to be disposed of within an abbreviated debate. I am not suggesting a filibuster here at all. But it is an important matter that deserves a lot of consideration.

So, while I am agreeing to this particular unanimous consent at this juncture, no one should interpret this agreement on this particular amendment to mean I will agree to future such requests. I say that with all due respect to my colleague from Oregon.

Mr. SARBANES. Will the chairman ask for a question?

Mr. HATFIELD. I will.

Mr. SARBANES. It is my understanding, then, that upon completion of the Murray amendment, which will take an hour—at least there is an hour of time for consideration of the Murray amendment—and then I take it there may be a vote? Or not?

Mr. HATFIELD. I think so.

Mr. SARBANES. At the end of that we would be back on the D'Amato amendment, in the exact posture in which we find ourselves?

Mr. HATFIELD. The circumstances of this moment will not be changed. They merely will be postponed for an hour.

The PRESIDING OFFICER. Without objection, the unanimous consent is agreed to.

Mr. HATFIELD. Mr. President, I would like just a moment to thank Senator DODD and Senator SARBANES and others for cooperating on this, and Senator D'AMATO on our side as the author of the amendment.

Once again, it will be a Burns amendment to the Gorton amendment, and then Senator MURRAY will offer an amendment as a probable substitute. So that means no second-degree amendments to the amendment of Senator MURRAY.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 428 TO AMENDMENT NO. 428  
(Purpose: To broaden areas in which salvage timber sales are not to be conducted)

Mr. BURNS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana (Mr. Burns) proposes an amendment numbered 428 to Amendment No. 428.

Mr. BURNS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 68, strike lines 7 through 18 and insert the following:

"(A) expeditiously prepare, offer, and award salvage timber sale contracts on Federal lands, except in—

"(i) any area on Federal lands included in the National Wilderness Preservation System;

"(ii) any roadless area on Federal lands designated by Congress for wilderness study in Colorado or Montana;

"(iii) any roadless area on Federal lands recommended by the Forest Service or Bureau of Land Management for wilderness designation in its most recent land management plan in effect as of the date of enactment of this Act; or

"(iv) any area on Federal lands on which timber harvesting for any purpose is prohibited by statute; and"

Mr. BURNS. Mr. President, this is a perfecting amendment to the Gorton amendment that merely accedes to the House language of the bill in the timber harvest. The House-passed bill contains language regarding lands which are exempt from the timber provision. However, the language as reported out of the Senate Committee on Appropriations is more limited than that passed by the House. So my amendment is the same language as that of the House, as it was passed through the House of Representatives.

It exempts land designated by Congress for wilderness study in Montana and Colorado. Federal lands recommended by the Forest Service or Bureau of Land Management for wilderness designation in its most recent land management plan in effect; the Federal lands on which timber harvesting for any purpose is prohibited by statute.

In other words, what this does is prevents harvesting timber inside of now-designated wilderness areas, those study areas, and also those areas that have been proposed for wilderness by any forest plan that is now in effect under the forest plan. I believe this amendment addresses most of the concerns that have been raised by my colleagues. I hope the Senate will accept my amendment.

I thank Senator GORTON of Washington for allowing me to perfect his amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, this amendment conforms the section of the proposal in the bill to what the House has passed. It clearly exempts wilderness areas and the like from the effect of the legislative language in the bill and I believe that, while the opponents to the whole section do not like it, they do like this addition.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 428) to amendment No. 428 was agreed to.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 429 TO AMENDMENT NO. 429  
(Purpose: To require timber sales to go forward)

Mr. MURRAY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington (Mr. Murray) proposes an amendment numbered 429 to amendment No. 429.

Mr. MURRAY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 68, strike line 8 and all that follows through page 79, line 8, and insert the following:

(a) DEFINITION.—In this section:

(1) CONSULTING AGENCY.—The term "consulting agency" means the agency with which a managing agency is required to consult with respect to a proposed salvage timber sale if consultation is required under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(2) MANAGING AGENCY.—The term "managing agency" means a Federal agency that offers a salvage timber sale.

(3) SALVAGE TIMBER SALE.—The term "salvage timber sale" means a timber sale—

(A) in which each unit is composed of forest stands in which more than 50 percent of the trees have suffered severe insect infestation or have been significantly burned by forest fire; and

(B) for which agency biologists and other agency forest scientists conclude that forest health may be improved by salvage operations.

