

NLWJC - Kagan

Counsel - Box 029 - Folder 003

**Northwest Forest Council v. Dan
Glickman and Bruce Babbitt
[Binder] [4]**

Texas (Mr. ARMEY) the distinguished majority leader. I hate to forecast votes, but my suspicion is that the conference report on Medicare Select would pass. I think that everything that has to be said on it, I believe it has an hour of debate. And our champion, the gentleman from Michigan (Mr. DOWELL) is ready to go. And I might respectfully suggest that we could accomplish some work if the gentleman wanted to begin with that at this point.

Mr. ARMEY. Mr. Speaker, I appreciate the gentleman's consideration. As soon as we are able to be confident that we are fully capable of moving forward with that bill, assuming no complications with respect to the rescission matter, we will do so.

But I must caution the gentleman, we have seen a great penchant in the last day or so for people to continue talking, even after it has been clear that all that needs to be said has been said. So we ought not be too optimistic about time.

Mr. ROEMER. Mr. Speaker, will the gentleman yield?

Mr. ARMEY. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Speaker, could the majority leader enlighten us a little bit about what the negotiations are about and what the sticking points might be or where there has been agreement, whether that has been on housing or national service or the timber program? Could he give us a little bit more information?

Mr. ARMEY. Mr. Speaker, I appreciate the inquiry, but no, I could not enlighten the gentleman.

Mr. ROEMER. Mr. Speaker, would the majority leader attempt to enlighten us, then, would this delay affect our time to get out of town tomorrow at 3 o'clock at all?

Mr. ARMEY. If, in fact we have difficulty getting out of town at the appointed time tomorrow, this delay will be the least of the reason for that difficulty.

Mr. ROEMER. Finally, Mr. Speaker, for the majority leader, does he expect us, then, to continue these all-night sessions when we get back after the July work period or what can we expect with the schedule?

Mr. ARMEY. Mr. Speaker, I think the gentleman from Indiana might be able to help us understand that better. I do intend to complete the people's work. It would be my hope and my intention to do so as cordially and as conveniently and as quickly as possible.

RECESS

The SPEAKER pro tempore (Mr. INGLE of South Carolina). Pursuant to clause 12 of rule I, the House will stand in recess subject to the call of the Speaker.

Accordingly (at 6 o'clock and 56 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 2015

AFTER RECESS

The recess having expired, the House was called to order by the Speaker p.t. (Mr. WALKER) at 9 o'clock and 15 minutes p.m.

GENERAL LEAVE

Mr. LIVINGSTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the emergency supplemental and rescissions bill, H.R. 1944, and that I may be able to insert tabular material and extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

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 RESCISIONS ACT 1996

Mr. LIVINGSTON. Mr. Speaker, pursuant to the House Resolution 176 just adopted, I call up the bill (H.R. 1944) making 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, 1996, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The text of H.R. 1944 is as follows:

H.R. 1944

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 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, 1996, and for other purposes, namely:

**TITLE I—SUPPLEMENTALS AND RESCISIONS
CHAPTER I**

DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES

**DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESEARCH SERVICE
(TRANSFER OF FUNDS)**

Funds made available under this heading in Public Law 103-330 and subsequently transferred to "Nutrition Initiatives" are transferred to the Agricultural Research Service.

FOOD SAFETY AND INSPECTION SERVICE

For an additional amount for salaries and expenses of the Food Safety and Inspection Service, \$9,082,000.

**AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE
SALARIES AND EXPENSES**

For an additional amount for salaries and expenses of the Agricultural Stabilization and Conservation Service, \$3,000,000.

**COMMODITY CREDIT CORPORATION FUND
FOOD FOR PROGRESS**

Notwithstanding any other provision of law, no funds of the Commodity Credit Corporation in excess of \$20,000,000 for fiscal year 1996 (exclusive of the cost of commodities in the fiscal year) may be used to carry out the Food for Progress Act of 1985 (7 U.S.C. 1726c) with respect to commodities made available under section 426(b) of the Agricultural Act of 1949: *Provided*, That of this amount not more than \$20,000,000 may be used without regard to section 128(g) of the Food for Progress Act of 1985 (7 U.S.C. 1726(g)). The additional costs resulting from this provision shall be financed from funds credited to the Corporation pursuant to section 426 of Public Law 103-330.

**RURAL ELECTRIFICATION ADMINISTRATION
RURAL ELECTRIFICATION AND TELEPHONE LOANS PROGRAM ACCOUNT**

The second paragraph under this heading in Public Law 103-330 (108 Stat. 2941) is amended by inserting before the period at the end, the following: " *Provided*, That notwithstanding section 305(d)(2) of the Rural Electrification Act of 1936, borrower interest rates may exceed 7 per centum per year."

FOOD AND NUTRITION SERVICE

COMMODITY SUPPLEMENTAL FOOD PROGRAM

The paragraph under this heading in Public Law 103-330 (108 Stat. 2941) is amended by inserting before the period at the end, the following: " *Provided further*, That twenty per centum of any Commodity Supplemental Food Program funds carried over from fiscal year 1994 shall be available for administrative costs of the program."

GENERAL PROVISION

Section 715 of Public Law 103-330 is amended by deleting "\$25,500,000" and by inserting "\$110,000,000". The additional costs resulting from this provision shall be financed from funds credited to the Commodity Credit Corporation pursuant to section 426 of Public Law 103-330.

**OFFICE OF THE SECRETARY
(RESCISIONS)**

Of the funds made available under this heading in Public Law 103-330, \$1,500 are rescinded: *Provided*, That none of the funds made available to the Department of Agriculture may be used to carry out activities under 7 U.S.C. 2257 without prior notification to the Committee on Appropriations.

**ALTERNATIVE AGRICULTURAL RESEARCH AND COMMERCIALIZATION
(RESCISIONS)**

Of the funds made available under this heading in Public Law 103-330, \$1,000,000 are rescinded.

AGRICULTURAL RESEARCH SERVICE

**BUILDINGS AND FACILITIES
(RESCISIONS)**

Of the funds made available under this heading in Public Law 103-330 and other Acts, \$1,000,000 are rescinded: *Provided*, That after completion of the construction of the National Swine Research Center Laboratory, all rights and title of the United States in that Center Laboratory shall be conveyed to Iowa State University.

**COOPERATIVE STATE RESEARCH SERVICE
(RESCISIONS)**

Of the funds made available under this heading in Public Law 103-330, \$1,961,000 are

**ENVIRONMENTAL PROTECTION AGENCY
RESEARCH AND DEVELOPMENT
(RECISSION)**

Of the funds made available under this heading in Public Law 103-327, \$14,638,000 are recinded.

**ABATEMENT, CONTROL, AND COMPLIANCE
(RECISSION)**

Of the funds made available under this heading in Public Law 103-327, \$9,800,805 are recinded. *Provided*, That notwithstanding any other provision of law, the Environmental Protection Agency shall not be required to site a computer to support the regional acid deposition monitoring program in the Bay City, Michigan, vicinity.

**BUILDINGS AND FACILITIES
(RECISSION)**

Of the funds made available under this heading in Public Law 103-327 and Public Law 103-229 for the Center for Ecology Research and Training, \$63,000,000 are recinded.

**HAZARDOUS SUBSTANCE SUPERFUND
(RECISSION)**

Of the funds made available under this heading in Public Law 103-327, \$100,000,000 are recinded.

**WATER INFRASTRUCTURE/STATE REVOLVING FUNDS
(RECISSION)**

Of the funds made available under this heading in Public Law 103-327 and Public Law 103-124, \$1,077,200,000 are recinded. *Provided*, That \$1,074,000,000 of this amount is to be derived from amounts appropriated for State revolving funds and \$3,200,000 is to be derived from amounts appropriated for making grants for the construction of wastewater treatment facilities specified in Report 103-715.

ADMINISTRATIVE PROVISIONS

1004. None of the funds made available in any appropriations Act for fiscal year 1995 may be used by the Environmental Protection Agency to require any State to comply with the requirement of section 182 of the Clean Air Act by adopting or implementing a test-only or IM240 enhanced vehicle inspection and maintenance program, except that EPA may approve such a program if a State chooses to submit one to meet that requirement.

1005. None of the funds made available in any appropriations Act for fiscal year 1995 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. Section 304 of the Clean Air Act (42 U.S.C. 7504) shall not apply with respect to any such requirement during the period beginning on the date of the enactment of this Act and ending September 30, 1995.

1006. None of the funds made available in any appropriations Act for fiscal year 1995 may be used by the Environmental Protection Agency for listing or to list any additional facilities on the National Priorities List established by section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended (49 U.S.C. 9605), unless the Administrator receives a written request to propose listing or to list a facility from the Governor of the State in which the facility is located, or unless legislation to reauthorize CERCLA is enacted.

1007. None of the funds made available in any appropriations Act for fiscal year 1995 may be spent by the Environmental Protection Agency to disapprove a State implementation (SIP) revision solely on the basis

of the Agency's regulatory 80 percent discount for alternative test-and-repair inspection and maintenance programs. Notwithstanding any other provision of EPA's regulatory requirements, the EPA shall assign up to 100 percent credit when such State has provided data for the proposed inspection and maintenance system that demonstrates evidence that such credits are appropriate. The Environmental Protection Agency shall complete and present a technical assessment of the State's demonstration within 45 days after submittal by the State.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**SCIENCE, AERONAUTICS AND TECHNOLOGY
(RECISSION)**

Of the funds made available under this heading in Public Law 103-327 and any unobligated balances from funds appropriated under "Research and Development" in prior years, \$65,000,000 are recinded.

**CONSTRUCTION OF FACILITIES
(RECISSION)**

Of the funds made available under this heading in Public Law 103-327, for the Consortium for International Earth Science Information Network, \$27,000,000 are recinded; and of any unobligated balances from funds appropriated under this heading in prior years, \$7,000,000 are recinded.

**MISSION SUPPORT
(RECISSION)**

Of the funds made available under this heading in Public Law 103-327, \$2,000,000 are recinded.

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

Of the available balances under this heading in previous fiscal years, \$43,000,000 are recinded.

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

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

1009. Notwithstanding any other provision of law or regulation, the National Aeronautics and Space Administration (NASA) shall convey, without reimbursement, to the State of Mississippi, all rights, title and interest of the United States in the property known as the Yellow Creek Facility and consisting of approximately 1,300 acres near the city of Iuka, Mississippi, including all improvements thereon and also including any personal property owned by NASA that is currently located on-site and which the State of Mississippi requires to facilitate the transfer. *Provided*, That appropriated funds shall be used to effect this conveyance. *Provided further*, That \$10,000,000 in appropriated funds otherwise available to NASA shall be transferred to the State of Mississippi to be used in the transition of the facility. *Provided further*, That each Federal agency with prior contact to the site shall remain responsible for any and all environmental remediation made necessary as a result of its activities on the site. *Provided further*, That in consideration of this conveyance, NASA may require such other terms and conditions as the Administrator deems appropriate to pro-

tect the interests of the United States. *Provided further*, That the conveyance of the site and the transfer of the funds to the State of Mississippi shall occur not later than thirty days from the date of enactment of this Act.

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

Of the funds made available under this heading in Public Law 103-327, \$118,957,000 are recinded.

CORPORATIONS

**FEDERAL DEPOSIT INSURANCE CORPORATION
FISC AFFORDABLE HOUSING PROGRAM
(RECISSION)**

Of the funds made available under this heading in Public Law 103-327, \$11,901,000 are recinded.

TITLE II—GENERAL PROVISIONS

EMERGENCY SALVAGE TIMBER SALE PROGRAM

SEC. 2001. (a) DEFINITIONS.—For purposes of this section:

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

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

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

(4) The term "Secretary concerned" means—

(A) the Secretary of Agriculture, with respect to lands within the National Forest System; and

(B) the Secretary of the Interior, with respect to Federal lands under the jurisdiction of the Bureau of Land Management.

(b) COMPLETION OF SALVAGE TIMBER SALES.—

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

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

(3) **SALES IN PREPARATION.**—Any salvage timber sale in preparation on the date of the enactment of this Act shall be subject to the provisions of this section.

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

(1) SALE DOCUMENTATION.—

(A) PREPARATION.—For each salvage timber sale conducted under subsection (b), the Secretary concerned shall prepare a document that combines an environmental assessment under section 106(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) (including regulations implementing such section) and a biological evaluation under section 7a(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2)) and other applicable Federal law and implementing regulations. A document embodying decisions relating to salvage timber sales proposed under authority of this section shall, at the sole discretion of the Secretary concerned and to the extent the Secretary concerned considers appropriate and feasible, consider the environmental effects of the salvage timber sale and the effect, if any, on threatened or endangered species, and to the extent the Secretary concerned, at his sole discretion, considers appropriate and feasible, be consistent with any standards and guidelines from the management plans applicable to the National Forest or Bureau of Land Management District on which the salvage timber sale occurs.

(B) USE OF EXISTING MATERIALS.—In lieu of preparing a new document under this paragraph, the Secretary concerned may use a document prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4332 et seq.) before the date of the enactment of this Act, a biological evaluation written before such date, or information collected for such a document or evaluation if the document, evaluation, or information applies to the Federal lands covered by the proposed sale.

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

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

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

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

(C) A plan and schedule for an enhanced salvage timber sale program for fiscal years 1994, 1995, and 1997 using the authority provided by this section for salvage timber sales.

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

(E) A statement of the intentions of the Secretary concerned with respect to the salvage timber sale volume levels specified in the joint explanatory statement of managers accompanying the conference report on H.R. 1184, House Report 104-134.

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

timber sales intended for a preceding fiscal year.

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

(3) SALE PREPARATION.—

(A) USE OF AVAILABLE AUTHORITIES.—The Secretary concerned shall make use of all available authority, including the employment of private contractors and the use of expedited fire contracting procedures, to prepare and advertise salvage timber sales under subsection (b).

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

(1) the requirements of the Competition in Contracting Act (41 U.S.C. 308 et seq.) and the implementing regulations in the Federal Acquisition Regulation issued pursuant to section 35(e) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)) and any departmental acquisition regulations; and

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

(C) INCENTIVE PAYMENT RECIPIENTS: REPORT.—The provisions of section 3(d)(1) of the Federal Workforce Restructuring Act of 1994 (Public Law 103-226; 5 U.S.C. 5597 note) shall not apply to any former employee of the Secretary concerned who received a voluntary separation incentive payment authorized by such Act and accepts employment pursuant to this paragraph. The Director of the Office of Personnel Management and the Secretary concerned shall provide a summary report to the appropriate committees of Congress, the Committee on Government Reform and Oversight of the House of Representatives, and the Committee on Governmental Affairs of the Senate regarding the number of incentive payment recipients who were rehired, their terms of reemployment, their job classifications, and an explanation, in the judgment of the agencies involved of how such reemployment without repayment of the incentive payments received is consistent with the original waiver provisions of such Act. This report shall not be conducted in a manner that would delay the rehiring of any former employees under this paragraph, or affect the normal confidentiality of Federal employees.

(6) 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.

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

(8) 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.

(9) EFFECT ON JUDICIAL DECISIONS.—The Secretary concerned may conduct salvage timber sales under subsection (b) notwithstanding any decision, restraining order, or injunction issued by a United States court before the date of the enactment of this section.

(d) DIRECTION TO COMPLETE TIMBER SALES ON LANDS COVERED BY OPTION 8.—Notwithstanding any other law (including a law under the authority of which any judicial order may be outstanding on or after the date of enactment of this Act), the Secretary concerned shall expeditiously prepare, offer, and award timber sale contracts on Federal lands described in the "Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl", signed by the Secretary of the Interior and the Secretary of Agriculture on April 12, 1994. The Secretary concerned may conduct timber sales under this subsection notwithstanding any decision, restraining order, or injunction issued by a United States court before the date of the enactment of this section: The issuance of any regulation pursuant to section 4(d) of the Endangered Species Act of 1973 (16 U.S.C. 1532(d)) to ease or reduce restrictions on non-Federal lands within the range of the Northern spotted owl shall be deemed to satisfy the requirements of section 106(30) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(30)), given the analysis included in the Final Supplemental Impact Statement on the Management of the Habitat for Late Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl, prepared by the Secretary of Agriculture and the Secretary of the Interior in 1994, which is, or may be, incorporated by reference in the administrative record of any such regulation. The issuance of any such regulation pursuant to section 4(d) of the Endangered Species Act of 1973 (16 U.S.C. 1532(d)) shall not require the preparation of an environmental impact statement under section 106(30) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(30)).

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

(f) JUDICIAL REVIEW.—

(1) PLACE AND TIME OF FILING.—A salvage timber sale to be conducted under subsection (b), and a timber sale to be conducted under subsection (d), shall be subject to judicial review only in the United States district court for the district in which the affected Federal lands are located. Any challenge to such sale must be filed in such district court within 15 days after the date of initial advertisement of the challenged sale. The Secretary concerned may not agree to, and a court may not grant, a waiver of the requirements of this paragraph.

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

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

(4) STANDARD OF REVIEW.—The courts shall have authority to enjoin permanently, order

modification of, or void an individual salvage timber sale if it is determined by a review of the record that the decision to prepare, advertise, offer, award, or operate such sale was arbitrary and capricious or otherwise not in accordance with applicable law other than those laws specified in subsection (1)).

(3) **TIME FOR DECISION.**—Civil actions filed under this subsection shall be assigned for hearing at the earliest possible date. The court shall render its final decision relative to any challenge within 45 days from the date such challenge is brought, unless the court determines that a longer period of time is required to satisfy the requirement of the United States Constitution. In order to reach a decision within 45 days, the district court may assign all or part of any such case or cases to one or more Special Masters, for prompt review and recommendations to the court.