(b) SALVAGE TIMBER SALES.—

(1) DEFINITION TO COMPLETE SALVAGE TIMBER SALES.—The Secretary of Agriculture, acting through the Chief of the Forest Service, and the Secretary of the Interior, acting through the Director of the Bureau of Land Management, shall—

(A) expeditiously prepare, offer, and award salvage timber sale contracts on Forest Service lands and Bureau of Land Management lands that are located outside—

(i) any unit of the National Wilderness Preservation System; or

(ii) any roadless area that—

(I) is under consideration for inclusion in the National Wilderness Preservation System; or

(II) is administratively designated as a roadless area in the managing agency's most recent land management plan in effect as of the date of enactment of this Act (not including land designated as a Federal wilderness area); or

(iii) any area in which such a sale would be inconsistent with agency standards and guidelines applicable to areas administratively withdrawn for late successional and riparian reserves; or

(iv) any area withdrawn by Act of Congress any conservation purpose; and

(B) perform the appropriate revegetation and tree planting operations in the area in which the salvage occurred.

(3) SALE DOCUMENTATION.—

(A) PREPARATION OF DOCUMENTS.—In preparing a salvage timber sale under paragraph (1), Federal agencies that have a role in the planning, analysis, or evaluation of the sale shall fulfill their respective duties expeditiously and, to the extent practicable, simultaneously.

(B) PROCEDURES TO EXPEDITE SALVAGE TIMBER SALES.—

(1) IN GENERAL.—When it appears to a managing agency that consultation may be required under section 7(a)(3) of the Endangered Species Act (16 U.S.C. 1536(a)(3))—

(i) the managing agency shall solicit comments from the consulting agency within 7 days of the date of the decision of the managing agency to proceed with the required environmental documents necessary to offer to sell the salvage timber sale; and

(ii) within 30 days after receipt of the solicitation, the consulting agency shall respond to the managing agency's solicitation concerning whether consultation will be required and notify the managing agency of the determination.

(2) CONSULTATION DOCUMENT.—In no event shall a consulting agency issue a final written consultation document with respect to a salvage sale later than 30 days after the managing agency issues the final environmental document required under the National Environmental Policy Act of 1973 (16 U.S.C. 1502 et seq.).

(3) DELAY.—A consulting agency may not delay a salvage timber sale solely because the consulting agency believes it has inadequate information, unless—

(a) the consulting agency has been actively involved in preparation of the required environmental documents and has requested in writing reasonably available additional information from the managing agency that the consulting agency considers necessary under part 402 of title 40, Code of Federal Regulations, to complete a biological assessment; and

(b) the managing agency has not complied with the request.

(4) STREAMLINING OF ADMINISTRATIVE APPEALS.—Administrative review of a decision of a managing agency under this subsection shall be conducted in accordance with section 552 of the Department of the Interior and Related Agencies Appropriations Act, 1995 (Pub. Law 104-132), except that—

(A) an appeal shall be filed within 30 days after the date of issuance of a decision by the managing agency; and

(B) the managing agency shall issue a final decision within 30 days and may not extend the closing date for a final decision by any length of time.

(5) STREAMLINING OF JUDICIAL REVIEW.—

(A) TIME FOR CHALLENGE.—Any challenge to a timber sale under subsection (a) or (b) shall be brought as a civil action in United States district court within 30 days after the later of—

(i) the decision to proceed with a salvage timber sale is announced; or

(ii) the date on which any administrative appeal of a salvage timber sale is decided.

(B) EXPEDITIOUS.—The court shall, to the extent practicable, expedite proceedings in a civil action under subparagraph (A), and for the purpose of doing so may shorten the time allowed for the filing of papers and

taking of other actions that would otherwise apply.

(C) ASSIGNMENT TO SPECIAL MASTER.—The court may assign to a special master all or part of the proceedings in a civil action under subparagraph (A).

(6) OPTION 9.—

(1) DIRECTION TO COMPLETE TIMBER SALES.—The Secretary of the Interior, acting through the Director of the Bureau of Land Management, and the Secretary of Agriculture, acting through the Chief of the Forest Service, shall expeditiously prepare, offer, and award timber sale contracts on Federal lands in the forests specified in Option 9, as selected by the Secretary of the Interior and the Secretary of Agriculture on April 12, 1994.

(2) ESTABLISHMENT OF REBUTABLE PRESUMPTION.—A rebuttable presumption exists that any timber sale on Federal lands encompassed by Option 9 that is consistent with Option 9 and applicable administrative planning guidelines meets the requirements of applicable environmental law. This paragraph does not affect the applicable legal duties that Federal agencies are required to satisfy in connection with the planning and offering of a salvage timber sale under this subsection.

(3) AVAILABILITY OF FUNDS.—

(A) IN GENERAL.—The Secretary of Agriculture and the Secretary of the Interior shall make available 100 percent of the amount of funds that will be required to hire or contract with such number of biologists, hydrologists, geologists, and other scientists to permit completion of all watershed assessments and other analyses required for the preparation, advertisement, and award of timber sale contracts prior to the end of fiscal year 1995 in accordance with and in the amounts authorized by the Record of Decision in support of Option 9.

(B) SOURCE.—If there are no other unobligated funds appropriated to the Secretary of Agriculture or the Secretary of the Interior, respectively, for fiscal year 1995 that can be available as required by subparagraph (A), the Secretary concerned shall make funds available from amounts that are available for the purpose of constructing forest roads only from the regions to which Option 9 applies.