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

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

(g) **EXCLUSION OF CERTAIN FEDERAL LANDS.**

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

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

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

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

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

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

(h) **ENFORCEMENT.**—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) **EFFECT ON OTHER LAWS.**—The documents and procedures required by this section for the preparation, advertisement, offering, awarding, and operation of any salvage timber sale subject to subsection (b) and any timber sale under subsection (d) shall be deemed to satisfy the requirements of the following applicable Federal laws (and regulations implementing such laws):

(1) The Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.);

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

(3) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

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

(5) The National Forest Management Act of 1976 (36 U.S.C. 472a et seq.);

(6) The Multiple-Use Sustained-Yield Act of 1920 (16 U.S.C. 528 et seq.);

(7) Any compact, executive agreement, convention, treaty, and international agreement, and implementing legislation related thereto; and

(8) All other applicable Federal environmental and natural resource laws.

(j) **EXPIRATION DATE.**—The authority provided by subsections (b) and (d) shall expire on September 30, 1997. The terms and conditions of this section shall continue in effect with respect to salvage timber sale contracts offered under subsection (b) and timber sale contracts offered under subsection (d) until the completion of performance of the contracts.

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

(1) **AWARD AND RELEASE REQUIRED.**—Notwithstanding any other provision of law, within 45 days after the date of the enactment of this Act, the Secretary concerned shall act to award, release, and permit to be completed in fiscal years 1995 and 1996, with no change in originally advertised terms, volumes, and bid prices, all timber sale contracts offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 216 of Public Law 101-121 (103 Stat. 745). The return of the bid bond of the high bidder shall not alter the responsibility of the Secretary concerned to comply with this paragraph.

(2) **THREATENED OR ENDANGERED BIRD SPECIES.**—No sale unit shall be released or completed under this subsection if any threatened or endangered bird species is known to be nesting within the acreage that is the subject of the sale unit.

(3) **ALTERNATIVE OFFER IN CASE OF DELAY.**—If for any reason a sale cannot be released and completed under the terms of this subsection within 45 days after the date of the enactment of this Act, the Secretary concerned shall provide the purchaser an equal volume of timber, of like kind and value, which shall be subject to the terms of the original contract and shall not count against current allowable sale quantities.

(l) **EFFECT ON PLANS, POLICIES, AND ACTIVITIES.**—Compliance with this section shall not require or permit any administrative action, including revisions, amendment, consultation, supplementation, or other action, in or for any land management plan, standard, guideline, policy, regional guide, or multiresource plan because of implementation or impacts, site-specific or cumulative, of activities authorized or required by this section, except that any such administrative action with respect to salvage timber sales is permitted to the extent necessary, at the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b)(1) of this section or to reflect the effects of the salvage program. The Secretary concerned shall not rely on salvage timber sales as the basis for administrative action limiting other multiple use activities nor be required to offer a particular salvage timber sale. No project decision shall be required to be halted or delayed by such documents or guidance, implementation, or impacts.

SEC. 302. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

DOWNWARD ADJUSTMENTS IN DISCRETIONARY SPENDING LIMITS

SEC. 303. Upon the enactment of this Act, the Director of the Office of Management and Budget shall make downward adjustments in the discretionary spending limits (new budget authority and outlays) specified in section 501(a)(2) of the Congressional

Budget Act of 1974 for each of the fiscal years 1995 through 1998 by the aggregate amount of estimated reductions in new budget authority and outlays for discretionary programs resulting from the provisions of this Act (other than emergency appropriations) for each fiscal year, as calculated by the Director.

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

SEC. 304. Reductions in outlays, and reductions in the discretionary spending limits specified in section 501(a)(2) of the Congressional Budget Act of 1974, resulting from the enactment of this Act shall not be taken into account for purposes of section 258 of the Balanced Budget and Emergency Deficit Control Act of 1995.

SEC. 305. July 27 of each year until the year 2003 is designated as "National Korean War Veterans Armistice Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities, and to urge the departments and agencies of the United States and interested organizations, groups, and individuals to fly the American flag at half staff on July 27 of each year until the year 2003 in honor of the Americans who died as a result of their service in Korea.

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

SEC. 306. (a) **IN GENERAL.**—None of the funds made available in this Act may be used to provide any direct benefit or assistance to any individual in the United States when it is made known to the Federal entity or official to which the funds are made available that—

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

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

(b) **ACTIONS TO DETERMINE LAWFUL STATUS.**—Each Federal entity or official receiving funds under this Act shall take reasonable actions to determine whether any individual who is seeking any benefit or assistance subject to the limitation established in subsection (a) is lawfully within the United States.

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

FEDERAL ADMINISTRATIVE AND TRAVEL EXPENSES (RESCISSIONS)

SEC. 307. (a) Of the funds available to the agencies of the Federal Government, other than the Department of Defense—Military, \$28,800,000 are hereby rescinded. Provided, That rescissions pursuant to this paragraph shall be taken only from administrative and travel accounts. Provided further, That rescissions shall be taken on a pro rata basis from funds available to every Federal agency, department, and office in the Executive

Branch, including the Office of the President of the funds available to the Department of Defense—Military, \$50,000,000 are hereby provided: *Provided*, That decisions pursuant to this paragraph shall be taken only from administrative and travel accounts: *Provided further*, That decisions shall be taken on a pro rata basis from funds available to every agency, department, and office.

(c) Within 30 days of enactment of this Act, the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House and Senate a listing of the amounts by account of the reductions made pursuant to the provisions of subsections (a) and (b) of this section.

TITLE III

EMERGENCY SUPPLEMENTAL APPROPRIATIONS

ANTI-TERRORISM INITIATIVES

OKLAHOMA CITY RECOVERY

CHAPTER I

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

DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION
COUNTERTERRORISM FUND

There is hereby established the Counterterrorism Fund which shall remain available without fiscal year limitation. For necessary expenses, as determined by the Attorney General, \$34,220,000, to remain available until expended, is appropriated to the Counterterrorism Fund to reimburse any Department of Justice organization for the costs incurred in reestablishing the operational capability of an office or facility which has been damaged or destroyed as the result of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City in domestic or international terrorism: *Provided*, That funds from this appropriation also may be used to reimburse the appropriation account of any Department of Justice agency engaged in, or providing support to, countering, investigating or prosecuting domestic or international terrorism, including payment of rewards in connection with these activities, and to conduct a terrorism threat assessment of Federal agencies and their facilities: *Provided further*, That any amount obligated from appropriations under this heading may be used under the authorities available to the organization reimbursed from this appropriation: *Provided further*, That amounts in excess of the \$34,220,000 made available for extraordinary expenses incurred in the Oklahoma City bombing for fiscal year 1986, shall be available only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of Public Law 100-217: *Provided further*, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: *Provided further*, That the amount not previously designated by the President as an emergency requirement shall be available only to the extent an official budget request, for a specific dollar amount that includes designation of the entire amount of the request as an emergency requirement, as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted to Congress.

LEGAL ACTIVITIES

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For an additional amount for expenses resulting from the bombing of the Alfred P.

Murrah Federal Building in Oklahoma City and other anti-terrorism efforts, \$1,000,000, to remain available until expended: *Provided*, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: *Provided further*, That the amount not previously designated by the President as an emergency requirement shall be available only to the extent an official budget request, for a specific dollar amount that includes designation of the entire amount of the request as an emergency requirement, as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted to Congress.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

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

GENERAL PROVISIONS

SEC. 3001. Any funds made available to the Attorney General heretofore or hereafter in any Act shall not be subject to the spending limitations contained in sections 3050 and 3072 of title 18, United States Code: *Provided*, That any reward of \$100,000 or more, up to a maximum of \$2,000,000, may not be made without the personal approval of the President or the Attorney General, and such approval may not be delegated.

SEC. 3002. Funds made available under this Act for this title for the Department of Justice are subject to the standard notification procedures contained in section 605 of Public Law 100-217.

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

COURT SECURITY

For an additional amount for "Court Security" to enhance security of judges and support personnel, \$16,040,000, to remain available until expended, to be expended directly or transferred to the United States Marshals Service: *Provided*, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: *Provided further*, That the amount not previously designated by the President as an emergency requirement shall be available only to the extent an official budget request, for a specific dollar amount that includes designation of the entire amount of the request as an emergency requirement, as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted to Congress.

CHAPTER II

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT

DEPARTMENT OF THE TREASURY

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

SALARIES AND EXPENSES

For an additional amount for emergency expenses of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City and anti-terrorism efforts, including the President's anti-terrorism initiative, \$34,822,000, to remain available until expended: *Provided*, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

FEDERAL LAW ENFORCEMENT TRAINING CENTER

SALARIES AND EXPENSES

For an additional amount for the Federal response to the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, \$1,100,000, to remain available until expended: *Provided*, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

UNITED STATES SECRET SERVICE

SALARIES AND EXPENSES

For an additional amount for emergency expenses of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, and other anti-terrorism efforts, including the President's anti-terrorism initiative, \$6,675,000, to remain available until expended: *Provided*, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

UNITED STATES CUSTOM SERVICE

SALARIES AND EXPENSES

For an additional amount for emergency expenses resulting from the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, \$1,000,000, to remain available until expended: *Provided*, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

INDEPENDENT AGENCY

GENERAL SERVICES ADMINISTRATION

REAL PROPERTY ACTIVITIES

FEDERAL BUILDINGS FUND

LIMITATIONS ON AVAILABILITY OF REVENUE

The aggregate limitation on Federal Buildings Fund obligations established under this heading in Public Law 100-217 (as otherwise reduced pursuant to this Act) is hereby increased by \$93,800,000, of which \$40,400,000 shall remain available until expended for necessary expenses of real property management and related activities (including planning, design, construction, demolition, restoration, repairs, alterations, acquisition, installment acquisition payments, rental of space, building operations, maintenance, protection, moving of governmental agencies, and other activities) in response to the April 18, 1985, terrorist bombing attack at the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma.

In carrying out such activities, the Administrator of General Services may (among other actions) exchange, sell, lease, donate, or otherwise dispose of the site of the Alfred P. Murrah Federal Building (or a portion thereof) to the State of Oklahoma, to the city of Oklahoma City, or to any Oklahoma

public trust that has the city of Oklahoma City as its beneficiary and is designated by the city to receive such property. Any such trust shall not be subject to—
 (1) the Public Buildings Act of 1959 (40 U.S.C. 481 et seq.);
 (2) the Federal Property and Administration Services Act of 1949 (40 U.S.C. 471 et seq.); or
 (3) any other Federal law establishing requirements or procedures for the disposal of Federal property.

Provided, That these funds shall not be available for expenses in connection with the construction, repair, alteration, or acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, as amended, has not been approved, except that necessary funds may be expended for required expenses in connection with the development of a proposed prospectus; *Provided further*, That for additional amounts, to remain available until expended and to be deposited into the Federal Buildings Fund, for emergency expenses resulting from the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, for "Construction", Oklahoma, Oklahoma City, Alfred P. Murrah Federal Building, demolition, \$2,300,000; for "Minor Repairs and Alterations", \$2,300,000; for "Restoration of Space", \$2,300,000, to be used to lease, furnish, and equip replacement space; and for "Buildings Operations", \$12,500,000; *Provided further*, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

CHAPTER 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

For an additional amount for emergency expenses resulting from the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, \$2,300,000, to remain available through September 30, 1995; *Provided*, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

COMMUNITY PLANNING AND DEVELOPMENT
 COMMUNITY DEVELOPMENT GRANTS

For an additional amount for "Community Development Grants", as authorized by title of the Housing and Community Development Act of 1974, \$99,000,000, to remain available until expended to assist property and income damaged and economic revitalization due to the bombing of the Alfred P. Murrah Federal Building in Oklahoma City on April 19, 1995, primarily in the area bounded on the south by Robert S. Kerr Avenue, on the north by North 15th Street, on the east by Oklahoma Avenue, and on the west by Shurtel Avenue, and for reimbursement to the City of Oklahoma City, or any title trust thereof, for the expenditure of her Federal funds used to achieve these purposes; *Provided*, That in administering these funds, and any Economic Development Grants and loan guarantees under section 106 of such Act used for economic revitalization activities in Oklahoma City, the Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of such funds or guarantees, except for require-

ments related to fair housing and nondiscrimination, the environment, and labor standards, upon a finding that such waiver is required to facilitate the use of such funds or guarantees, and would not be inconsistent with the overall purpose of the statute or regulation; *Provided further*, That such funds shall not adversely affect the amount of any formula assistance received by Oklahoma City or any other entity, or any categorical application for other Federal assistance; *Provided further*, That notwithstanding any other provision of law, such funds may be used for the repair and reconstruction of religious institution facilities damaged by the explosion in the same manner as private nonprofit facilities providing public services; *Provided further*, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

INDEPENDENT AGENCIES

FEDERAL EMERGENCY MANAGEMENT AGENCY
 SALARIES AND EXPENSES

For an additional amount for "Salaries and Expenses", \$3,828,000, to increase Federal, State and local preparedness for mitigating and responding to the consequences of terrorism; *Provided*, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

EMERGENCY MANAGEMENT PLANNING AND ASSISTANCE

For an additional amount for "Emergency Management Planning and Assistance", \$3,477,000, to increase Federal, State and local preparedness for mitigating and responding to the consequences of terrorism; *Provided*, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

This Act may be cited as the "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 Rescissions Act, 1995".

The SPEAKER pro tempore. Pursuant to House Resolution 176, the gentleman from Louisiana (Mr. LIVINGSTON) will be recognized for 30 minutes and the gentleman from Wisconsin (Mr. OBEY) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Louisiana (Mr. LIVINGSTON).

Mr. LIVINGSTON. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LIVINGSTON asked and was given permission to revise and extend his remarks.)

Mr. LIVINGSTON. Mr. Speaker, I am pleased to bring to the House the emergency supplemental and rescissions bill, H.R. 1944.

As all Members know, the President vetoed H.R. 1158. This bill is a replacement version of H.R. 1158, and makes some changes to H.R. 1158 that will cause this new bill to be signed once congressional action is complete. This bill gives the President the opportunity again to take a first small step toward balancing the budget.

Since the veto, negotiations have been occurring to determine what

changes might be made to gain the President's approval and yet be acceptable to the Congress. Finding common ground in these negotiations has proven extraordinarily difficult. But I am pleased to tell you that with the changes I will propose in an amendment following my statement, the President will sign this bill.

After 3 weeks, we reached a stage in the negotiations where I felt we had to move if we were to have any chance of enacting an emergency supplemental and rescissions bill. We have gone a long way to meeting the President's concerns to the extent we have been able to identify them.

Mr. Speaker, this bill includes important supplemental appropriations for disaster assistance, \$8.55 billion, mostly for the Los Angeles earthquake, but also for some more recent flood and fire disasters; \$144.4 million for the Oklahoma City recovery; \$145.1 million for antiterrorism initiatives and enhanced security; and \$275 million as requested by the President for debt relief for Jordan.

These appropriations are more than fully offset so that the bill nets out to over \$9.126 billion in savings because of rescissions of over \$16.3 billion. That is, we cut \$16.3 billion, we spend about \$7.2 billion, and we have over \$9.1 billion in savings.

Mr. Speaker, this bill includes decreased rescissions, or lowered cuts, from H.R. 1158 for Adult Job Training, School-to-Work, Goals 2000, Safe and Drug-Free Schools, Drug Courts, the FACES program or the Community School program of HHS, the TRIO program, the Child Care block Grant program, Housing for People with AIDS, National and Community Service, Safe Drinking Water, and Community Development Financial Institutions. It also provides a new appropriation for additional urban redevelopment in Oklahoma City needed as a result of the terrorist attack.

Mr. Speaker, all of these additions, or lowered rescissions, have been requested by the administration and are being placed in the bill as a result of the administration's requests.

Mr. Speaker, the bill includes increased rescissions from H.R. 1158 levels for GSA's energy program, for GSA's Chlorofluorocarbon program, for the Assisted Housing (section 308) program, for NASA Challenger funds, and for NASA research and development. It also includes new rescissions for the Congregate Services, for travel and administration expenses from all Federal agencies, and makes some minor changes to the salvage timber language. The cuts in Federal travel and administration expenses and the reduction in the FEMA disaster supplemental appropriation were proposed by the President, who supports the other changes as well.

Overall, the changes to this bill compared to H.R. 1158 are \$772 million in increases and \$704 million in decreases. That is, \$72 million in increased

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spending, and \$794 million in decreased spending. This nets out to a further reduction of \$22 million in savings over and above the \$9.1 billion that was saved in the earlier bill.

In implementing the provisions of this bill, we expect the administration to use the guidance included in the Joint Explanatory Statement of the Committee of Conference on the Conference Report on H.R. 1158, House Report 104-194.

Mr. Speaker, we need to pass the bill quickly. The enactment of this bill is crucial, and I repeat, crucial to the orderly development of the fiscal year 1996 appropriations bills. Without the savings included in this bill, next year's bills will have to be cut over \$3 billion more in order to meet the allocations in the budget resolution that we have just adopted.

The \$3 billion would have to come in large measure from the programs that

the President was trying to protect when he vetoed H.R. 1158. When you are trying to balance the budget, as the President is now on board saying he wishes to do, you have to make difficult choices. You cannot have it both ways. If you protect programs this year, then you have to increase the level of cuts that you have to make in those same programs or in other programs the next year.

This bill compared to H.R. 1158 represents a balance of differing viewpoints. It restores funding for some programs this year that the President cares about, yet it provides enough savings so that we will not have to drastically cut similar programs next year. If we reduce the savings in this bill further by restoring more funding or if the bill is vetoed, then we have to increase the cuts that we have to make in these same programs next year. It is just that simple.

Mr. Speaker, if you are for deficit reduction, there is no reason not to support this bill. It is the last train leaving the station for fiscal year 1996. Important emergency supplemental appropriations are in this bill. Important reconciliations are in this bill. It saves over \$9.1 billion. It is not my idea of a perfect bill because it is a compromise bill, but it is a good bill, and we need its enactment as the first step in balancing the budget.

This is the very first real step that we can take in achieving a balanced budget. There will not be another change in fiscal year 1996. This is it, so let's adopt this bill and take the first step on the long road of getting our fiscal house in order.

At this point in the RECORD I would like to insert a table showing the details of this bill including the effect of the amendment I will be offering:

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economic needs this tragic event has created.

I would like to commend the Speaker, Chairman LIVINGSTON, Chairman LEWIS, and Mr. ISTOOK for their efforts as we have worked to develop the right course for this aid to take. I look forward to working with them and state and local leaders in Oklahoma as we continue to facilitate the healing and rebuilding process.

Mr. OBEY. Mr. Speaker, I yield myself 30 seconds to simply say it is a miracle. We are now told that within the last minute there actually has been an agreement reached on this letter.

I still find it phenomenal that this House is being asked to vote on this agreement without even having seen it. The timber issue is important to a lot of people in this House, including me, and just for the heck of it, I would like to know what the agreement is and see it in black and white before we debate it. It might be kind of quaint, but it might also be kind of useful.

Mr. Speaker, I yield 2 minutes to the gentlewoman from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. Mr. Speaker, I thank the gentleman from Wisconsin for yielding me this time.

I certainly am very sympathetic to the gentleman from Oklahoma who was in the well just before me. I think all of us realize that the President has, and we have, a serious responsibility dealing with some disasters.

But let us talk about this bill, which I think this rescission bill in a way is a disaster, because while it cuts over \$16 billion, the disasters, whether you agree with them or not, are only \$7-plus billion, and so that means there is \$9 billion left.

What happens to that money? It does not go to the deficit. It goes for tax cuts for the rich.

Now, I even questioned some of the disasters that are out there in parts of the country where people do not buy insurance, where they are back here all the time with their little tin cup; meanwhile they are returning State dollars and State taxes to their own people, and meanwhile what are we putting in here to make them whole? While they are getting tax rebates at the State and local level, my people in Colorado are being asked by this rescission bill to zero out summer jobs, to cut AmeriCorps in half, which is one of the great hopes for young people who are not lucky enough to be born into a family that can get them through college, it cuts significantly the Goals 2000 programs dealing with education, it zeros out the math and science training, it zeros out the public broadcasting, and for those of us who are parents and find Big Bird the only decent thing we want our kids to watch on TV, these are very serious cuts.

Part of this money, and I do not begrudge the part that is going to Oklahoma, but I begrudge the part that is going to tax cuts for the rich, and I begrudge the part that is going to other

parts where they are rescinding their State taxes at the same time they come at us with their golden cup.

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Mr. LIVINGSTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to ask the gentleman from North Carolina (Mr. TAYLOR) to take the well, and I would ask him, the author of the portion of the amendment relating to timber, to clarify the intent of the changes negotiated with the administration. The timber provision, of course, was originally conceived, I think, by the gentleman, as well as the gentleman from Alaska (Mr. YOUNG), our distinguished chairman of the Committee on Natural Resources. But the gentleman from North Carolina is the only forester who is a Member of the House, and he was directly involved in the negotiations.

Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. TAYLOR) so that he might describe the content of his negotiations.

(Mr. TAYLOR of North Carolina asked and was given permission to revise and extend his remarks.)

Mr. TAYLOR of North Carolina. Mr. Speaker, I say to the gentleman, "I appreciate your including me and the other members of the authorizing committees and their representatives in this discussion with the administration. It has been a long, arduous task, but I think we made progress."

We have been losing the forestry infrastructure in this country, along with it tens of thousands of jobs and our forest health in the long run. If we lose that forest infrastructure, then the decisions that are made in the future are moot because we will not be able to carry out those silviculture practices that our best universities, that a hundred years of forestry and a hundred years of experimentation with private, State, and Federal experiment sites have given us. We need harvest to carry out and save that infrastructure. We need it in an environmental way, and we have tried to craft a bill that will protect the environment, that will give us forest health at the same time it saves that infrastructure and provides jobs.

Mr. DEFAZIO. Will the gentleman yield on that point? Will the gentleman yield on that point?

Mr. TAYLOR of North Carolina. We have tried to work out because there has been little movement—although for nearly 3 years we have had promises, there has been little movement in getting that harvest. We have worked out with the administration a program that will define and move us forward both in forest health and in job creation. It will give a specific track that we can follow in a managed way using the best silviculture methods we have, taking into consideration the environment, and taking into consideration our economic needs. If we follow the outline that has been agreed to by the

President, then we can make substantial progress.

Mr. Speaker, the Congress will be monitoring this action periodically to see that we are making progress. We can provide the tools to the Forest Service, we can provide any other tools that are necessary for the—

The SPEAKER pro tempore (Mr. WALKER). The time of the gentleman from North Carolina (Mr. TAYLOR) has expired.

Mr. LIVINGSTON. Mr. Speaker, I yield to the gentleman from North Carolina (Mr. TAYLOR) an additional minute.

Mr. TAYLOR of North Carolina. We can be successful in all our areas in providing jobs and protecting forest health and protecting the environment, and I think this agreement that we reach tonight will give us that end product, and that is why I am willing to support that, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from North Carolina (Mr. TAYLOR) is recognized, he controls the time—

Mr. DEFAZIO. I am asking him to yield.

Mr. TAYLOR of North Carolina. I will not yield at this time.

Mr. LIVINGSTON. Regular order, Mr. Speaker.

The SPEAKER pro tempore. The gentleman has declined to yield, and the gentleman from North Carolina (Mr. TAYLOR) does control the time.

Mr. TAYLOR of North Carolina. We can be successful in all our areas, in providing jobs, and protecting forest health, and protecting the environment, and I think this agreement that we reach tonight will give us that end product, and that is why I am willing to support that.

Mr. DEFAZIO. Representing the most public timber-dependent district in the Nation and far exceeding the needs of the gentleman's district, could the gentleman provide something in writing to decide before we vote, or are we going to be required to vote on the good-faith assurances of the Republican Party, having dealt with a Democratic President, and telling us that there is nothing available in writing? What is available in writing to the Members of this House, 685 members, now?

Mr. TAYLOR of North Carolina. I say to the gentleman, "Mr. DICKEY has been involved from your side of the aisle, been involved in these negotiations. What we have tried to do is what I just said. We all recognize the need. We have tried to come up with a realistic plan, not unlike what was passed in the original—"

Mr. DEFAZIO. Is it in writing?

Mr. TAYLOR of North Carolina. By 77 members of this House.

Mr. Speaker, the modifications agreed to by the administration and the committee embody clarifications of several parts of the package.

First, subsection (f) concerning the effect of the provision on other laws was revised by creation of a limited exception to language that prohibited modifying land plans and other.

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Administrative actions a consequence of implementing this section. The new exception modifications under limited circumstances needed to meet salvage levels agreed by the conferees or to reflect the particular effect of the salvage sale program.

However, the salvage timber sales cannot form the basis for an administrative action that limits other multiple use activities. Project decisions, such as salvage sales, cannot be stopped or delayed by modifications either. The term "delayed" was substituted to ensure that salvage sales and other project decisions go forward. A clarification was added to make sure that a particular salvage timber sale cannot be required to be offered.

Second, subsection (b)(1) was clarified in its linkage to subsection (c), which is part of the salvage sale portion of the section. The authority and process for emergency salvage timber sales is contained in these and other subsections and the clarification embodies the concept that the two subsections are to work in concert, but that once a sale is prepared and advertised the sale is deemed sufficient to meet all applicable laws and then go forward. A 45-day stay can delay the sale while the U.S. District Court considers an appeal. Otherwise the sale will proceed. This expedited procedure will ensure that dead and dying timber on federal land can be harvested before it rots.

Third, the managers and Administration agreed to two important changes in subsection (f). We made it explicit that any salvage sale subject to subsection (b) and any timber sale subject to subsection (d) should be deemed to satisfy the requirements of any compact, executive agreement, convention, treaty, and international agreement, and implementing legislation related thereto. This change was made in response to allegations that passage and implementation of Section 2001 would result in violations of the North American Free Trade Agreement. No such violations would occur.

Fourth, subsection (i) and paragraph (i)(B) were modified slightly to clarify that salvage timber sales subject to subsection (b) and any timber sale subject to subsection (d) shall be deemed to satisfy the requirements of all applicable federal environmental and natural resource laws. This clarification is to ensure that purchasers of timber under this section must still comply with applicable contract law.

I stress that this provision was developed in concert with the authorizing Committee and included only after close consultation with the authorizing committee. The legislative committee have ensured us that long-term timber salvage legislation is forthcoming.

Mr. LIVINGSTON. Reclaiming my time, Mr. Speaker, I yield 2 minutes to the gentleman from Alaska (Mr. YOUNG), the distinguished chairman of the Committee on Resources, to discuss his understanding of these negotiations.

Mr. YOUNG of Alaska. Mr. Speaker, may I suggest, as the chairman of the authorizing committee, the Committee on Resources can agree with the gentleman from North Carolina (Mr. TAYLOR). The man has done yeoman's work on this situation of salvageable timber.

One of the things that concerns me the most, Mr. Speaker: We worked long and hard to force and forge several modifications and address the concerns

of the administration. We have worked with the administration. It is language that is coming from the administration and not legislative language in this bill. What we are trying to do, why anybody would oppose it, is salvage dead trees, not RARE II, 16 billion board feet of timber is rotting today, standing because it was burned last year. And yet I have people say, "Oh, we can't harvest it because it might destroy the ecosystem."

What we have destroyed are the jobs of the American people. The mills have been shut down, those that provide the paper for this gobbled gook that we work on here every night, for that which we use here ourselves personally, have been shut down, and the American people have been put out of work, and I have people on that side that say, "We can't harvest a dead tree."

We have negotiated long and hard with the chairman and the administration, trying to reach a solution by putting the people of America back to work, and we have done that, and we will continue to do it with this legislation. But beyond that is a matter of principle. Is, in fact, man part of this system?

This man is a forester and understands that the renewable growth of trees—trees are a renewable resource. And to have someone to say we cannot cut down 16 billion board feet of trees, which we have not asked to do so; we asked to cut down 3 billion board feet. That is all, and yet we are looked upon by the media and by those in this body, saying we must not harvest RARE II.

Nonsense. We are talking about a tree that has been burnt because the forests were not managed to begin with. We are talking about American lives and American working forests. It is time we got on. This is good legislation. I urge the passage of the legislation.

Mr. OBEY. Mr. Speaker, I yield 1 minute to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. We need a thoughtful forest health program. We have a forest health crisis in the Western United States caused by mismanagement, and that would include some salvage, but we are being asked to accept a pig in a poke. We are being told that the Democrat administration has entered into a secret agreement not available in writing with the Republican majority which we are going to be asked to vote on within 15 minutes here in the House of Representatives. I am being asked to accept on good faith that this is something that will both protect the environment and do what we need for forest health and salvage in the Western United States, but it is not available in writing.

This is an outrage, this is an extraordinary outrage. I do not know how many times I heard from the minority on that side last year, "You can't make us vote on something we haven't read." We have not read this. This is not available to us. It is not available

to us either through the Democratic administration, nor the Republican majority. That is absurd. No one in America thinks we should vote on something we have not read.

Mr. LIVINGSTON. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, if the gentleman has not read the timber provisions in H.R.—

Mr. DEFAZIO. I have read that, if the gentleman will yield?

The SPEAKER pro tempore. The time is controlled by the gentleman from Louisiana.

Mr. DEFAZIO. Will the gentleman yield?

Mr. LIVINGSTON. As a matter of fact, I will not yield.

Mr. DEFAZIO. Well, of course not. They will not let us read it, and they will not yield.

The SPEAKER pro tempore. The gentleman owes the House the respect of the rules.

Mr. DEFAZIO. He owes the courtesy of reading it before I vote on it.

The SPEAKER pro tempore. The gentleman will suspend.

Mr. SOLOMON. Get the Sergeant at Arms to get him out of here.

The SPEAKER pro tempore. The gentleman does owe the House the respect for the rules, and the gentleman from Louisiana is recognized.

Mr. LIVINGSTON. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, we have had a lot of ranting and raving from the gentleman without a sense of humor about the fact that he has not had a chance to read this. No the fact of the matter is H.R. 1168 was filed 3 months ago. The President of the United States vetoed that bill. It contained a lot of timber language. He has had 3 months to read that language—

Mr. DEFAZIO. And I have read it.

Mr. LIVINGSTON. I did not know that I yielded to the gentleman.

Mr. DEFAZIO. The gentleman will not yield. He is shutting me down.

The SPEAKER pro tempore. The gentleman from Oregon should obey the rules of the House. The rules of the House require him to be yielded to while he is proceeding on the time of the gentleman from Louisiana. If the gentleman wants time, he seeks time from a Member who will yield it to him. Otherwise, he has no right to interrupt people who are proceeding under the proper order. The gentleman has the obligation to himself to proceed under the proper order.

The Chair recognizes the gentleman from Louisiana.

Mr. LIVINGSTON. And I was simply going to say, Mr. Speaker, that the gentleman has had 3 months to read the timber language in H.R. 1168, he has had a couple of days to read the timber language in H.R. 1944, and he has got the opportunity to speak with the gentleman from Washington (Mr. DICKS) as well as the gentleman from Alaska (Mr. YOUNG)—

Ms. FURSE. Mr. Speaker, will the gentleman yield?

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Reich, Health and Human Services Secretary Donna Shalala, and then Secretary Lloyd Bentsen of the Treasury, all members of the Clinton cabinet, said:

The federal hospital insurance trust fund, which pays inpatient hospital expenses, will be able to pay for only about seven years and is severely out of financial balance in the long range.

The trustees, therefore, have legiti-ly called for prompt, effective and decisive action to save the fund from its own insolvency. As well the bipartisan commission on entitlement and tax reform, headed by Senator Bob KENNEDY and Senator John DANFORTH came to the same conclusion.

This impending disaster only came to light very recently. The Clinton administration had tried to sweep it under the rug. His fiscal year 1998 budget proposes no changes or solutions to Medicare's problems, and he even did not bring that up when he had the White House Conference on Aging. It was not even addressed by him.

As Medicare travels the road toward bankruptcy, President Clinton has been AWOL, absent without leadership, on this issue. He has even refused to participate in a bipartisan effort to save Medicare. Not until the Republicans had come forward to talk openly and honestly about how we can save, preserve and protect Medicare has the problem been described and the options been discussed.

House Republicans are determined to work with House Democrats to save Medicare by using new approaches, new management, new technologies to improve it, preserve it and protect it. Congress has an unprecedented opportunity, Mr. Speaker, to undertake a fundamental reform of this important Medicare Program.

One of the steps many of us are taking are Medicare preservation task forces, where we have senior citizens, people involved with AARP, R5VP, groups across our country like my own in Montgomery, Pennsylvania to make sure we include seniors in the solution. Seniors need to be served. We want to make sure we hear from them about options on making sure we protect it not only for seniors now but for generations to come.

The General Accounting Office has estimated that there is \$44 billion that is wasted on fraud and abuse in the Medicare and the Medicaid funds. As much as 30 cents of every \$1 is simply wasted or lost due to mismanagement.

House Republicans will increase Medicare spending under our proposal from \$1,700 per retiree to as much as \$2,300 per retiree by 2002. This is a 46-percent increase in Medicare spending per retiree.

We will preserve the current Medicare system but we need to develop a new series of options for our senior citizens so they can control their own future. I believe that by working together both sides of the aisle we can save Medicare, preserve and protect it

so that we can provide the best possible health care at the lowest cost to our senior citizens so they can control their destiny. And we working together with them, we will in fact have a bright future.

TIMBER SALVAGE

The SPEAKER pro tempore. Under the Speaker's announced policy of May 13, 1995, the gentleman from North Carolina [Mr. TAYLOR] is recognized for 60 minutes as the designee of the majority leader.

Mr. TAYLOR of North Carolina. Mr. Speaker, we are here today to talk about the Presidential veto of the timber rescission or timber salvage amendment that is part of the rescission package that has passed this House, passed the Senate, has been confirmed, from the conferees, by the House and is waiting confirmation in the Senate.

The President has promised to veto the entire rescission package, and that includes the timber salvage amendment. The salvage amendment was put together after considerable consultation with the Forest Service, with many groups; in fact, the final amendment reflected a good many suggestions from the White House itself, and still the White House wishes to veto the entire rescission package, including the timber amendment.

What we are talking about with the timber amendment tonight is to tell people what is going to be the result of that Presidential veto. First of all, we have to look at what is happening to our forests and what is happening to the jobs related to forest harvesting. Our forests are deteriorating in health because we are not managing them along the lines of our best scientific knowledge in forests. We have a well-funded special interest of environmental groups in Washington that take in over \$600 million, and they take in that money by scaring people into thinking the last tree is going to be cut tomorrow or some other fantasy in order to bring those hundreds of millions of dollars in to themselves. This does not meet with true science or with what is actually happening in the forest.

The forests are deteriorating because of the bad management that has been pushed by these organizations creating the policy over the last several years.

The salvage amendment was an effort to try to return sensible environmentalism and sensible science back to the harvest of our timber. And what else is at stake? Is it better environmental policy for us not to harvest dead and dying wood in our forests, to lose tens of thousands of jobs because we do not allow that harvest, to make the people of our country have to use alternative resources other than wood? And what is the consequence of using alternative resources other than wood?

We will make this podium, these chairs, this table out of either wood,

metal or plastic. If we make them out of plastic, then we have to import the oil from the Middle East. We have to fight to get it out, many times. We spill it several times along the way. The toxicity in the manufacturing is greater than it is in wood manufacturing. And it is much harder to recycle or to dispose of when its usefulness is over.