(4) SECTION 512.—

(1) IN GENERAL.—With respect to each timber sale awarded pursuant to section 512 of Public Law 101-121 (108 Stat. 745) the performance of which is, on or after July 30, 1992, precluded under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to requirements for the protection of the marbled murrelet, the Secretary of Agriculture shall provide the purchaser replacement timber, at a site or sites selected at the discretion of the Secretary, that is equal in volume, kind, and value to that provided by the timber sale contract.

(2) TERMS AND CONDITIONS.—Harvest of replacement timber under paragraph (1) shall be subject to the terms and conditions of the original contract and shall not count against current allowable sale quantities.

(3) EXPIRATION.—Subsections (b) and (c) shall expire on September 30, 1994, but the terms and conditions of those subsections shall continue in effect with respect to timber sale contracts offered under this Act until the contracts have been completely performed.

Mrs. MURRAY. Mr. President, I rise today to offer an alternative to the timber management authorizing language in this bill. I offer my amendment because I believe the language included in the bill by my colleague, the senior Senator from Washington, will

backfire. I believe it will hurt—not help—timber communities and workers in the Northwest.

The authorizing language contained in this bill is designed to accomplish three things: respond to a timber salvage problem resulting from last year's forest fires; speed up the rate of timber sales under the President's forest plan, option 9; and to release a few timber sales remaining from legislation passed by Congress 4 years ago.

These are goals with which I can agree. My problem is with the method. I believe the language proposed by my colleague will cause a blizzard of lawsuits, cause political turmoil within the Northwest, and take us right back to where we were 4 years ago.

Our region has been at the center of a war over trees that has taken place in the courtrooms and Congress for almost a decade. There is a history of waiving environmental laws to solve timber problems; that strategy has not worked.

It has made the situation worse. Until 1993, the Forest Service was paralyzed by lawsuits, the courts were managing the forests, and acrimony dominated public discourse in the region.

Now this bill contains language that will reopen those old wounds. I strongly believe that would not be in the best interest of the region.

Let me briefly explain my amendment, and why I think it makes more sense than the underlying bill. There are two distinct issues in question: salvage of dead and dying timber in the arid inland west, and management of the old growth fir forests along the Pacific coast.

There is a legitimate salvage issue right now throughout the West. Last year's fire season was one of the worst ever. There are hundreds of thousands of acres with burned trees sitting there. I believe these trees can and should be salvaged and put to good public use.

I believe there is a right way and a wrong way to conduct salvage operations on Federal lands. The wrong way is to short cut environmental checks and balances. The wrong way is to cut people out of the process. The wrong way is to invite a mountain of lawsuits.

The right way is to expedite compliance with the law. The right way is to make sure the agencies can make correct decisions quickly. The right way is to let people participate in the process—so they do not clog up the courts later.

I believe we can offer eastside timber communities hope, not only in the short term—by delivering salvage volume—but in the long term, too. By following the law, we can immediately harvest timber—and sustain it in the future—because we will not be tied up in lawsuits; we conserve our natural environment by not allowing poorly planned clearcuts to slide into salmon-bearing streams; and we protect human

efforts to give the administration all possible tools to meet its promises to get wood to the mills of the Pacific Northwest in the next 18 months.

While the first portion of the Gorton amendment is national in scope, these last two sections will assist the President in meeting his commitments to the workers, families, and environment of both western and eastern Oregon and Washington.

I came to the floor in 1989 to offer the Northwest timber compromise because we were witnessing what was then a crisis for the rural communities of my State. Since that time, 213 mills have closed in Oregon and Washington and over 21,800 workers have lost their forestry-related jobs. In addition, the forests in the eastern half of these two States are in the worst health in a hundred years.

These national forests and communities cannot wait through another fire season like 1994 for Congress to finally meet its commitments to rewrite the Nation's forest management laws. I have every confidence that the new Republican Congress will do its best to meet that challenge, but the Gorton amendment is necessary to help us bridge that gap. It is a much needed piece of legislation for our Nation's forests and timber dependent communities.

There are those whose agenda is to prevent people from managing our forests altogether. They would rather let our dead and dying forests burn by catastrophic fire, endangering human life and long-term forest health, than harvest them to promote stability in natural forest ecosystems and communities dependent on a supply of timber from Federal lands. The Gorton amendment says we can be reasonable in what we do in the forests and harvest trees for many uses—forest health, community stabilization, ecosystem restoration, and jobs for our workers.

I urge my colleagues to support the Gorton amendment to the fiscal year 1995 reauthorization bill.

The PRESIDING OFFICER (Mr. BUNNERT). All time has expired.

Mrs. MURRAY. Mr. President, I ask for the yeas and nays.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. I move to table the Murray amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion of the Senator from Washington to lay on the table the amendment of the Senator from Washington [Mrs. MURRAY]. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD], the Senator from North Dakota [Mr.