The same thing with metal. We dig it from the ground. A great deal of energy in the smelting process, and it is much harder to recycle than is the renewable resource of wood. Also, both of those items are finite resources; when they are gone, they are gone.

The renewable resource of wood managed on a perpetual yield basis can take our lands, our best suited lands for timber and grow over and over again the multitude of products that we need for all of our home products, paper, many resources that otherwise we would have to use finite resources.

Now, it is better for us to use the renewable resource of wood or use up our finite resources?

We are today importing over one-third of the timber that we need, over 16 billion board feet. Often this is harvested from far more sensitive environmental areas than we have available to us in the United States.

So by forcing these imports, we are damaging tropical rain forests in many cases and other more sensitive parts of land.

What we tried to do with the timber amendment, a bipartisan amendment that had the support of the United Brotherhood of Carpenters, the United Paperworkers International Union, Western Council of Industrial Workers, National Association of Home Builders, Realtors, Women in Timber and many other small business organizations. It was to craft language that would provide us with 59,000 more jobs during the three years in the timber communities. It would bring in an additional \$2 billion in payroll for timber workers in communities all over this country. It would provide over \$450 million in additional tax revenue, and it would put over \$423 million returned to the Treasury directly. Two hundred three million dollars would be shared with the counties, mostly going to education, which is where the counties put funds coming from the harvest of timber.

It would also bring us a lower cost in fighting forest fires, which utilized \$1 billion in Federal cost in 1994 and cost us \$2 lives in this country fighting fire.

The President plans to veto this bill, the entire rescission bill and the timber salvage provision. That would put people back to work, reduce expenditures on forest fires, and improve forest health.

Included also was section 218 timber. Many people have said that the timber salvage bill is not needed because the Government has a process now for harvesting salvaged timber. It does. But it has been used in such a way by many organizations through the appeals

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process, through delaying processes, at they render the harvest in salvage of timber useless. If timber in the Northwest, in the Southwest, the Southwest, is not utilized within 6 to 24 months, then it usually is lost as far as any practical use and the ability to salvage it.

So it must be done quickly. Appeals and other actions by special interests in this country delay it for years.

For instance, the section on timber, it is in Washington and Oregon, this area has already met all the environmental requirements. This is green timber but it has not yet been released. It has been waiting since 1980, over 6 years. And this meets all the environmental requirements, and it meets, it has already been approved to move, but it has been held up for over 6 years while people in Washington and Oregon are without jobs.

I think the salvage bill itself provides an opportunity to review environmental laws. It requires the secretary of agriculture to see that those laws are followed; if he feels that a tract can be salvaged following the Environmental Species Act and the Forest Act and some other group disagrees with him, they have the right to appeal. They must appeal directly to a federal judge, a district court judge and they have 45 days in which the judge will hear the evidence and then make a ruling, and then that is the end.

If he feels the environment is endangered, then he can declare the sale unacceptable. If he thinks there is no environmental damage to be done, he can declare the sale to move ahead, and that is the end of the appeals process.

□ 1995

The Forest Service itself then puts together, through professionals, the sale, and puts it out to the highest bidder. There is no forest giveaway, there is a sale to the highest bidder for the timber to be utilized.

Mr. Speaker, the fact that this legislation brings in revenue, puts people back to work, uses our best science, and gives full protection for environmental laws should mean that the President should not veto this legislation, but should pass it.

Mr. Speaker, I will yield to some of the people advocated by this. I yield to the gentleman from California Mr. DOOLITTLE.

Mr. Speaker, I thank the gentleman for yielding to me. I wish to acknowledge the gentleman's leadership on this salvage issue as a member of the Committee on Appropriations and a member of the environmental committee. He is to be commended for the work that he has done.

Mr. Speaker, this will definitely result in a vast improvement for the quality of our forest health, which is so desperately needed in many parts of my district. In many parts of California and the Sierra, the percentages range up to one-third of dead and dying

trees. A third of the Sierra in parts are dead and dying trees.

I believe the gentleman is the only licensed forester in the United States Congress, so the gentleman has an expertise that no one else really does, not to the degree that the gentleman does. He understands what happens when we have a forest fire, and the environmental damage that that does when it burns so hot. He understands that if we do not take this dead and dying timber while it still has commercial value, when the taxpayer is charged by selling out money out of it, if you, the general fund to go remove these trees, there is nothing to be realized in terms of repaying the Treasury.

Is that your understanding?

Mr. TAYLOR of North Carolina. This is true, and not only that I doubt if we could get that money, expended, and the wood would not go to create jobs in most cases, if it was harvested that way.

Mr. DOOLITTLE. Yes, because it has a no value. So at that point they are just doing something to improve the health.

I would comment, we have had a highly slanted, undi- biased report called the Green Boissors Report, which is a coalition of I believe, Earth First and the National Taxpayers Union and Citizens Against Government Waste, which is, I think, just shocking in terms of the distortion that is in that report. One of the things they attack is so-called below-cost timber sales.

What I find interesting is that many of these self-professed groups that profess to protect the environment drag out the appeals process as long as they can, so they make sure that timber has no commercial value, and then, when money is spent to get rid of that timber to protect the health of the forest, I believe that counts against the overall tree program, and so it is bootstrapping. They make sure that it does not recover the costs, and then they try and blow "Look what pork barrel scandal support of industry we have here, because the taxpayer money is going to support the timber industry," when in reality, their own actions have guaranteed that result.

Mr. TAYLOR of North Carolina. Mr. Speaker, I yield to the gentleman from Washington (Mr. KERVALL), whose State is also involved in this. If he would talk to us about the impact in his area.

Mr. KERVALL asked and was given permission to revise and extend his remarks.)

Mr. KERVALL. Mr. Speaker, the President will soon have on his desk legislation that would make good use of a valuable natural resource. However, without the President's signature, this resource will not away.

Thought I will tell Members the story of just one tree, one in thousands in western Washington State. The Forest Service estimates that over 200 billion board feet of dead, dying, or downed

timber is now in our forests. This tree on this picture and many others like it blew down in a windstorm on the Olympic Peninsula.

This is not an uncommon occurrence in this Washington State coast. While this tree grew in a region that is part-foot for its growth, the unique combination of heavy rainfall, wet soil, and high winds caused trees like this giant 600-year-old growth Douglas fir tree to blow down. Thousands of these blow-down trees are lying on the forest floor right now.

However, this tree had a chance to be different. Mr. Jim Carlson, in the picture, tried to purchase this tree from the Forest Service, to be cut up in his sawmill and sold to the public. His sawmill used to employ about 100 people. The Quilam Ranger District refused to sell this tree to him. Mr. Carlson later came back to the Forest Service and asked to buy the tree, pay money for it, the lumber to be used in the construction of an interpretive building that he wanted to build on this ranch as part of an economic diversification project. This would have allowed Mr. Carlson to get into the tourism business which, as long as we are going to put him out of the timber business, seems to me about the least we could do.

The request was also denied, in spite of the fact that provisions for this type of sale were contained in the Gray's Harbor Federal Sustained Yield Duit Agreement.

The taxpayers are the big losers in this story, though. This tree contained just look at this tree, it contained 21,000 board feet of lumber. The sale of this tree by the Federal Government to Mr. Carlson would have brought the taxpayers, would have brought the Federal Government, \$10,000 to \$20,000. Mr. Carlson would have been able to manufacture that lumber from this one tree, and sell it for approximately \$60,000 on the retail market. That is the value of that one tree.

Mr. Speaker, the sad end for this tree came in a perfectly legal, though tortious, manner. An out-of-work timber worker, armed with a throwwood permit and a chainsaw, cut up this grand old giant for \$5 a cord and paid about \$15, \$15 to the taxpayers of this Nation, instead of the \$10,000 to \$20,000 that that tree was worth when it fell.

The rest of the story, as Paul Harvey likes to say, is that this past year this timber worker had his home sold on the steps of the county courthouse, because he could not pay taxes in back taxes, while the Quilam Ranger District that would not sell him the tree for lumber did not have enough money to purchase the diesel fuel to run their road grader.

The extreme environmentalists oppose harvesting downed or diseased timber. For those who feel good to have that fine timber rot on the forest floor, for those people, I remind them that 15 billion board feet that lies there now will rot. There are no roads to get

to it. It is not accessible, and it will

feel good about the \$ billion board that we can salvage. The environmentalists claim these trees are necessary for the nutrients they provide to the forest floor. However, if we check with the forestry scientists, they will tell us that 80 percent of the nutrient value is found in the crown of the tree. That is what stays in the forest when you take out the lumber. It stays in the crown of the tree, while 80 percent of the fiber is found in the trunk. That 80 percent that we need, and which can be put to good use, contains less than 20 percent of the nutrient value.

It is possible, therefore, Mr. Speaker, to have the majority of the fiber we seek from these trees and at the same time leave the majority of nutrients behind. With a sensible salvage policy, we can have our cake and eat it too, and at a profit to the Federal Government.

Mr. Speaker, there are thousands of trees just like this one in the Pacific Northwest. When in full operation, Mr. Carlson could have run his mill with only 150 trees like this each year. He would employ 60 direct, full-time workers, with a payroll of over \$1 million, from a yearly sales total of \$7.5 million to \$8 million. He would pay \$200,000 to \$300,000 per year in corporate income tax, he would pay \$1 million to \$2 million in Forest Service stumpage fees. That is what the Federal Government gets directly.

His employees would pay personal income tax of over \$1 million. They would have complete company-paid medical care for themselves and their families. In addition, Mr. Carlson would employ up to 40 other people in subcontractor positions. These would include the loggers and those people that would help get the logs out of the forest.

To the State of Washington alone, this legislation would mean 7,500 man-years of direct, indirect, and induced employment. These are jobs we desperately need, as well as making wise use of a resource that would otherwise go to waste.

Sadly, if these giants are not harvested within 3 years of being blown down, or fire or disease-damaged, they are of no value as timber. They begin to deteriorate within 3 years. Thus, they are of no value to us as taxpayers. This is part of the emergency situation we face in our forests.

Unless the President signs this important legislation, giant trees like that will rot back into the forest floor from which they sprang. It is my hope that he can see the common sense in this legislation, and make the best use of our forest resources.

The forest communities all over the Pacific Northwest are dying. Our people are dying, in economic terms. This salvage timber opportunity is here now, and it is something that we desperately need in the State of Washington. We await no longer for consideration

and meaningful action addressing this situation. We desperately need President Clinton to help by signing the bill which authorizes the timber salvage.

Mr. TAYLOR of North Carolina. Mr. Speaker, I thank the gentleman for his comments. Of course, he has given an exact case, something very close to home, where individual lives are being impacted by a policy that does not realize science, and does not realize the reality of forest management, but is trying to pander to an elite group of special interests in Washington.

Mr. Speaker, I would say to the President of the United States that if he is serious about helping working people, and if he is serious about providing a balanced budget and providing resources to carry out a number of programs that he would like to see in that budget, then we have an opportunity here to restore hundreds of millions of dollars to the taxpayers, to the budget, and to put tens of thousands of people back to work.

I was mentioning a moment ago that we have section 318 timber that has been approved. If the President signs this bill, we will get the benefit of 8,942 instant jobs, in addition to the ones in the salvage bill, because part of the timber salvage amendment includes three phases. It includes the timber salvage portion, it includes the section 318 timber that has been approved and been waiting 8 years now; past all regulations, been waiting 8 years to be put on the market, and the option 3 that the President himself recommended.

With the 318 money we will put 2,942 people to work immediately, \$12 million in additional payroll funds for timber workers, \$47 million in additional tax revenue, \$194 million returned to the Treasury, and \$61 million to be shared with the counties for whatever uses they need and see fit.

Good-paying jobs are not government-trained jobs, they are reality, they are what is needed in the marketplace. We have 151 job training programs, yet here we could put tens of thousands of people back to work without the taxpayer training.

Mr. Speaker, I yield to the gentleman from California [Mr. HERGER], who also has a personal experience. He has a personal experience of what is going on in the mismanagement of forests in California.

Mr. HERGER. Mr. Speaker, I thank the gentleman for yielding to me, and for all of his hard work. I believe he is the only certified forester in the House of Representatives. I thank him for his leadership in this area.

Mr. Speaker, when the President threatened to veto the 1956 Supplemental Appropriations and Reconciliation Bill, H.R. 1198, he stated, among other things, that he "really objected to the timber salvage provision of the bill." I was quite surprised to hear this, particularly in light of what the amendment stands for in terms of wildfire prevention, forest health, jobs, and the preservation of rural schools all over the country.

What I would like to do for the next few minutes, Mr. Speaker, is outline just what the President means when he says he objects to the amendment. That is, where his priorities lie, and what that means to the rural communities in my district in northern California and in other regions throughout the country.

□ 1915

Apparently the President is objecting to wildfire prevention and forest health.

Mr. Speaker, last year nearly 4 million acres of forestland nationwide and some 375,000 acres in my district alone were consumed by wildfire. This was due primarily to the excessive buildup of natural fuels, that is, dead and dying trees in our forests.

Mr. Speaker, of the 8 national forests in my northern California congressional district, I have areas where as much as 80 to 90 percent of the trees are dead and dying due to disease, insect infestation caused primarily because of 7 out of 9 years of severe drought. In fact, tree mortality in my district is so severe that the California State Board of Forestry has declared much of the area as a zone of infestation.

When these dead and dying trees ignite, they burn with such intensity that virtually everything in the forest, live trees, riparian habitat, owl nesting sites and even the soil is consumed. This kind of wildfire brings the health of the forest to its lowest ebb. Nature is unable to repair itself for years, even if man does everything within his power to help. Wildfire also does not discriminate between animal and human habitat.

Last year the city of Loyalton, for example, in my district was threatened to be burned to the ground 3 times by the same fire. Each time the town was spared by changing winds. Next year the families who live in Loyalton may not be so fortunate.

Our salvage amendment offered the President the tools to protect our forests and forest communities from this kind of catastrophe, but apparently the President finds this proposition objectionable. Apparently the President would rather see our forests and the towns adjacent to them, the Loyaltons in States throughout the country, blow up in fire storms than remove the dead and dying trees that cause this kind of disaster.

The President apparently also objects to putting unemployed people back to work. Mr. Speaker, since 1957, 51 mills have closed in northern California due to drastic decreases in Federal timber sales and the listing of the Northern Spotted Owl. Forty-two of these mills have closed since the beginning of 1950. Twenty-nine are in my district.

These closures have literally devastated many small timber-dependent communities. Thousands of workers have been displaced, causing unemployment to exceed 30 percent in some

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area. Welfare rolls have ballooned and domestic violence has risen sharply. It has simply been a social travesty.

When the President held his Western Forest Health Summit in 1992, he promised to help these people. What has he done since then? Since he made his highly touted promises to the people of northern California, Forest Service timber sales in the region have fallen to approximately half of their 1992 levels and to approximately one-third of their historic levels.

Year 1995 looks even more bleak for the timber communities. Of the 20 timber purchasers which currently have outstanding timber contracts in the Klamath and Sierra Provinces of northern California, only 7 of these 20 will have outstanding contracts at the end of 1995. The bottom line is, the industry is being bled dry.

How ironic it is to consider that at the same time we have a desperate need to remove the dead and dying timber from our forests, we also have a work force in desperate need of jobs. Mr. Speaker, common sense says that we have the wherewithal to kill two birds with one stone, to save our forests and put a number of people back to work. But again, Mr. Speaker, the President apparently finds this objectionable. The fact is that he is turning his back on the promises he made in 1992 and to the people to whom he made them.

Finally, the President apparently also objects to infusing money for schools and roads into depressed rural communities which have not the money for either. Mr. Speaker, 25 percent of the receipts of all Federal timber sales are returned directly to counties to fund schools and road construction. Any county school superintendent in northern California would tell you of the devastating impact reduced timber sales have had on the schools in his or her district.

Plumas County, for example, has had its annual school budget cut by as much as \$5.5 million from its 1992 levels. Stiklyou County has lost over \$1.7 million annually since 1992. These drastic cuts to school budgets which are very small to begin with, Mr. Speaker, have forced school boards to eliminate some of the most basic scholastic programs which most school districts take for granted.

Our salvage amendment would give county school districts and road funds an infusion of a projected \$380 million. This money would also help restore basic programs in rural schools. But, again, Mr. Speaker, the President apparently finds this proposition objectionable. Apparently his "people first" philosophy does not include children in poor rural communities.

So what does the President not object to? If he objects to fire prevention, job creation, and the preservation of rural schools, what does he not object to? He apparently does not object to continuing what he began the day he took office, an all-out war on the West

spurred on by environmental extremists and special interest groups, a preservationist war that apparently he will continue waging until our forests are locked up completely and the enemy, the people who have lived and managed them for generations, have been vanquished.

Mr. Speaker, I thank the gentleman from North Carolina (Mr. TAYLOR) for his leadership in having this special order and bringing this to the attention of not only the Members of the Congress but to the American people.

Mr. TAYLOR of North Carolina. I appreciate the gentleman's commitment to his constituency and the people of this country and his willingness to tell them the truth about what is happening in your district, and it is happening in districts all over the United States.

I would like to ask the gentleman a question. The President when he indicated that he would veto this bill, he made a statement, and I am quoting from it. He says, "I object to this amendment which would basically direct us to make timber sales to large companies."

The people who harvest the timber out in your area, are those the major companies, the Weyerhaeusers and the other larger corporations? In our area, it is mostly mom-and-pop outfits, they hire maybe under 100 people, they are people in the community, and most of those folks are right there in the community. These are not large companies. These are basic community small businesses.

Is that the case in your area?

Mr. HERGER. That is absolutely the case in our area. Again there is probably not any other industry that has as many small business type family organizations than in the timber business, that business which provides our Nation with our paper products, provides us with the wood products to be able to build our homes, to be able to have affordable homes, essential needs. Yet as the gentleman mentioned, these are primarily done by family small businesses.