DORGAN] and the Senator from Florida [Mr. GRAHAM] are necessarily absent.

Mr. LOTT. I announce that the Senator from North Carolina [Mr. FAIRCLOTH] is necessarily absent.

I also announce that the Senator from Kansas [Mrs. KASSERATH] and the Senator from Minnesota [Mr. GRAMS] are absent due to a death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 42, nays 42, as follows:

(Rollcall Vote No. 121 Leg.)

YEAS—42

Abraham	Gorton	Markowski
Ashcroft	Grams	Mikulas
Bamert	Grassley	Packwood
Bass	Grass	Prescher
Brown	Hatch	Reid
Buras	Hatchfield	Santorum
Casper	Helms	Shelby
Coin	Stabenow	Strom
Coffman	Stark	Smith
Coverdell	Strom	Snowe
Craig	Strom	Specker
D'Amato	Lott	Stevens
DeWine	Lugar	Thomas
Dole	Mack	Thompson
Domenici	McCain	Thurmond
Fritz	McConnell	Warner

NAYS—46

Alaska	Felinetals	Lieberman
Baucus	Ford	Mikulski
Biden	Glenn	Mosley-Blason
Bingaman	Harkin	Morahan
Borah	Heflin	Murray
Bradley	Hollings	Nunn
Brennan	Inouye	Pall
Bryan	Jefords	Pryor
Bumpers	Johnston	Robb
Byrd	Kennedy	Rockefeller
Chafee	Kerry	Roche
Cohen	Kerry	Sarbanes
Conrad	Kohl	Simon
Dodd	Lastenbury	Wellstone
Eros	Leahy	
Fehring	Lewis	

NOT VOTING—6

Conrad	Faircloth	Grams
Dorgan	Graham	Kassbaum

So the motion was agreed to.  
Mr. GORTON. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BAUCUS addressed the Chair.  
The PRESIDING OFFICER. The Senator from Montana.

HONORING JEREMY BULLOCK

Mr. BAUCUS. Mr. President, I would like to welcome some special friends to Washington today. They are Penny Copps of Butte, and Penny's son, Steve Bullock, late of Montana and now living here in Washington, DC.

Just about a year ago, the entire Bullock family weathered about the worst blow any family can take.

Eleven-year-old Jeremy Bullock—the grandson of Penny and her husband Jack; Steve's nephew; the son of Bill and Robin; Joshua's twin; the elder brother of Sam, Max and now Kaitlyn—was shot and killed on the playground at the Margaret Leary Elementary

School, by an emotionally troubled fourth grader.

The family and the whole Butte community, has been through a terrible test. The loss can never be repaired. But they are working together to use this tragedy to make our State of Montana, and all of America more sensitive to and aware of the violence that has hurt so many of our youth. They have spent a year teaching, learning, and doing their best to make sure no other family suffers such a loss.

It is now my great privilege to read to you a statement written by the Bullock family in memory of their son, Jeremy.

There is nothing more infectious than a child's laugh.

Nothing more disarming than the innocence of a child's question.

What fills the void when our children's voices can no longer be heard?

On April 12, 1994, Jeremy and Joshua, eleven-year-old-identical twins, woke, dressed, had breakfast and left for school that day, the same as any other day. It was library day, so Jeremy's backpack was heavy with books he had read and was returning.

Weeks later, a police officer worked up the courage to give Jeremy's family that backpack. He had tried to scrub the blood from the canvas, trying to ease the pain in the only way he knew how. For on April 12, 1994, eleven-year-old Jeremy was shot and killed at his school by a child whose only explanation was "No one loves me."

Jeremy Michael Seidlitz Bullock lived in a home in Montana where violence was not condoned. He was not allowed to watch violence on television or play games glamorizing violence. Instead, he was active in sports. Jeremy loved to sing. He listed his hobby as getting good grades. School was his second home, a place where children laughed and learned.

Jeremy wanted to become a teacher or an environmental engineer. Jeremy and his brother Josh would spend hours on hikes, coming home with their pockets overflowing with garbage they picked up along the way. Jeremy believed that leaving places he visited better than the way he found them was a good way to live.

Jeremy loved and was deeply loved. Yet, he was not safe because collectively we allowed Jeremy's voice to be silenced.

Every day in America the voices of 10 of our children are silenced by violent acts. Over three million of our children ages 3 to 17 are exposed to parental violence every year. Our children will witness over 300,000 acts of violence on television by the time they turn 18. A new handgun is manufactured every 20 seconds in America. And many of them wind up in the wrong hands.

We passively listen and accept the statistics, but do we listen for the voices lost?