Mr. TAYLOR of North Carolina. I would suggest that the President get away from the elite environment that he is surrounded by at the White House and go out and talk to these folks and see how many businesses are involved.

Major timber companies that have millions of acres of land do not need this to produce their forest products, but small businesses do. They are being devastated to the point of tens of thousands of jobs all over this country.

I think the gentleman brought our another point, homebuilding. The average cost of a home has gone up over \$7,000 just over what has happened in the Pacific Northwest, and expected to go higher. We are using today metal studs for construction purposes as well as other metal components instead of the renewable resources of wood.

How can you possibly be an environmentalist and want to use a finite product that is hard to recycle, hard on

the environment when it is brought in and smelted and produced as opposed to a renewable resource like wood, easily recyclable and can be used over and grown over and over again?

Mr. HERGER. I thank again the gentleman for bringing this out. Again we are talking about a renewable resource. As I mentioned earlier in my talk, I have some eight national forests, all or parts of them in my district. Of that part, during the time when we were under historic levels and were harvesting, approximately 75 percent were off-limits to any type of harvesting at all. They were in preserves, they were in national parks, in wilderness areas. So we really had about 25 percent of the pie that could be harvested, and through our California laws could not be harvested any more rapidly than they were growing back.

At this point, even that 25 percent has been locked up. Maybe there is about 5 percent or even less that we are able to harvest. Again, we are talking about a renewable resource. These steel studs that you are referring to or even in our grocery store, the plastic. Plastic is not renewable. Steel studs are not renewable. But yet our forest products are renewable. Again, it is a tragedy to our environment to see this happening, that not only are our forests rotting and burning but our communities are being deprived of their very livelihoods. Again, this is a tragedy, and I thank the gentleman for bringing this out.

Mr. TAYLOR of North Carolina. The gentleman makes another good point. We are not talking about any harvest in national parks. We are not talking about harvesting in wilderness areas or wild and scenic river areas. As you say, 75 percent of the national forests even are off-limits from this harvest. Only about 25 percent of the area which is already being used and harvested from a commercial standpoint, or at least eligible—it is not being harvested now—for harvesting will be impacted. A very small part, one-third, of this Nation's public lands that the Government owns today.

I would also remind, and I think the gentleman pointed out a moment ago, management of the forest and thinning of the forest is important for forest health, whether it is down wood or standing wood. There was a wire today, a green wire that came out that pointed out that aspen trees in New Mexico and Arizona are on a rapid decline.

It points out that in 1982, there were 490,000 acres and it is down to 285,000 acres now, a 45 percent decrease of aspen, and the primary reason is the aspen, and I am quoting from it, needs open spaces to grow. They need to clear the forests so the younger trees can grow out, and that can be done, according to this green wire, in several ways. One is by wood harvest. That is important in managing today's forest. If you are going to have a wealthy forest, it has to be managed, and harvest is part of that management.

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I would go back and talk again about what the President said in his statement. He went on in addition to saying this was made up of large timber companies, we were directing the cuts in sales to large timber companies, and that is entirely false. I would say it is close to 99 percent of these companies that are going to be harvesting, that will be winning bids on forest sales, come from small family firms and would be classified as small businesses under all the definitions of small business.

He also mentioned there would be a subsidy to the taxpayer. The Congressional Budget Office saw no subsidy, the taxpayer was not subsidizing these sales. In fact, they saw tens of millions of dollars coming into the treasury, and I think we quoted from those figures a moment ago.

Then he went on to say that this legislation would essentially throw out all environmental laws, and that is ridiculous. If he would talk to his own chief of the U.S. Forest Service, he would tell them that the environmental laws are not being thrown out, that the Secretary is required to follow a number of the environmental laws. If there was no requirement for following them, there would be no reason for an appeal, and there is an appeal process.

I would go to the last segment in the salvage amendment, and, that is, that was inserted by the Senate. It was option 9 timber harvest.

□ 1990

The President himself went to the Pacific Northwest directly after his election and promised the people that he would start seeing that the forests there were being harvested. Now he cut the harvest down to approximately 20 percent of what it would be or what it had been in the past, but even that is not happening. The extreme elements who are influencing the administration are seeing that is not happening. Of the 1.2 billion board feet that were selected for harvest under Option 9, almost none of that timber has been cut since the plan was selected by the administration.

It was tested in district court, was upheld in district court in December, and the conference language would require that it now proceed and it would insulate it from further judicial review so that we do not have to subject the tens of thousands of employees to endless appeals on this process.

In real terms if we restore and bring the Option 9 procedures ahead, it would restore almost 19,000 jobs for timber workers in the communities in the so-called spotted owl areas, it would add \$94 million in additional payroll for timber workers, it would add \$64 million in additional tax revenue, and \$360 million would be returned to the Treasury; \$120 million would go to the counties to be shared as we mentioned a moment ago primarily for education.

Even the Forest Service estimates that if we do not proceed it may be

years and years before option 9 can move ahead, and that in effect is the President denying the people even that part of his promise that he made in the Pacific Northwest.

We have a section that is called the 4-D areas, a provision that legitimizes future action for the administration's 4-D section on Endangered Species Act rulings for relief of small landowners which was also included by the conference. When the administration finishes its 4-D rules, millions of small landowners will be out from under the ESA restrictions on timber harvesting. It would free up hundreds of thousands of board feet of new timber by small property landowners.

The acceptance of this provision was basically a good-faith attempt to show that Congress is willing to work with the administration's plan to utilize section 4-D of the ESA to provide relief for small landowners.

In other words, the President has made many representations. What we are trying to do is to bring those representations to fruition. Certainly the President can support that.

The President's veto means that the administration's commitment to provide relief in timber communities will not happen. The President's veto threat and comments on the timber provisions in the reversion bill is proof that his campaign pledge to put people first has been breached.

The number of jobs in the entire reversion bill, including the salvage portion, 318 and option 9, would create over 88,000 jobs; in other words, it would put that many people who have been unemployed this period of time back in their jobs all across this country. Instead of that, the President is willing rather to see that the forests rot or burn than to see that good silviculture, good management, forest health management is put in place.

I would remind him that his promise was to help bring economic activity back to the area. His veto of this legislation will kill that entirely. His signing of that bill will give 88,000 people across this country and primary in the Pacific Northwest immediate employment.

There are numerous opportunities for us to evaluate this bill. The Congress had hearings, the Committee on Agriculture and Committee on Resources had joint hearings before they requested that I sponsor this amendment in the Committee on Appropriations. We had debate in the Committee on Appropriations, we had debate upon the floor. There were 277 members of Congress who supported this bill; it was opposed by 142. It passed with almost two-thirds of this Congress' support. It passed in the Senate. It came back and was approved, the conference language in the House was approved overwhelmingly, as it will be in the Senate. And so, this is the people through their representative speaking for what is needed in this country and what they want.

The President is vetoing it because he is being asked by a group of ill-informed special interests in Washington not to do it.

If you read the Wall Street Journal of 2 weeks ago last Friday you will see why. The environmental organizations in this town, the special interest to which I refer that take in the \$600 million and lavish it out to political special interests, were polled as to their support. The report said they were basically left-leaning, 89 percent who support the President of the United States, voted for President Clinton in the 1992 election. And he now is reaching out to pander to that very elite special interest and forget 88,000 honest taxpaying citizens who can be put back to work immediately.

I would remind them of one other statement that was made by the group, an environmental group who spoke positively about the President's threat to veto, and I am quoting the Oregon-based Headwaters organization, and it said "By preventing these clear cuts, President Clinton today saved the marbled murrelet from extinction." Now that defies sensibility. We are talking about dead timber, we are talking about timber that in many cases has already blown over on the ground, we are talking about timber that has been burned, we are talking about timber that is insect-infested. Clearcutting dead and dying timber is ridiculous, and how you could have saved anything, the marbled murrelet from taking out salvaging dead timber remains to be seen.

I yield to the gentleman from California, Mr. RIGGS, whose district also is impacted by this legislation, who has real people who are suffering because of the policies of this administration and because of the veto threat of this administration.

Mr. RIGGS. I thank the gentleman for yielding, and I commend him for his extraordinary leadership in helping to steer this very important piece of legislation properly called the emergency timber salvage amendment through the House and making sure it survived the House and Senate conference committee.

I want to tell the gentleman that I am dismayed to put it mildly that the President might specifically point to our emergency timber salvage amendment as grounds for vetoing the emergency supplemental appropriations and rescissions package, first of all because the bill as the gentleman well knows appropriates Federal assistance, Federal aid for disaster victims in California, many of whom live in my congressional district and were victims of last winter's severe flooding, but also because, frankly, we need to ensure a greater supply to timber, and what better source than the dead and dying trees on Federal forest lands for the independent mills in the north part of my congressional district, which are

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very much a part of that regional economy, and the independent mills, frankly, are almost the backbone of our regional economy and have been beset by any number of pressures in recent years, not least of which is in my view an overregulation of our Federal forest lands and a moving away from utilizing those forest lands to produce a resource that the mills can then use to turn into products and to create and to save jobs.

Let me point out to the gentleman what I am sure he has already mentioned here tonight, and that is our amendment is vitally needed for fire-suppression purposes and the health of the forests. Our amendment would save lives and save, frankly, the Federal Government millions of dollars in fire-suppression costs that have been spent combating these raging wildfires that have burned out of control particularly in the western United States in recent years.

Second, it would generate revenues for the Federal Treasury by again allowing the salvage harvesting of those dead and dying trees on Federal forest lands. Our amendment, which the gentleman was able to incorporate into the appropriations bill when it left the full committee, was actually one of the revenue-positive aspects of that piece of legislation, and was one of the measures that were used to pay if you will for the expenditures in the bill, not least of which again was Federal disaster assistance for emergency victims in California.

Second, I would like to point out, as I am sure the gentleman has stressed here tonight, that our amendment is designed at taking some of those dead and dying and diseased trees out of Federal forest lands at a rate, frankly, that is far below the annual mortality rate on Federal forest lands, so what we have proposed here is a very reasonable amendment, one that is good for the environment, again good for forest health purposes, it is good forestry technique or silvicultural technique in that it allows the selective thinning of our forest lands targeting dead and dying trees, thinning those forest lands and managing those forest lands for again forest health and fire-suppression purposes.

I must say I am perplexed by the President's position on this particular issue. It seems like his administration has been, frankly, talking on both sides of this issue. In fact the very day before the President mentioned in his veto threat our emergency timber salvage amendment as grounds for a potential Presidential veto I has been assured by our former colleague and the new Secretary of Agriculture, Dan Glickman from Kansas, that he as the Agriculture Secretary intended to do all that he could as a key representative of the administration to ensure that we began selling more timber off of our Federal forest lands, and as the gentleman pointed out in his opening, when he was kind enough to

introduce me and yield time to me, my congressional district, the First Congressional District of northwest California, is home to all or part of four Federal forest lands. Our economy, our regional economy in northwest California is very much resource-dependent. We have traditionally relied upon the forest products industry as the primary source of steady, good-paying, industrial-type jobs, and, frankly, I would hope that the administration will reconsider their position, allow us to begin extracting that resource off of Federal forest lands for the benefit of our economies and the benefit of our local communities in our congressional district, in your congressional district, and in many congressional districts across the country.

Mr. TAYLOR of North Carolina. Would the gentleman perhaps consider this question: If the President signs this reclamation package, he will put 88,000 people back to work, and these are good, high-paying jobs, that is why we have at least three or four union endorsements here, we have the National Home Builders, we have many organizations endorsing this.

At a time when unemployment is relatively high across the country and especially high in the Pacific Northwest and other areas that would be impacted greatest by this, why would the President not sign a bill that would put 88,000 people back to work, would improve the forests' health, would actually by his own Forest Service admission, would really create a healthier forest? Why would he not do that?

Mr. RIGGS. If the gentleman would yield, I would be the last one to speculate for the administration on this particular question, and I know that the gentleman's question is somewhat rhetorical in nature. But he makes a very, very good point.

First of all we are talking about jobs that are not easily replaced in the local economies of resource-dependent communities. And I cannot fathom his motivation, except for the possibility that the President is afraid of frankly antagonizing a core constituency in the national Democratic Party, and that is the more militant environmental element which has made professional environmental activism a movement in America in recent years. They are the forces, the entrenched forces of the status quo on this particular issue. They are the ones that are frankly saying let those dead and dying trees rot on the forest floor rather than use those trees as a resource to produce a value-added product and again ensure good paying jobs in the forest products industry and the communities that depend on that industry as the primary source of their economic livelihood and economic well-being.

Mr. TAYLOR of North Carolina. A little while ago I mentioned the study that was published in the Wall Street Journal a couple of weeks ago pointed out this special interest in Washington of the environmental movement, and

this is to be distinguished from genuine, honest, working people out there that are concerned about the environment. I have three children, I am concerned about the environment.

□ 1946

Many people across the country are concerned. I am talking a special interest here that takes in over \$600 million by frightening people and does not come close to putting out the truth of what is happening. It is an organization that, according to the Journal report, is very far left. It voted 88 percent for Mr. Clinton in 1992. I know it is a special interest group that backs him.

But pandering to that group at the expense of these tens of thousands of wage earners out in that part of the country and doing it against the recommendations that he made himself, promises he made himself, with option 9 and other promises to get these people back to work, I cannot understand why he is picking this very left-wing group over this large part of America's working people, labor unions that want to go back to work, members, others, and I am just confused as to why this administration would pander to this small, elite group as opposed to mainstream America, why he would fly in the face of nearly two-thirds of the House of Representatives.

This was a bipartisan effort.

To get two-thirds, we had over 70 Democrats who voted and worked hard for the bill. The gentleman from Washington [Mr. DICKS] was particularly helpful to get the bill passed; the gentleman from Texas [Mr. WILSON], others were involved in this, as well as the gentleman from California [Mr. RIGGS], and it is all of us who are looking to help these working men and women get their jobs back, high-paying jobs in most cases, to get them back in the mainstream economy, and here the President is threatening to do that, to veto it. He is threatening because of the pressure from a group that does not know a sourwood from a white pine.

I had one of them testifying in the Committee on Interior the other day who testified he was an environmental educator. After he told me all the things that were happening in the forest, the world was coming to an end, I tried to ascertain his qualifications. I found out he did not have a degree in anything, and his practical knowledge was void. I asked him what portion of the country was owned by the Federal Government. It is about a third. He did not have a clue. I asked him how many acres were in the U.S. Forest Service system. It is 191 million acres. He did not know. I asked him how much of that 191 million acres could be harvested today. He said it all could. Less than 25 percent of it can be harvested today.

What I am saying is, with that kind of misinformation, the President would do well to listen to the working men and women in California and Washington and Oregon and other parts of this

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country as opposed to listening to a very elite special interest group that is giving him very bad information.

Mr. RIGGS. If the gentleman will hold, I think the gentleman makes an excellent point, and I would simply add at again the hard-core professional environmental element, which again has become, giving, I guess, the devil its due, a well-organized and well-funded movement in this country in recent years, having lost this debate through a fair and open process at the full Committee on Appropriations level when the bill was marked up, in fact, when the gentleman's amendment was voted on on an up-or-down basis, having lost the debate out here on this House floor when we debated at some length the merits of the gentleman's emergency timber salvage amendment, then employs a back-door mechanism, goes to the White House and convinces the certain figures in the President's administration that he really ought to veto this bill, which, as the gentleman pointed out, passed the House with strong bipartisan support, and I want to say that the President, frankly, is not, in my just intuitive sense here, he is not heeding his instinct. He is not doing what I think, frankly, he knows is the right thing.

I mean, after all, this is a President who campaigned on a promise of putting people first. Well, I want to point out to the President that the independent timber mills of this country have launched a new campaign called Putting Family Businesses First, so if the President met his campaign rhetoric, if he really does believe in putting people and families first, he can begin by reconsidering his threat to veto the gentleman's outstanding emergency timber salvage amendment.

Mr. TAYLOR of North Carolina. That falls in line with the President's declaration that these are large companies. These are not large companies. These are small, family-size businesses.

THE REAL ENVIRONMENTAL EXTREMISTS

The SPEAKER pro tempore (Mr. NETHEMOUTH). Under the Speaker's announced policy of May 12, 1995, the gentleman from Georgia (Mr. LEWIS) is recognized for 30 minutes as the designer of the minority leader.

Mr. LEWIS of Georgia. Mr. Speaker, I yield to the gentleman from Ohio (Mr. BROWN), my friend and colleague.

Mr. BROWN of Ohio. Mr. Speaker, I just sat here listening for the last hour as the gentleman from Georgia (Mr. LEWIS) did, and my friend, the gentleman from North Carolina (Mr. CLAYTON) talking about environmental extremists and environmental extremists.

The fact is that 70 percent of the American public wants to see not weaker but stronger environmental laws, and the real extremists and the radicals in this environmental debate are not people that support the

clean water laws and not people that support the clean air laws and not people that support public health laws, but the real extremists are a good many Republicans in this body who literally want to privatize some of the national parks, sell the national parks to large corporations, want to roll back a lot of the environmental laws, clean air laws, safe drinking water laws, laws that affect, that we have built a consensus in this country around that have given us the best public health in our history, that have given us the best, strongest laws in the world to protect our citizens against everything from breast cancer to tuberculosis. We have done that well in this country in the last 3 or 4 decades, something I am proud of.

I live in Lorain, Ohio. My back door looks out over Lake Erie. Twenty years ago, Lake Erie was declared dead in many parts. Part of the Cuyahoga River in Cleveland caught on fire.

Because of the efforts of the U.S. EPA, because of the commitment of a lot of people in Lorain, Cleveland, Medina, and all of northeast Ohio and other areas, we as a Nation were able to clean up that lake, so my daughters, Emily and Elizabeth, can now swim in Lake Erie, and other people, we drink the water, we can enjoy that lake recreationally, and it helps create jobs. It helps attract people to the Great Lakes to build their businesses and build their industries and employ people.