On behalf of Jeremy's family and children everywhere, we will designate April 12 as a day of remembrance of



**VIEW OF ALABAMA, TOLSON AND FRANKS**

**Salaries and Expenses**

The conferees agree to provide \$24,922,000, \$18,648,000 above the \$16,897,000 requested by the Administration, in order to offset similar expense associated with the aftermath and investigation of the Oklahoma City bombing, security upgrades in headquarters and field offices, and the enhancement of special counter-terrorism capabilities.

The conferees provide \$4,722,000 of the \$4,222,000 requested to cover overtime, travel, communications and equipment associated with reestablishing ATF offices in Oklahoma City and to cover investigative expenses. The conferees deny the \$20,000 request for the replacement of all basic office equipment and furniture lost in the explosion since these costs will be borne by the General Services Administration.

The conferees provide \$2,000,000 to improve security in field offices, the same amount requested by the President.

The conferees agree to provide \$7,000,000 for costs associated with the relocation of ATF headquarters, of which up to \$20,000 may be used to provide temporary improvements to ATF's current headquarters, as needed.

The conferees provide \$2,000,000 to fund the personal costs of four new participants National Response Teams (NRT), \$2,200,000 for mobile response equipment and additional laboratory personnel, and \$1,800,000 for additional intelligence analysts and explosives inspectors.

The conferees further note that ATF lacks sufficient resources to purchase certain critical pieces of equipment or to make other investments needed to effectively and efficiently pursue its mission. For that reason, the conferees agree to provide \$12,000,000 to fund a number of items requested in the President's FY 1995 budget request: purchase of electronic surveillance equipment; workshop protective vests and investigative vehicles; improvement of database management information system; and development of ATF's Integrated Collection System. These funds may also be used for costs associated with the relocation of the ATF Laboratory.

**FEDERAL LAW ENFORCEMENT TRAINING CENTER**

**Salaries and Expenses**

The conferees agree to provide \$1,102,000 and additional personnel as requested for the Federal Law Enforcement Training Center to enhance the anti-terrorism training component of basic courses, increase the number and quality of advanced training courses in anti-terrorism tactics, provide additional equipment for such training and train personnel.

**UNITED STATES AIRPORT SERVICE**

**Salaries and Expenses**

The conferees agree to provide \$4,676,000 for the Secret Service, \$2,500,000 above the amount requested by the President. The conferees have provided the additional funds for expenses related to the completion of the White House Access Control System (WACS) and the purchase of Remotely Directed Site Equipment (RSE).

**UNITED STATES OVERSEAS SERVICES**

**Salaries and Expenses**

The conferees agree to provide \$1,800,000 of the \$1,200,000 requested to relocate Overseas offices, pay for temporary duty replacement, over the course of permanent change of station moves and replacement vehicles, and purchase certain office equipment. The conferees deny the \$200,000 request for the replacement of all basic office equipment and assets lost in the explosion since these costs will be borne by the General Services Administration.

**INTERNAL SECURITY SERVICES**  
**Administration and Management**

As part of the Administration's supplemental request, \$1,000,000 was included to cover expenses for overtime, travel and expenses related to the investigation of the bombing. The conferees deny this request and instead have directed these funds to the Secret Service for the purchase of additional White House security systems.

**FEDERAL CRISIS RESPONSE NETWORK**

**Salaries and Expenses**

The conferees have denied the President's request of \$20,000 in emergency appropriations for the Presidential Crisis Response Network (PCRN) and instead have directed these funds to the Secret Service for the purchase of additional White House security systems. The conferees note that any additional work accomplished by PCRN as part of the Oklahoma City investigation should be done within existing resources.

**INDEPENDENT AGENCY**

**GENERAL SERVICES ADMINISTRATION**

**FEDERAL SECURITY FUND**

**Alfred P. Murrah Federal Building**

The conferees have included a provision which provides additional funding related to the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma. The conferees, in response to the special needs created by the April 19, 1995, terrorist bombing attack at the Murrah Federal Building, have added \$40,000,000 for expenses of real property maintenance and related activities. This includes: planning, design, construction, demolition, restoration, repair, alterations, acquisition, installation acquisition, maintenance, protection, moving of governmental agencies and other activities.

The recommendation also provides that, in carrying out the foregoing activities, the Administrator of General Services may exchange, sell, lease, donate, or otherwise dispose of the site of the Murrah Building to the State of Oklahoma, to Oklahoma City, or any political subdivision or agency of the State or city, and that such disposal shall not be subject to the Public Buildings Act of 1950, the Federal Property and Administration Services Act of 1949, or any other Federal law establishing requirements or procedures for disposing of Federal property.

In recommending waivers of these laws, the conferees are responding to the extraordinary circumstances created by this tragic destruction of life and property and the realization that the work of replacement and recovery should not be unnecessarily constrained by otherwise applicable provisions of law. Nevertheless, the conferees recommend the use of this waiver authority by the Administrator, at his discretion. This authority should only be used when circumstances dictate the other necessity to do so. It is not intended that use of standing authority be precluded where consistent with and appropriate to serving the needs and purposes of this special act.

The conferees have also included a provision requiring prospective approval of any major repair, alteration, lease, or contract project if the need for such a prospective review is the requirements of the Public Buildings Act.

**Emergency Appropriations**

As part of the Administration's supplemental request, a total of \$4,600,000 was included for emergency reallocations. The conferees agree with the request as follows:

Demolition/Debris removal of the Alfred P. Murrah Federal Building ..... \$2,200,000

Repair of other Federal buildings ..... 2,200,000  
Replacement leases, furniture, and equipment ..... 6,200,000  
Risk-free increased security in Federal buildings ..... 1,200,000  
Oyster III

**DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES**  
**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**MANAGEMENT AND ADMINISTRATION**

**Salaries and Expenses**

Provides \$2,200,000 for emergency expenses resulting from the bombing of Alfred P. Murrah Federal Building in Oklahoma City as requested by the Administration. These funds will cover relocation costs for replacement employees, travel, overtime, replaced office equipment and supplies, and other expenses.

**INDEPENDENT AGENCIES**

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**Salaries and Expenses**

The conferees propose a supplemental appropriation for fiscal year 1995 of \$3,222,000. This amount, not included in either the House or Senate bills, was requested by the President in his May 2, 1995 message to address urgent needs arising from the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma. This amount will assist in providing additional security personnel as well as enhanced physical protection at all Agency field offices. Additionally, funds will be available for start training and expenses of the terrorist threat and enhanced security management systems, for additional training and exercises associated with the Federal Response Plan, and for modifying and expanding the Federal Response Plan.

**Emergency Management Planning and Legislation**

The conferees propose a supplemental appropriation for fiscal year 1995 of \$3,477,000. This amount, not included in either the House or Senate bills, was requested by the President in his May 2, 1995 message to address urgent needs arising from the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma. This amount will provide for the development of new plans and procedures for an efficient response to a terrorist event under the Federal Response Plan, as well as for increased training and exercises associated with such a response for State and local emergency personnel.

**OTRATIONS**

The conferees agreement amends the legislative title of the bill to reflect the inclusion of emergency supplemental appropriations for the anti-terrorism initiatives and for the recovery assistance for the tragedy that occurred at Oklahoma City. The Senate bill did not contain a title change.

The conferees agreement expands the title of the bill to be compatible with the amendment of existing clause and title.

**COMMITTEE TOTAL—WITH CONGRESSIONS**

The total new budget (obligational) authority for the fiscal year 1995 recommended by the Committee of Conference, with corrections to the fiscal year 1995 budget estimates, and the House and Senate bills for 1995 follow:

Budget estimation of new (obligational) authority:	
House year 1995 .....	\$4,624,262,195
Senate bill, fiscal year 1995 .....	-11,745,202,259
Senate bill, fiscal year 1995 .....	-6,511,204,450
Conference agreement, fiscal year 1995 .....	-1,589,295,978

Budget estimate of new (obligational) authority, fiscal year 1986 ..... -14,481,879,871  
 House bill, fiscal year 1986 ..... +2,715,352,323  
 Senate bill, fiscal year 1986 ..... -518,322,428

BOB LIVINGSTON,  
 JOHN T. MYERS,  
 RALPH BROOKS,  
 JERRY LEWIS,  
 JOHN EDWARD PORTER,  
 MAL ROOBER,  
 JOE SCHEIN,  
 FRANK E. WOLF,  
 TOM DELAY,  
 BARBARA P. VUCANOVICH,  
 JIM LIGHTFOOT,  
 S. CALLAHAN,  
 BOB FACEARD,

Managers on the Part of the House.

MARK O. HATFIELD,  
 TED STEVENS,  
 TRAD COCHRAN,  
 ARLEN SPECTER,  
 PETER V. DOMENICI,  
 P. GRAMM,  
 C.S. BOND,  
 BLADE GORTON,  
 MITCH MCCONNELL,  
 CONNIE MACK,  
 CONRAD BURNS,  
 RICHARD SHELBY,  
 JIM JEFFORDS,  
 JUDG GREGG,  
 R.F. BENNETT,  
 ROBERT C. STRID,  
 D.K. DOUYE,  
 E.F. HOLLINGS,  
 J. BENNETT JOHNSTON,  
 PATRICK J. LEAHY,  
 DALE BUMPERS,  
 BARBARA A. MICULSKI,  
 HARRY REID,  
 BOB KERNEY,  
 HERB KOHL,  
 PATTY MURRAY.

Managers on the Part of the Senate.

**REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF HOUSE CONGRESSIONAL RESOLUTION 57, CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEARS 1986, 1987, 1988, 1989, 2000, 2001, AND 2002**

Mr. SOLOMON, from the Committee on Rules, submitted a privileged report (Rept. No. 104-125) on the resolution (H. Res. 125) providing for consideration of the concurrent resolution (H. Con. Res. 67) setting forth the congressional budget for the U.S. Government for the fiscal years 1986, 1987, 1988, 1989, 2000, 2001, and 2002, which was referred to the House Calendar and ordered to be printed.