The extremists and the environmental issue are not those 70 or 80 percent of the American people that want clean air, pure food, safe drinking water for their children and their families and their grandchildren, but the people that want to sell off the national parks and allow the chemical companies and other polluters to write the laws that dismantle the best environmental laws in our history and the best environmental laws in the whole world, and that is what concerns me when I hear this kind of debate on the House floor.

Mr. LEWIS of Georgia. I say to my friend, the gentleman from Ohio (Mr. BROWN) I must agree with you. There is nothing radical about wanting to know what is in the air we breathe, what is in the water we drink or what is in the food we eat. I thank the gentleman very much for his comments.

I yield to the gentleman from North Carolina (Mr. CLAYTON).

CELEBRATING THE MOTOR-VOTER LAW

Mr. CLAYTON. Mr. Speaker, I also want to applaud my colleague, the gentleman from Georgia (Mr. LEWIS) for organizing this special order and his dedication and commitment to the cause of voting and the rights of civil rights. He has an impeccable reputation, and those people who know of his record know that, indeed, the gentleman from Georgia (Mr. LEWIS) is a long-distance runner in the struggle for civil rights and the opportunity for basic rights that the Constitution ar-

for all Americans, the right to vote for all our citizens.

He has faced all manner of discouragement, and yet he has never been discouraged. I just want to thank you. I say to the gentleman from Georgia (Mr. LEWIS), for not only this special order but for the life that you have lived and showing that America should be there for everyone and living the life that is exemplary, what you are. And so I am delighted to participate with you.

Mr. LEWIS of Georgia. I thank the gentleman for those comments.

Mrs. CLAYTON. The right to vote is a precious right because all rights derive from the voting right. Freedom of speech, which we know as the First Amendment, has far less meaning without the right to vote and to elect those persons who will uphold that fundamental freedom.

Freedom from illegal search and seizure, which we know as the fourth amendment, has little meaning if those who hold elective office do not stand up and protect those basic freedoms.

The term due process, the fifth amendment, providing important procedural safeguards, guaranteed by the Constitution, become mere words if those who we elect fail to protect them.

And the equality of treatment under the law, the 14th amendment, is a platitude we talk about that becomes a living reality only when, now only when, those we vote into office become champions of those rights.

The Constitution is a living and breathing document that gets its life from people we elect.

It is, therefore, clearly the best way to safeguard all of our rights is to exercise our most fundamental right, and that is the right to vote. And the first step in exercising that right obviously is to register. We in Congress have made registering to vote easy. The National Voter Registration Act of 1993, the so-called motor voter bill, was passed by Congress and signed into law by President Clinton May 20, 1993.

The motor voter act took effect January 1 of this year. It requires basically that we get our drivers licenses, we can register by mail, any time we get public services, those three areas allow us to register very easily. With this simplified registration, we expect citizens will register to vote.

Indeed, in North Carolina, since implementation of the motor voter law, some 85,000 new voters have registered, 85,000. The reason for the simplified registration procedure is actually to encourage more people to participate, and we know there has been a declining participation of citizens in elections, so we need to do that.

One author has said the deadliest enemy is not really those who live in foreign lands but really it is within ourselves. I want to say to you, JOHN, that the same thing could be applied to us in our own community or in our own private life. The deadliest enemy is not

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Table 4. The 60 timber sales addressed in this amended biological opinion. Sales denoted with an "O" have at least one murrelet-occupied unit. Sales denoted with a "U" have at least one surveyed murrelet-occupied unit. Sales containing unsurveyed units are denoted with a "NS". According to the Forest Service, most sale units for which murrelet occupancy has not yet been determined (i.e., "NS") have been surveyed in 1994 and will be surveyed for a second year in 1995. Most sales have been partially harvested during the last five years. The three right-hand columns indicate original sale volume (from the 1990 and/or 1992 biological assessments), volume remaining in 1995 (from Forest Service estimates), and the estimated volume harvested or removed from individual sales. Much of this timber was harvested before the murrelet was listed, or the timber was located in non-murrelet habitat and was not subject to the May 11, 1994 biological opinion. Volume is in thousand board feet.

Sale Name	Volume	Occupancy	Original Volume	Volume Remaining	Harvested Volume
Siskiyou N.F.					
Warrior*	160	O,UNS	2573	3027	0
Lobster*	29	O,U	5255	930	4325
Sugar Cube*	109	O,U	3510	2117	1393
Spr Trigger	158	O,NS	4620	5026	0
Raspberry	199	NS	17045	8790	8255
West Knob	64	NS	4720	2230	2490
Cat Track	37	NS	9429	9330	99
Father Oak	170	NS	5080	3760	1320
Homestead	59	NS	5430	5430	0
Slick John	46	NS	3270	2530	740
Taylor Ranch	52	NS	5350	1770	3580
Townberry	92	NS	3035	3820	0
Siuslaw N.F.					
Beamer 712	96	O	8900	8470	430
Beamer Bunch	92	O	10300	5512	4788
Berry Bushel	124	O,UNS	5500	3049	2451
Canal 606	71	O	9400	6819	2581
Cannon Carriage	47	O	6800	3294	3506
Fivemile Flume	142	O	7500	7500	0
Poland Ridge	30	O	4460	1593	2867
Formader 103	118	O	8300	8001	299
Formader 717	33	O	2400	2377	23
Franklin Ridge	117	O	9000	6446	2554
Garley Bluff	35	O	7600	2895	4705
Green Hill	131	O	8500	8500	0
Green Apple	113	O	10100	9964	136
Green Horn	22	O	8800	1945	3855
Indian Hook	146	O	15200	14561	639
Lower Bailey	16	O	3200	668	2532

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Mesa Skyline	161	O,U,NS	12700	12193	907
North Bell	21	O	6700	807	5893
Randall Salado	70	O,U	6500	2734	3766
Ryan Wapiti II	78	O	10700	6149	4551
Skywalker	59	O	7700	5381	2319
South Pardon	151	O	9200	8707	493
Square Clare	151	O,U	10700	7199	3501
Sugar Maple	53	O,U	6400	3606	2794
Sulphur	40	O,U,NS	6400	5218	1182
Uncle Condon	126	O	12600	8041	4559
Upperica 002	204	O	14000	13595	405
Upper McLeod	40	O	5100	1897	3203
Wapiti 305	43	O,U	2300	2281	19
Whodlock 403	113	O	5600	5313	287
Olympic N.F.					
Wynoochee	67	O	14800	2204	12596
West Boundary	45	O	6500	2527	3973
Camel	76	O	6050	2110	3940
Stevens	20	O,NS	3500	710	2790
Deodar	9	O	9200	800	8400
Not Bad	23	O	8000	1600	6400
You Who	13	O	8400	1750	6650
Squeegee	41	O	2690	2910	0
Mt. Baker/Snoq.					
Boyd Creek	20	O	3750	750	3000
Clear Creek	30	O	3400	2970	430
Fish Story	65	O	5300	2510	2790
Lotise	12	NS	5300	620	4680
Median BB	157	O,U	5800	5800	0
Old Grade	14	O	9900	2000	7900
Scraps	82	O,NS	6900	3764	3136
Seattle 2 BB	24	NS	3000	1750	1250
Stalwart	22	O	2800	2500	300
Wenatchee					
Carton	101	NS	5700	1300	4400
Total	4619*		419867	262050	157817

*prior to the Forest Service sale modification in the Feb. 8, 1995, biological assessment

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2. Conservation of occupied murrelet sites is the most important short-term management need for the conservation and recovery of the marbled murrelet (Marbled Murrelet Recovery Team 1994; USDA/USDI 1994a,b; Ralph et al. 1995). The Forest Plan and other activities such as habitat conservation planning on non-Federal lands should contribute to the long-term conservation of the species, assuming that most occupied sites are conserved in the near future.

To date, the Forest Service has determined that 18 murrelet-unoccupied units occur in 11 sales with occupied units. The Forest Service has not provided the Service with acreage figures for individual units, but they have provided volume estimates. The Service estimated that murrelet unoccupied units contain approximately 20 million board feet of timber volume. The Forest Service has yet to determine the occupancy status of 49 units in 17 sales and will complete murrelet surveys for most of these units in 1995; these units contain approximately 51 million board feet. Using these volume figures, the Service estimates that harvest of murrelet-unoccupied habitat in these 60 sales will range between 7% (20 mmbf/269mmbf) and 26% (71mmbf/269mmbf) of the suitable murrelet habitat remaining in these 60 sales (see Table 3). Therefore, 74% to 93% of the suitable habitat – and 100% of the known occupied habitat – in these sales will not be harvested if the Forest Service implements the reasonable and prudent alternatives described below. The Service does not believe that this loss of unoccupied suitable murrelet habitat is likely to jeopardize the continued existence of the species.

The following reasonable and prudent alternative applies to the timber sales listed in Table 4 (except for 9 sales listed below and the Lobster, Winnriver, and Sugar Cube sales) that have at least one unit located in suitable murrelet habitat that has been determined to be occupied by murrelets:

Cancel, suspend, or take action to otherwise withdraw from harvest, units determined to be occupied by marbled murrelets unless section 7 consultation is reinitiated and a determination is made, based on new information, that the harvest of such units is not likely to jeopardize the continued existence of the species.

The Forest Service and the Service are unable to identify a reasonable and prudent alternative for timber sales where all original sale units have been determined to be occupied by murrelets. The Forest Service has determined (April 21, 1995, letter from J. Lowe to M. Spear, G. Gunderson, pers. comm.) that sales where all original sale units are murrelet-occupied are Beamer 712, Fivemile Flume, Formader 103, Formader 717, Grass Hula, Green Apple, Upperten 002, Wheelock 403, and Statwart.

The following reasonable and prudent alternative applies to the timber sales listed in Table 4 that contain suitable murrelet habitat but for which occupancy has not yet been determined:

Determine murrelet occupancy of suitable habitat. The sale may proceed if all suitable murrelet habitat contained in the sale is determined to be unoccupied or when the sale is reconfigured to allow harvest of only unoccupied murrelet habitat, consistent with the reasonable and prudent alternative described above.

facility is needed for EPA's Lake Guardian research vessel, which provides important monitoring and research in the Great Lakes.

Mr. BOND. I thank the Senator from Michigan for his remarks. Let me assure him that I understand how important this project is to his State.

The bill rescinds funds for this project primarily because EPA is in the midst of a major reorganization of its research laboratories. EPA already has 29 laboratories, and there is great concern as to whether a new facility is needed or can be afforded at this time.

I understand the plans for the center include a super computer center, a training center, a docking and maintenance facility, and environmental research and analytical chemistry laboratories.

As part of the Agency's laboratory reorganization, EPA should study whether the docking and maintenance facility is critically important in Bay City, and if so, determine the associated construction and operating costs. This information should be provided to the Appropriations Committee as soon as possible so that it may be considered in the fiscal year 1996 appropriation bill for EPA.

The committee will give close consideration to the Senator from Michigan's recommendation for this project, as well as information from the EPA. While I cannot provide any guarantees for funding, I ensure my friend from Michigan that it will receive our serious and careful consideration.

Mr. LEVIN. I appreciate the assurances of the distinguished chairman of the Appropriations Subcommittee. I hope he will also work with me to ensure that EPA is able to fulfill its legal and moral obligations to acquire and remediate, if necessary, contaminated properties where acquisition by EPA has begun.

Mr. BOND. I will make every reasonable attempt, within available funds, to provide EPA with the ability to satisfy the Agency's obligation.

Mr. LEVIN. I thank the Senator from Missouri. His assurances and those expressed by Congressman LIVINGSTON regarding this project, improve the future prospects for the dock and maintenance facility, if not the entire project.

Mr. GORTON. Mr. President, today the Senate will vote to adopt, and send to the President for his signature, H.R. 1944, the revised fiscal year 1995 rescission bill. The legislation before the Senate today is an important first step toward a balanced budget. Once we get to that balanced budget—roughly 7 years from now—the Nation will be relieved of a terrific burden on its people and our economy. There's another form of relief in the rescission bill before us today, and it's specifically targeted at natural resource based communities across our Nation that have been destroyed by misguided Federal policies.

The emergency salvage timber provision in this legislation, which has been the subject of many intense negotia-

tions over the past few days, was included in the original rescission bill vetoed by the President, as a way to provide some short-term relief to timber communities in my State.

For 6 long years, rural timber communities in my State have been under siege from their Federal Government, and the implementation of environmental laws that have neglected to consider the impacts of these laws on people. Federal agencies have gone literally unchecked in their imposition of regulations, and restrictions on people and their property, and the cumulative effects of these actions have resulted in the destruction of rural communities and their way of life.

Mr. President, I know the people who live and work in these communities—Forks, Morton, Aberdeen Port Angeles, Colville—and I am proud to call them my friends. I get angry when actions by the Federal Government result in the destruction of their way of life. Forks, Washington is no different than any other rural community across America. What is different about Forks is that the community has largely been shut down. And what is different about Forks is that the Federal Government has done little, if anything, to acknowledge the fact that this community has forever been changed.

Today timber communities must fight for every log that gets to their mill. Timber communities fight against clever—and not so clever—environmental attorneys that file lawsuits to block Federal timber sales. If success is measured in the number of sawmills shut down, the number of small business with closed doors, the number of workers collecting unemployment checks, and number of close-knit families that have unraveled, then environmental extremists have been hugely successful.

It is fundamental to our ideal of the American dream that an individual have the ability to choose his or her livelihood. As a father and a grandfather, I see endless opportunities for my children and grandchildren, to pursue a career or life's work that will bring them great happiness. I believe this to be a tenet of our American way of life that should not be undermined or compromised, and this Senator will fight to protect and enhance such opportunities, not compromise them.

But Federal agencies and Federal environmental laws have compromised—if not sold out—the dreams of people in timber towns across my State. It was not enough that an individual's life's work was casually disregarded by his Government, but the response from the Federal Government—and from urban area leaders—to their plight was to simply suggest that timber workers just find another job. The arrogance of this statement speaks for itself.

To add insult to injury, this administration put forward a plan—Option 9—that would pour money—hundreds of millions of dollars—into myriad bureaucracies, training programs, forma-

and procedures that was supposed to ease the pain of a policy designed to essentially eliminate a vital part of our region's workforce and economy.

Mr. President, it is crystal clear to this Senator, and I hope to many of his colleagues, that the answer to this problem is not arrogant statements that look down upon the time honored way of life in our rural communities, or throwing money at the problem and hoping it will go away. The answer to this problem is simple, we must change the laws that have brought us to this point.

The legislation before us today is an emergency measure that will bring a degree of relief to people in timber communities in my State. It's a good starting point, but this Senator intends to address the underlying statutes that have brought us to this point in the first place.

The history of the emergency salvage timber provision dates back to what is commonly known as "section 318" of the fiscal year 1990 Interior appropriations bill. That provision was crafted by the chairman of the Appropriations Committee, Senator HATFIELD, together with other members of the Pacific Northwest congressional delegation, to address the timber supply shortage in our region. The provision included what is commonly known as "sufficiency language"—language insulating timber sales from frivolous legal challenges filed under various environmental statutes. The sufficiency language included in Section 318 was ultimately challenged all the way to the Supreme Court, where the Court ruled in favor of the goals and principles put forward in the legislation.

The emergency salvage timber provision in the rescission bill before the Senate today includes sufficiency language that was carefully crafted to mirror the sufficiency language in section 318. Why? Section 318 has been tested by legal challenge, and it has survived. The sufficiency language in H.R. 1944 does not attempt to chart new territories on this front, but to follow the carefully crafted language that has been held up under close scrutiny.

In 1992, this Senator offered an amendment on the Senate floor to the fiscal year 1993 Interior appropriations bill that would have granted the authority to the Secretary to move forward with salvage timber sales. During the Senate debate on that amendment, I cautioned the Senate that to allow salvage timber to continue to build up on the floor of our Nation's forests would result in devastating wildfires in future years. The Senate rejected that warning, and my amendment was soundly defeated.

And again, just last year, during the House-Senate conference on the fiscal year 1995 Interior appropriations bill, I attempted to offer an amendment that would give the Secretary the authority to offer salvage sales to improve forest

health conditions in our Nation's forests. My amendment was soundly rejected by the Democratic-controlled Congress.

But this year, things are different. Today, after years of struggle and suffering, the voices of timber families in Washington State have finally been heard. Today, the Senate will finally pass legislation, and send it to the President that will result in real relief for people in my State. Real relief, Mr. President, not simply promises on paper to be waved around at press conferences.

EMERGENCY SALVAGE TIMBER PROVISION

The provision in H.R. 1944 is virtually identical to that which passed the House and Senate in the conference report to H.R. 1158. The conference report to H.R. 1158 was, of course, vetoed by the President. The legislation before the Senate today includes four key modifications to the timber language included in the conference report to H.R. 1158. Allow me to briefly explain these changes, and the rationale behind each.

First, in subsection (c)(1)(A) of H.R. 1944, the change worthy of notice was included at the request of the administration. This Senator did not believe that this change was necessary because of the way that the entire provision is drafted. The fundamental concept of the timber language is that the Secretary has the discretion to put forward the salvage timber sales of which he approves. Consequently, I was baffled by the administration's demand that in this subsection language be inserted to give direction to the Secretary "to the extent the Secretary deemed, at his sole discretion, considers appropriate and feasible" that timber salvage sales "be consistent with any standards and guidelines from the management plans applicable to the National Forest or Bureau of Land Management District on which the salvage timber sale occurs." The administration demanded that some mention of "standards and guidelines" be included in this section. After a series of negotiations this is the compromise that the House and Senate worked out with the administration.