**APPOINTMENT AS MEMBERS OF THE BOARD OF VISITORS TO THE U.S. NAVAL ACADEMY**

The SPEAKER pro tempore. Without objection, and pursuant to the provisions of section 606(a) of title 10, United States Code, the Chair announces the Speaker's appointment as members of the Board of Visitors to the U.S. Naval Academy the following Members

HOYER, of Maryland; and Mr. MURPHY, of Maryland.

There was no objection.

**APPOINTMENT AS MEMBERS OF THE BOARD OF VISITORS TO THE U.S. MILITARY ACADEMY**

The SPEAKER pro tempore. Without objection, and pursuant to the provisions of section 496(a) of title 10, United States Code, the Chair announces the Speaker's appointment as members of the Board of Visitors to the U.S. Military Academy the following Members of the House: Mrs. KELLY of New York; Mr. TAYLOR, of North Carolina; Mr. HENNER, of North Carolina; and Mr. LAUGHLIN, of Texas.

There was no objection.

**APPOINTMENT OF MEMBERS OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT**

The SPEAKER pro tempore. Without objection, and pursuant to the provisions of section 1505 of Public Law 95-498 (30 U.S.C. 4412), the Chair announces the Speaker's appointment to the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development the following Members of the House: Mr. YOUNG of Alaska; and Mr. KILDEE of Michigan.

There was no objection.

**APPOINTMENT AS MEMBERS OF THE BOARD OF TRUSTEES OF THE HARRY S. TRUMAN SCHOLARSHIP FOUNDATION**

The SPEAKER pro tempore. Without objection, and pursuant to the provisions of section 8(b) of Public Law 93-642 (30 U.S.C. 2004(b)), the Chair announces the Speaker's appointment as members of the Board of Trustees of the Harry S. Truman Scholarship Foundation the following Members of the House: Mr. EMERSON of Missouri; and Mr. SKELTON of Missouri.

There was no objection.

**SPECIAL ORDERS**

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1983, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. LIPINSKI) is recognized for 5 minutes.

Mr. LIPINSKI addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gen-

(Mr. SMITH of Michigan addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

**CLEAN WATER ACT AND THE GREAT LAKES INITIATIVE**

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. KAPTUR) is recognized for 5 minutes.

Mr. KAPTUR, Mr. Speaker, I come to the well this evening to express my strong opposition to H.R. 961, the Clean Water Act amendments and why I urged its defeat. It steps back from the progress resulting from our Nation's commitment to clean water as a national treasure.

I represent a Great Lakes district along Lake Erie. Cumulatively, the Great Lakes contain 20 percent of all the fresh water on the face of the Earth. For those of us who remember when swimming or fishing in Lake Erie was hazardous to your health, the actions the House is taking to weaken Clean Water Act protections are backward-looking. I am astounded that anyone can fail to see the great progress we have made over the last 25 years to clean up our Nation's water. Today, after two decades, the job of cleaning up Lake Erie is one-half finished. Our progress is laudable, but the goal has not been achieved along our coast or on the Nation's other major waterways.

I can remember when the Cuyahoga River burned and when Lake Erie was declared dead. Some of our colleagues, Mr. Speaker, have apparently forgotten. We have made great strides toward renewing our water resources, but there is still a long way to go. In Ohio, 82 percent of our lakes and 60 percent of our rivers still cannot support fishing or swimming on a year-round basis. Some of our waters still cannot support aquatic life. Just last summer the city of Toledo found it necessary to pump fresh water into the Ottawa River just to restore some oxygen and flush out the polluted discharge from combined sewer overflows. The job of cleaning our waters is far from over. The task of cleaning up dozens of major toxic burial grounds leaching into our fresh water tributaries stands before us.

The aspect of H.R. 961 about which I am most concerned is the provision to make adherence to the standards of the Great Lakes initiative voluntary on the part of Great Lakes States. This initiative has been a model bipartisan effort to standardize water quality protections in the Great Lakes watershed. Over the last 4 years, Federal guidelines have been developed, which, under current law, the States have 3 years to implement. Under H.R. 961, adherence would be voluntary. States could choose which standards to implement



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order to get a compromise with the other body it was struck.

It includes emergency salvage timber... It includes emergency salvage timber... It includes emergency salvage timber...

What this bill says to the American people is that we can meet our emergencies, that we can pay for them, and that we can move toward a balanced budget for the first time since 1989.

Mr. Speaker, this bill is a good deal. A good deal for present and current Americans and their children and their grandchildren, and a no vote against this bill would be irresponsible and a veto by the President of the United States would be irresponsible.