Subsection (c)(1)(A) gives the administration the broadest latitude to prepare the salvage timber sales that it deems appropriate. It already has the discretion to make the decision of whether or not to put forward a sale that is consistent the standards and guidelines of a particular forest unit or BLM district. Essentially this request by the administration and the language ultimately included at its request is nothing more than redundant.

Subsection (k) releases sales that were authorized under section 318 of the fiscal year 1990 Interior appropriations bill. Roughly 300 mbf of timber sales have been held up due to agency gridlock over the marbled murrelet. The administration asked the House and Senate to include in (k)(2) its definition of "occupancy." That change in

subsection (k)(2) of the Emergency Salvage Timber provision would undermine the ability to move these sales forward. That suggestion was soundly rejected by the House and Senate authors of the provision.

The language of (k)(2) requires that if a threatened or endangered bird species is "known to be nesting" in the sale unit that the administration not harvest that unit, but come up with an equal amount of timber in exchange for preserving that unit. This was written to give the administration flexibility to protect that individual sale unit in which the bird resides.

I wish to clarify that it is the intention of the House and Senate authors of this provision that the administration must provide physical evidence that the bird is "nesting" in that unit before the administration may enact (k)(2) to avoid the harvest of that sale unit.

The administration also requested that the date in subsection (k) be changed from 30 days for the release of the sales, to 45 days. The House and Senate authors of the provision included this request in H.R. 1944.

The third change included at the request of the administration relates to subsection (l)—Effect on Plans, Policies, and Activities—of the Timber provision. The subsection addresses the effect that salvage timber sales have on other multiple use activities. The provision was revised to create a limited exception to language that prohibits modifying land plans and other administrative actions as a consequence of implementing the section. The change, as requested by the administration, allows for modifications under extremely limited circumstances when needed to meet the salvage program agreed to by the conferees, or to reflect the particular effect of the salvage sale program.

It is critical to note that this modification expressly prohibits the administration from using salvage timber sales as the basis for limiting other multiple use activities. If the administration does need to modify an existing plan or program, project decisions, such as salvage sales, or other activities, cannot be halted or delayed by the modification. This is a critical point. This provision, as included in the conference report to H.R. 1158, was requested by the U.S. Forest Service as a way in which to ensure that the Forest Service would not be subject to legal challenge for the "cumulative effects" of a salvage sales when combined with another multiple use activity.

Last, the fourth change requested by the administration is, perhaps, the most interesting. The administration requested that the expiration date of the timber language be changed from September 30, 1997 to December 31, 1998. The administration aggressively pursued this request, with the express knowledge that its own agency officials in the Forest Service specifically asked the House and Senate conferees on H.R. 1158 to extend the Senate passed date

of September 30, 1998 to September 30, 1997. The Forest Service made this request of the conferees for budgetary and planning purposes. Despite this fact, the administration was undaunted, however, in their desire to change the date to December 31, 1998.

When asked why the administration needed the date to be changed to December 31, 1998, the response was this: the current administration cannot control the actions of future administrations.

This is certainly an interesting concept, and an idea that I totally reject. Why? We cannot predict what will happen between now and the next election. Will we continue to have a Republican controlled House and Senate? Will one body return back to Democratic control? This is the subject of elections, and should not be the subject of policy discussions. But this President, unlike almost any other in recent history, has made election politics a consideration in nearly every one of his policy deliberations.

Aside from these changes the principle of the timber language in this legislation remains the same. The timber language simply provides the President the ability to keep the multitude of promises that have been made and broken to the people who live and work in timber communities in the Pacific Northwest. It's just that simple.

Briefly, the three components of my amendment are: emergency salvage timber sales, Released timber sales, and option 9.

Emergency salvage timber sales: An emergency situation exists in our Nation's forests created by past wildfires, increased fuel load, or bug infested and diseased timber stands. Time and again, the administration has publicly committed to putting together an aggressive salvage timber program. My amendment gives the administration the ability to do just that.

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, but infested, downed, and burnt timber on these Federal lands nationwide, and to perform the appropriate revegetation and tree planting operations in the areas in which the salvage operations have taken place.

The bill language deems the salvage timber sales to satisfy the requirements of applicable Federal environmental laws. It also provides for an expedited process for legal challenges to any such timber sale, and limits administrative review of the sales.

Released timber sales: Language has also been included to release a group of sales that have already been sold under the provisions of Section 318 of the fiscal year 1990 Interior and Related Agencies Appropriations Act. 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 substitute volume for the sale unit.

Option 2: First, let me make clear that I do not agree with, or support, option 2. I do not believe it comes close to striking an appropriate balance between the needs of people and their environment. My amendment simply provides the Forest Service and Bureau of Land Management the authority to expedite timber sales allowed for under option 2. The administration promised the people in the region of option 2—Washington, Oregon and California—an annual harvest of 1.1 billion board-feet, and the time has come for it to keep its promise.

My amendment 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. Let me make clear that my amendment does not independently validate option 2 and does not restrict future legal challenges to option 2.

Mr. President, although I believe that the negotiations that have gone on over the timber language were unnecessary given the broad latitude that the administration has in this legislation, it is a part of the legislative process. More important than these negotiations, and the last minute interest of this administration in the legislation, in the opinion of this Senator, are the people in timber communities. The people in timber communities across my State will have won their first victory when the President signs this bill. It's a victory they deserve and one we should give to them. I encourage my colleagues to support H.R. 1944.

SUBSECTION (1) OF SECTION 301

Mr. HATFIELD. Mr. President, I want to take a moment to share with my colleagues my understanding of subsection (1) of section 301 of H.R. 1944. This subsection contains references to several specific Federal statutes as well as general references to Federal laws, including treaties, compacts, and international agreements. It is my understanding that the reference to treaties is made in response to allegations that passage and implementation of section 301 would result in violation of the North American Free Trade Agreement or the General Agreement on Tariffs and Trade.

FOREST HEALTH

Mr. LIEBERMAN. Mr. President, I voted for the rescission bill that passed the Senate earlier today because I believe so strongly that we must bring our Federal budget under control, and hopefully balance it in the near future. The longer we delay this process the more difficult our choices become in

cutting spending for truly important Federal programs. But I remain strongly opposed to the provision in this rescission bill to exempt Federal logging from all Federal environmental laws for 2 years under the justification of salvage harvests. Not only is this provision unrelated to spending cuts—and probably will be budget negative—it sets very inadvisable policy and precedent.

"Timber salvage" in this provision is defined broadly to include virtually all Federal forests, potentially including areas set aside or managed scientifically for critical watersheds, endangered species, roadless areas, or special recreation uses. It defines salvage to include "dead, dying, and associated trees"—which may include virtually all mature timber. And, it provides exemptions from citizens suits, appeals, and judicial review of agency actions. These actions do not appear warranted based on timber harvest data from public lands.

According to U.S. Forest Service data, since 1992 less than one-half of 1 percent of forest sales by volume have been delayed by citizen suits, and less than 3 percent by litigation. In the first 11 months of 1994 over 1 billion board feet of timber was harvested from the "Option 2" areas developed for salmon and spotted owl protection—very close to the 1.2 billion board feet promise made for the 12 month period of 1994. Further, U.S. Forest Service data shows that a substantial number of timber sales in this region have been offered but not taken due to lack of demand.

In a recent issue of Random Lengths, industry's weekly report on North American Forest Products Markets, the lead story states that:

Consensus has developed that there is simply too much production chasing too few orders. Most buyers and sellers now agree that unless demand revives in a big way, and soon, the industry is headed for widespread shutdowns and curtailments.

Futures prices for softwood continue to be very low in relation to past years, further indicating low demand relative to supply.

Many experts believe that the timber industry faces a crisis of demand, not supply. Even if this were not the case, it is doubtful that exemptions from Federal environmental laws would help smaller mills facing log shortages. Mills that are most threatened by log shortages from public lands often cannot outbid larger mills at auction. Auctions tend to be won by deep pockets, with no guarantee that mills needing logs the most will get them.

During debate over original passage of this bill Senator MURRAY offered a moderating amendment, which I voted for, that would have expedited but not eliminated implementation of environmental laws on Federal forest lands. It failed by only one vote. The timber provision that finally passed contains a change over previous language to expand the role of the Secretary of Agri-

culture to require his signature in order to implement new sales. Although I do not think this is a sufficient fix to this legislation, I do think it is essential for the administration to faithfully execute this authority in order to prevent serious abuse of the legal exemptions in this provision.

This timber provision is an unrelated, inadvisable, and unnecessary addition to the rescission bill that will only further confuse our efforts to bring thoughtful, balanced reform to Federal environmental protection, without sacrificing important safeguards.

Mr. BOND. Mr. President, over 2 months ago, the President first announced his determination to veto H.R. 1154, the rescission and supplemental appropriations bill agreed to by the joint House-Senate conference committee. In part, he decried the agreement on the basis of the rescission proposed for HUD. At the time, I said that rationale for the veto was groundless. It is ironic, and very significant, that this measure, H.R. 1944, which the President now finds acceptable, rescinds \$357 million more from HUD than did the bill which he vetoed.

Some have questioned why HUD is being cut by nearly \$8.5 billion, more than three-quarters of a total rescission of \$2.4 billion for the subcommittee. The answer is simple: That cut is roughly proportionate to that Department's available budgetary resources. Although HUD received new appropriations for fiscal year 1995 of \$26.7 billion, about 29 percent of the funding for our major agencies, it also carried into this fiscal year \$35.2 billion in unobligated prior year balances. In other words, it more than doubled its total available budgetary resources with this massive influx of unspent, unobligated funding.

We must cut HUD, and we must begin now if there is to be any hope of surviving the very constrained freeze-minus future for discretionary spending reflected in the budget resolution. The Congressional Budget Office analysis of the cost of the President's original budget submission for subsidized housing demonstrated a 50-percent expenditure increase over the next 5 years. This is a crisis. Unless we act now to curb the spiraling growth in outlays, we will have to make truly draconian cuts in the forthcoming fiscal year, including widespread evictions of low-income families from subsidized housing and accelerated deterioration in public and assisted housing across the country.

The solution is simple: Turn-off the pipeline of new subsidized units. That is the fundamental focus of the rescission bill. We have also restored cuts proposed by the House in CDBG, modernization, and operating subsidies, and redirected available resources toward another urgent aspect of restoring budgetary sanity to this out of control Department: demolish the failed housing developments, and put the rest

S10466

CONGRESSIONAL RECORD—SENATE

July 21, 1995

on a sound footing to survive the competition and subsidy reductions coming down the pike.

Amid all the debate over the future of HUD, it's important to keep in mind that over 4.8 million families receive Federal housing assistance, and half of them are elderly and disabled. It's also important to note that such housing assistance is expensive. This year HUD will expend \$36 billion for these programs, and costs are rising. In fact with the long-term contractual commitments previously made by HUD, the Government is currently obligated to pay over \$187 billion over the life of these contracts, some stretching out 40 years.

Given the long-term nature of these obligations and commitments, halting the budgetary growth of the Department can only be accomplished with a focused, determined, multiyear effort. Unless we begin now, with this bill, we will look ourselves into another multi-billion-dollar increment of long-term budget obligations. And this is only a first step, one of many in which we will go beyond the limited fixes and cuts that can be accomplished in a rescission bill. We must enact major reform legislation later this year, but this is a good, and very necessary, beginning.

The program reforms and initial reductions contained in the rescission bill are desperately needed to avoid a budgetary train wreck with the Department of Housing and Urban Development. Immediate enactment of this bill, and the enactment of further budgetary and legislative measures to address this crisis later this summer, provide us our best and perhaps only opportunity to avoid the displacement of thousands of low-income families, as well as further deterioration and loss of desperately needed affordable housing stock.

The President criticized a number of specific actions contained in the original conference agreement. Frankly, there are a number of recommendations in the revised measure before us which are even more troubling. But this bill is a compromise, not only between what was originally passed by the House more than 3 months ago and what was worked out in conference 2 months ago on H.R. 1158, but also with what the administration has subsequently demanded. I believe the agreement goes a long way toward minimizing adverse program impacts while increasing our contributions to deficit reduction. The bottom line, however, is that it provides almost \$8.4 billion in deficit reduction while protecting funding for activities critical to our Nation's veterans, investments in science and technology, the environment, and to meet the housing needs of lower income families.

For example, the rescission agreed to for national service was cut in half to \$106 million. While many of us are dubious of the whole premise of paying people to become volunteers, regardless of their financial resources, and we

have heard of instances where excessive payments have been made, the conferees decided to hold this program closer to the funding level established for fiscal year 1994. I might add that the rescission is only a quarter of the original House-passed rescission of \$418 million. The GAO is completing its report on the cost of this program which appears to confirm many of the concerns some of us have expressed. This report will serve as an important new factor in our consideration of funding for this program for fiscal year 1996.

In the case of housing for AIDS victims, the current rescission totals only \$18 million, a small fraction of \$168 million included in the House bill. Moreover, the rescission provides an increase in funding over the level requested by the President for this fiscal year.

The bill includes \$6.6 billion requested by the President for the disaster relief fund. This will enable FEMA to respond to needs in California resulting from the Northridge earthquake and disasters in other States, and to meet emergency needs arising out of the terrorist bombing in Oklahoma City and flooding in the Midwest.

Mr. President, I would also note that the bill contains \$5 million requested by the administration to enable FEMA to initiate flood mitigation activities authorized by the National Flood Insurance Reform Act of 1994. So this bill not only provides the resources to help flood victims recover from these disasters, but we are also taking steps to help avoid such flood damage in the future.

The bill also rescinds \$81 million from the Department of Veterans Affairs, including \$50 million from excess personnel costs and \$31 million from excess project reserves. This rescission will not impact VA's ability to provide patient care in any way. The rescission to personnel costs does not affect staffing. Simply, VA's budget included \$60 million more than they now estimate they need to pay salaries. Despite the assertion in the President's previous statement, no funding is being rescinded for medical equipment needs of VA hospitals and clinics.

In terms of the construction account, funds are rescinded from projects which are costing less than what was originally appropriated. Rescinding the funds ensures more careful management of the VA construction budget.

This measure rescinds a total of \$1.3 billion from EPA. Of the total, \$1.1 billion is rescinded from the drinking water State revolving fund. Because this program has not been authorized, EPA has been unable to obligate the funds. While I support the need for this program, until it is authorized no funds may be spent. The rescission bill leaves \$25 million for the drinking water State revolving fund should authorizing legislation be enacted.

Within the Superfund Program, \$100 million is rescinded. Because EPA fails to obligate on average \$100 million in

Superfund appropriations each year, this rescission is not expected to have a dramatic effect on program activities. On the other hand, it is intended to slow program spending pending enactment of major reform legislation which will likely change the scope and nature of cleanup activities previously planned.

This measure contains number of legislative provisions impacting EPA programs including the automobile inspection and maintenance program to ensure EPA is flexible in reviewing States' plans for I/M programs and considers assigning additional credits for effective decentralized programs.

Also included are two key EPA reforms: first, a moratorium on new Superfund site listings for the balance of this fiscal year, unless requested by the Governor or unless reauthorization legislation is enacted, and second, a prohibition on EPA from enforcing vehicular trip reduction programs.

Mr. President, this compromise bill is a good one. Rescissions for programs under the jurisdiction of the VA, HUD, and Independent Agencies Subcommittee total \$8.4 billion. The contribution toward deficit reduction is \$1.5 billion more than the level originally passed by the Senate, but is \$300 million less than that passed by the House. It is a compromise, but one which fairly balances the differing priorities of the two Houses and still maintains funding for critical activities.

Mr. President, this bill must be enacted without further delay to assure timely delivery of assistance to disaster victims in 41 States, including my own, as well as the Federal response in Oklahoma City. Perhaps equally important, immediate enactment of this measure is absolutely critical to beginning the process of expenditure reduction to prevent widespread disruption and dislocations as we enact the legislation necessary to bring the Federal budget back into balance in 7 years. We must eliminate this spending before Federal agencies obligate even more of the funds we have identified for rescission, making the task of saving money in low priority programs even more difficult.

This is a responsible bill. It cuts funding and contributes to deficit reduction. It provides emergency funding which is urgently needed to assist victims of disasters. It makes long overdue reforms and corrections in programs which need fixing. And this bill needs to be enacted without further delay. I urge its adoption.

Mr. HATFIELD. Mr. President, I ask unanimous consent that a letter addressed to the Democratic leader, which is identical to the letter sent to the Republican leader, from Alice Rivlin indicating the administration's full support for the bill as it was passed by the House, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXHIBIT 14PAGE 5

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Mark C. Rutzick, OSB # 84336
Alison Kean Campbell, OSB #93011
MARK C. RUTZICK LAW FIRM
A Professional Corporation
500 Pioneer Tower
888 S.W. Fifth Ave.
Portland, Oregon 97204-2089
(503) 499-4573

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

I hereby certify that I served the following:

1. Plaintiff's Motion for Summary Judgment;
2. Plaintiff's Memorandum in Support of Motion for Summary Judgment; and
3. Concise Statement of material Facts Not in Dispute

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Wells D. Burgess
Michelle L. Gilbert
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
601 Pennsylvania Avenue N.W.
8th Floor
Washington, D.C. 20044

Attorneys for Defendants

Adam J. Berger
Sierra Club Legal Defense Fund
705 Second Avenue, Suite 203
Seattle, Washington 98104

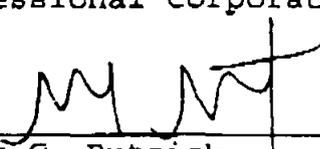
Attorneys for Proposed Intervenor-Defendants

on August 25, 1995, by delivering to said attorneys via Federal Express true copies thereof, certified by me as such, contained in sealed envelopes, prepaid, addressed to said attorneys at said attorneys' last known addresses, and deposited with Federal Express in Portland, Oregon, on said day.

Dated this 25th day of August, 1995.