I urge the Members of this body to adopt this conference report.

Mrs. COLLINS of Illinois. Mr. Speaker, earlier the majority in this body passed their budget resolution to effectively restructure future Federal tax and spending policies to benefit the most well-to-do individuals and largest corporations in the United States at the expense of hardworking Americans and their families.

The GOP leadership likes to give lip service to the issue of empowerment, to helping people help themselves. However, this resolution package lies in the face of such a philosophy.

However, residents of the Seventh Congressional District in Illinois, my constituents, care deeply about the reckless nature of the GOP budget axe and its disastrous impact on them, their families, and their communities.

Of great concern is the status of the Low-Income Home Energy Assistance Program (LHEAP), which helps 2 million struggling senior citizens meet the high costs of their winter heating bills without having to make a choice between those bills and their daily meals and medicine.

Mr. Chairman, in a city such as mine, where on an average winter day the temperature hovers around 10 degrees, with the wind chill in the negative double digits, you tell me this is a sound policy decision. Tell the family of 80-year-old Earline Hooper, who froze to death in January in Chicago because she was not able to get LHEAP assistance, that program is wasteful or unnecessary. I urge you.

In keeping with the GOP assault on our children and our future as a nation, this bill steals all hope and opportunity away from 600,000 of our disadvantaged youngsters through the eradication of the summer jobs program in 1998—a proven program that provides basic skills, income, and work experience.

The GOP also doesn't care that this legislation punishes low-income babies and their moms with a \$20 million cut from the Women, Infants, and Children Nutrition Program, an \$85 million cut in the lead-based paint abatement program. They're poor, who cares?

Yet one of the most disturbing portions of this bill is its complete lack of regard for the plight of public housing residents in this Nation and the neighborhoods in which they live and work. Although the Department of Housing and Urban Development has already begun a serious effort to restructure and make Federal housing and development programs more efficient and responsive to local needs, the Republicans don't want to hear it.

HUD has estimated that the \$6.3 billion in housing cuts in this bill will result in the elimination of thousands of low-income housing units in my city of Chicago. Assistance will be lost for public housing modernization and operating subsidies, seriously disrupting already weakened maintenance and security for residents.

With respect to the issue of disaster relief for the California earthquake and the tragedy in Oklahoma, no one in Congress wishes to hold up that aid and charges that opposition to this conference report will do that are unfounded. The Republican majority knows full well that they could craft a bill today for these important purposes, pass it, and send it to the President's desk for signature without delay.

Mr. Chairman, I urge my colleagues to vote no on the Republican resolutions conference report and put a quick halt to the GOP's carelessness, reckless beginning to this second 100 days. Take a stand—the President has.

Mr. FREUNDLICH. Mr. Speaker, I rise in support of the conference report to H.R. 1154.

Mr. Speaker, as a new Member of the House, I voted for a balanced budget amendment knowing full well that such a measure would require tough choices. While some contend that we don't need such an amendment, personally I felt that our Nation's future depended on it.

Our national debt is staggering, our annual deficit continues to grow, and our actions today on this conference report mark the first real step to protect future generations. We are here for our children and grandchildren, pass and simple. If we act today we give them a

greater measure of security. Most important, this first tough vote may give them a chance to have the opportunities we enjoy, a great education, the prospect of a real job and an opportunity for a better future. Our vote today is a downpayment on a balanced budget.

Let's be clear this package is a \$16.4 billion reduction out of a total of a \$15.5 billion budget. It is less than a 1 percent reduction.

The bottom line is that we need to start the process. What better steps than to consolidate a horde of programs, some highly duplicative, some unauthorized by Congress itself, some with unjustified increases, and others paralyzed in the money pipeline with little likelihood of being spent.

I am astonished that President Clinton is considering using his first veto on this bill that would reduce Federal spending by \$16.4 billion and provide emergency funding for the California floods and the Oklahoma City bombing recovery effort.

The President and the Democrats have made their position clear—which is that they intend to sit on the sidelines while the Republicans balance the Federal budget. As I said early, this reduction represents less than 1 percent of the Federal budget, and yet the President thinks that is too much. It is ironic and saddening that the very day the House will vote on the first real balanced budget plan in 25 years, the President would rather keep spending money we don't have and stick our children and grandchildren with the tab.

With this bill we are making it clear that we will set priorities, we will limit the size of government, and we will do what we said we would—reduce the deficit, balance the budget, and restore the future to our children.

I urge the passage of this important conference report.

Mr. LIVINGSTON. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. WALKER). All time has expired.

Without objection, the previous question is ordered on the conference report.

There was no objection. The SPEAKER pro tempore. The question is on the conference report.

Pursuant to clause 7 of rule XV the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 225, nays 189, not voting 11, as follows:

(Roll No 987) YEAS—225

Table with 3 columns: Name, Party, and Vote. Lists names of House members and their corresponding votes (Yeas or Nays).