MARK C. RUTZICK LAW FIRM,
A Professional Corporation

By: _____


Mark C. Rutzick
Alison Kean Campbell
Of Attorneys for Plaintiff



Date: Monday, September 11, 1995 10:36 am
From: SS57(W\$WILLIA)
Subject: 318 litigation - Here's the

schedule we agreed to friday:

- 1) Any motion to transfer by defendants to be filed by Sept. 15
opposition on motion to transfer by Sept 20
reply brief due Sept 25
- 2) Defendants will file their opposition and cross motion for
summary judgment on both nesting cases by Sept 27.
reply and opposition from plaintiffs by Oct. 4
reply by October 10, with the understanding that the court
will rule on transfer by then, and the whole package will go to
Rothstein if that's the end result
- 3) NFRC announced at the hearing that it would be filing a
third motion for summary judgment on the Forest Service 318
unawarded sales NOT withheld for murrelets. It will file that
by September 15, unless the sales are released
Our opposition and possible cross motion due Sept 29
Reply and opposition by October 6
Reply by defendants if we cross move by October 12



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

September 7, 1995

MEMORANDUM

TO: Jack Ward Thomas
Chief
Forest Service

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

I have received your August 31 memorandum regarding the progress the Forest Service has made to date to assess the availability of alternative timber volume pursuant to Section 2001 (k)(3) of P.L. 104-19.

I understand that this initial assessment was based on assumptions of what is meant by "like kind and value", that the harvest of any alternative volume would be in accordance with the standards and guidelines of the President's Northwest Forest Plan, and that timber currently being prepared pursuant to the President's Northwest Forest Plan would not be considered.

Since the issue of alternative timber volume will be influenced by negotiations between the government and the beneficiaries of 2001 (k)(3) we need to draw from as broad a base as possible including timber sales currently being prepared pursuant to the President's Northwest Forest Plan.

Accordingly I would appreciate a further assessment based upon a broader definition of "like kind and value" which approximates comparable quality, size, value, and species of the alternative timber volume offered. Your continued assessment should also assume that timber being prepared under the Northwest Forest Plan, especially sales being prepared to be offered for sale in FY97 and FY98, may be available to offer as alternative volume. If there are any negative consequences associated with this approach, please include this in your assessment. Finally, I recognize that this should be accomplished within the limits of available personnel and appropriated funds.

FOREST SERVICE

BUREAU OF LAND MANAGEMENT

SECTION 318	Volume released during summer 1995: 59 mmbf → 53 mmbf in OR 6 mmbf in WA	Volume released during summer 1995: 48 mmbf plus 16 mmbf (to be released by 9/7/95)
	Volume outstanding: 337 mmbf WA: 43 mmbf → 13 mmbf unawarded 30 mmbf suspended OR: 294 mmbf → 87 mmbf unawarded 207 mmbf suspended	Volume outstanding: 10 mmbf <i>only</i> <i>now</i>
	Status of outstanding volume: 4.8 mmbf being prepared for release 126 mmbf undergoing further review 206 mmbf not subject to release under "known to be nesting"	Status of outstanding volume: 10 mmbf not subject to release under "known to be nesting"
Nonsection 318 (FY 91-95)	Total volume outstanding: 109 mmbf East side: 104 mmbf West side: 5 mmbf	Total volume outstanding: 125 mmbf

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

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL,)
)
Plaintiff,)
)
v.)
)
)
DAN GLICKMAN, in his capacity)
as Secretary of Agriculture,)
BRUCE BABBITT, in his capacity)
as Secretary of Interior,)
)
Defendants.)

Civil No. 95-6244-HO

DEFENDANTS' OPPOSITION
TO PLAINTIFF'S SUMMARY
JUDGMENT MOTION

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1 KRISTINE OLSON
United States Attorney
2 888 SW Fifth Avenue
Suite 1000
3 Portland, OR 97204-2024
(503) 727-1008

4 LOIS J. SCHIFFER
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as Secretary of Agriculture,)
18 BRUCE BABBITT, in his capacity)
as Secretary of Interior,)
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Defendants.)
20)

Civil No. 95-6244-HO

DEFENDANTS' OPPOSITION
TO PLAINTIFF'S SUMMARY
JUDGMENT MOTION

21 INTRODUCTION

22 Plaintiff urges an expansive interpretation of subsection
23 2001(k)(1) that would exempt millions of board feet of timber,
24 above and beyond that which had been offered pursuant to Section
25 318, from statutorily mandated environmental protections. The

1 Ninth Circuit has explicitly held that such exemptions are to be
2 very narrowly construed, imposing a heavy burden on plaintiff in
3 defending its interpretation. Plaintiff has failed to satisfy
4 this burden, as its interpretation violates basic rules of
5 statutory construction and is built on a number of indefensible
6 assumptions.

7 First, in claiming that the phrase "subject to section 318"
8 really means "as described in", plaintiff fails to accord the the
9 term "subject to" its commonly understood meaning. Moreover,
10 plaintiff's interpretation violates the basic rule of statutory
11 construction that when Congress uses particular phrase in one
12 portion of the statute but omits it in another, the difference in
13 language is presumed to be intentional. Plaintiff's
14 interpretation ignores the fact that in numerous other places in
15 section 2001, when explaining the geographic scope of a
16 particular subsection, Congress explicitly used the words "as
17 described in." Plaintiff's interpretation, which converts
18 "subject to" into a geographic descriptor gives no meaning to
19 Congress's change in word choice in subsection 2001(1)(k).

20 In order to give meaning to the term "subject to Section
21 318", it is necessary to read section 318 as a whole, recognizing
22 that it contained more than plaintiff's selected reference to
23 Washington and Oregon. As the Supreme Court expressly held in
24 Robertson v. Seattle Audubon Soc'y, 503 U.S. 439 (1992), section
25 318 limits the geographic scope of application of its substantive

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1 provisions to western portions of Oregon and Washington and
2 contains express temporal limits on the statute's application.
3 Section 318 only applied to timber management on these lands in
4 fiscal years 1989 and 1990, and expired September 30, 1990 except
5 that authorized sales could go forward subject to section 318.
6 This temporal limitation, as well as the geographic one, make
7 clear that the term "subject to section 318" means more than "as
8 described in." Section 318 sales remain "subject to" section
9 318's geographical and temporal limitations; fiscal year 1991-95
10 sales, on the other hand, do not. Accordingly, plaintiff's
11 interpretation must be rejected.

12 Plaintiff also relies on a number of indefensible
13 assumptions. To support its strained interpretation, plaintiff
14 relies heavily on tables prepared by the Bureau of Land
15 Management (BLM) as allegedly representing the agency's
16 interpretation of the scope of section 2001(k). In expounding
17 upon this point, however, plaintiff omits the critical fact that
18 the chart was generated at the specific request of an attorney
19 representing a number of timber companies for a list of all
20 previously offered BLM sales (which apparently was then shared
21 with plaintiff's counsel). The tables' identification of 318
22 sales as well as fiscal year 1991-95 sales was made in response
23 to this express request and was never intended as an indicator of
24 BLM's understanding of the scope of subsection 2001(k)(1).

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1 Plaintiff's theory also is dependent upon an inaccurate
2 manipulation of timber volume numbers. In attempting to use
3 Senator Hatfield's reference to the subsection 2001(k)(1)'s
4 potential release of 375 million board feet of timber in western
5 Oregon, plaintiff suggests a convoluted approach for calculating
6 the 375 figure to include non-318 sales. Plaintiff's calculation
7 is riddled with errors. For example, acceptance of plaintiff's
8 calculations presupposes that, back in March of 1995 when the 375
9 volume figure was mentioned, Senator Hatfield (or whomever
10 supplied him with the number), was sufficiently prescient to
11 factor in the future (and at that time undecided) release of a
12 specific volume of suspended 318 sales to arrive at the 375
13 figure. Moreover, the calculation omits, among other numbers,
14 over approximately 87 million board feet of additional 318 volume
15 of unawarded Forest Service sales in western Oregon.

16 With the numerous flaws in the structural underpinnings of
17 its argument exposed, plaintiff is left with its a one-sided
18 presentation of selected legislative history as support for its
19 interpretation. Plaintiff's recitation of selective comments and
20 a post-enactment letter signed by a handfull of legislators fails
21 to adequately address the numerous statements supporting the
22 agencies' interpretation. In any event, plaintiff's version of
23 what the legislative history meant is inadequate to overcome the
24 agencies' interpretation which is consistent with the plain
25 language of the statute.

1 Finally, plaintiff's argument must fall in light of the
2 deference due the agencies' interpretation. Recognizing that the
3 agencies charged with administering a statute are in the best
4 position to interpret it for purposes of implementation, courts
5 have long stressed that deference be given the agency's
6 interpretation so long as it is a permissible one. The
7 inaccurate assumptions upon which plaintiff's theory rests
8 highlights the dangers inherent in rejecting the interpretation
9 by the agencies charged with administering the statute in favor
10 of the one-sided interpretation urged by a private litigant such
11 as plaintiff.

12 STATEMENT IN OPPOSITION
13 TO PLAINTIFF'S STATEMENT OF FACTS

14 A. Section 318 Sales

15 Section 318 of the Department of the Interior and Related
16 Agencies appropriations Act, Fiscal year 1990, Pub. L. 101-121
17 (Section 318), "established a comprehensive set of rules to
18 govern harvesting within a geographically and temporally limited
19 domain. By its terms, it applied only to 'the thirteen national
20 forests in Oregon and Washington and [BLM] districts in western
21 Oregon known to contain northern spotted owls.'" § 318(i). It
22 expired automatically on September 30, 1990, the last day of
23 Fiscal Year 1990, except that timber sales offered under § 318
24 [hereafter section 318 sales] were to remain subject to its terms
25 for the duration of the applicable sales contracts. §318(k)." Robertson v. Seattle Audubon Soc., 503 U.S. 429, 433 (1992). The

1 thirteen national forests in Oregon and Washington known to
2 contain northern spotted owls are Olympic, Mt. Baker-Snoqualmie,
3 Gifford Pinchot, Okanogan, Wenatchee, Siuslaw, Mt. Hood,
4 Willamette, Deschutes, Winema, Umpqua, Rogue River, and
5 Siskiyou.¹ While section 318 sales were initially offered in
6 fiscal years 1989 or 1990, a number of section 318 sales were not
7 awarded until after September 30, 1990, with at least one being
8 awarded in 1995. See Declaration of Jerry Hofer at ¶ 7, attached
9 hereto as Exhibit A; Declaration of Stephen J. Paulson at ¶ 5
10 (attached to defendants' opposition to plaintiff's motion for
11 temporary restraining order). Several section 318 sales have not
12 yet been awarded. Hofer Dec. at ¶ 3.

13 B. The 1995 Rescissions Act

14 The Rescissions Act of 1995 (the Act), Pub. L. 104-19 §2001
15 (1995), has three primary components, subsection 2001(b)
16 (describing expedited procedures for proceeding with salvage
17 timber sales); subsection 2001(d) (directing expedited
18 implementation of the Pacific Northwest Forest Plan) and
19 subsection 2001(k) (seeking to resolve continuing delays in the
20 release of the remaining section 318 sales). Both subsections
21 (b) and (d) provide for expedited judicial review similar the
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24 ¹ See Standards and Guidelines C-2, accompanying Record
25 of Decision for Amendments to Forest Service and Bureau of Land
26 Management Planning Documents Within the Range of the Northern
27 Spotted Owl (ROD).

1 section 318 procedure for expedited review. Compare subsections
2 2001(f)(1)-(7) with subsections 318(g)(1)-(3).

3 Throughout section 2001, but not in subsection 2001(k)(1),
4 Congress used the phrase "as described in" to refer to geographic
5 areas covered by a particular subsection. See subsection
6 2001(b)(1) (directing the Secretary to prepare, advertise, offer
7 and award contracts for "salvage timber sales from Federal lands
8 **described in** subsection (a)(4)"); subsection 2001(d) (directing the
9 Secretary to "expeditiously prepare, offer and award timber sale
10 contracts on Federal lands **described in** the [April 13, 1994
11 ROD]"); subsection 2001(g) (directing the Secretary not to
12 "undertake any salvage timber sale under subsection (b) with
13 respect to lands **described in** paragraph (2)") (emphasis added).

14 Subsection 2001(k)(1) of the Act directs the Secretaries of
15 the Interior and Agriculture to, inter alia:

16 act to award, release, and permit to be completed . . .
17 all timber sale contracts offered or awarded before
18 that date in any unit of the National Forest System or
19 district of the Bureau of Land Management **subject to**
20 **section 318** of Public Law 101-121 (103 Stat. 745).

19 C. Outstanding Sales

20 Of the section 318 sales that were offered but not awarded,
21 the Forest Service data, current as of August 25, 1995, shows
22 that there are 17 unawarded section 318 sales located in eight
23 national forests located in the western portions of Washington
24 and Oregon See Declaration of Jerry Hofer at ¶ 3 (attached
25 hereto as Ex. A). As of August 25, 1995, the overall volume of

1 unawarded Forest Service section 318 sales was approximately 99
2 million board feet, and of that amount, approximately 87 million
3 board feet was located in western Oregon. Id.

4 As of August 25, 1995, the Forest Service data also shows
5 that there are 58 section 318 sales that had been offered and
6 awarded, but subsequently delayed or suspended in western
7 portions of Washington and Oregon. Id. at ¶ 4. As of August 25,
8 1995, the total volume of awarded, but delayed or suspended
9 section 318 sales was approximately 237 million board feet, and
10 of that amount, approximately 207 million board feet was located
11 in western Oregon. Id. In addition to the amounts described
12 above, since April 1995, a number of previously suspended or
13 delayed units of section 318 sales have been released by the
14 Forest Service. Id. at ¶ 5.

15 In addition to the section 318 sales described above, the
16 Forest Service has estimated, according to its most recent review
17 of timber sale files for all national forests located in
18 Washington and Oregon, that approximately 109 million board feet
19 of timber was offered or awarded (but delayed or suspended)
20 pursuant to sales offered in fiscal years 1991 through July 27,
21 1995 (non-318 sales). Id. at ¶ 6.

22 As of April 1995, BLM data showed an estimated volume of
23 approximately 70 million board feet of section 318 sales that
24 were unawarded or delayed or suspended. See Declaration of
25 Lyndon A. Werner at ¶ 3, attached hereto as Ex. B (referring to

1 tables attached to Ragon Declaration). At that time, BLM data
2 also showed an estimated volume of approximately 125 million
3 board feet timber that was offered or awarded (but delayed or
4 suspended) pursuant to sales offered in fiscal years 1991 through
5 July 27, 1995. Id. (referring to Tables 2 and 3).

6 D. Plaintiff's Alleged Injury

7 Plaintiff relies on general allegations that its members are
8 "statutorily entitled to the award and release of one of [sic]
9 timber sales under § 2001(k) of Pub. L. 104-19." Complaint ¶ 4.
10 Plaintiff does not identify the location (including which
11 national forest or BLM district, or even which state, Washington
12 or Oregon) of any of the sales which its members are "statutorily
13 entitled" to have released or provide information to identify
14 whether the sales plaintiffs demand are non-section 318 fiscal
15 years 1991-95 sales rather than section 318 sales.

16 ARGUMENT

17 I. THE PLAIN MEANING OF THE STATUTE DOES
18 NOT SUPPORT PLAINTIFF'S ONE-SIDED INTERPRETATION

19 Plaintiff bears an extraordinarily heavy burden of proof in
20 order to have its interpretation, which effectively would exempt
21 numerous timber sales from statutorily mandated environmental
22 protections, adopted. The Ninth Circuit recently explicitly held
23 that exemptions from the Endangered Species Act, 16 U.S.C. §§
24 1531 et seq., and the National Environmental Policy Act, 42
25 U.S.C. §§ 4321 et seq., must be strictly construed. Mount Graham
26 Coalition v. Thomas, 53 F.3d 970, 975 (9th Cir. 1995). In ruling

1 on a legislative exemption from the ESA and NEPA, the Ninth
2 Circuit held that "[t]o extend an exemption to other than those
3 plainly and unmistakably within its terms and spirit is to abuse
4 the interpretative process." Id. (quoting A.H. Phillips, Inc. v.
5 Walling, 324 U.S. 490, 493 (1945)). Plaintiff thus bears a heavy
6 burden of demonstrating that timber sales that were not offered
7 "subject to section 318" are included within the parameters of
8 subsection 2001(k). Mt. Graham Coalition, 53 F.3d at 975.
9 Plaintiff cannot satisfy this burden.

10 A. Plaintiff's Alleged Plain Language Interpretation
11 Violates Basic Rules Of Statutory Construction

12 Plaintiff argues that "there is no ambiguity" that the
13 phrase "subject to section 318" defines the geographic range of
14 section 2001(k) to mean all national forests in Oregon and
15 Washington. "Subject to" is a clearly-defined term of art that
16 means "governed or affected by." Black's Law Dictionary, 1594
17 (4th ed. 1966); cf. Pacific Gas & Elec. Co. v. Securities &
18 Exchange Com'n, 127 F.2d 378, 382 (9th Cir. 1942) (upholding
19 agency definition as "susceptibility to control"). "Subject to"
20 does not mean "described in." Plaintiff's interpretation, which
21 disregards the phrase's common meaning, violates the basic rule
22 of statutory construction that when Congress uses a particular
23 phrase in one section of a statute but omits it in another, the
24 difference in language is presumed to be intentional. See
25 Deberry v. Sherman Hosp. Ass'n, 769 F.Supp. 1030 (N.D. Ill.
26 1991) (citing Russellov. United States, 464 U.S. 16, 21 (1983));

1 Donovan v. U.S., Through Farmers Home Admin., 807 F.Supp. 560
2 (S.D. 1992), aff'd, 19 F.3d 1267 (8th Cir. 1994).

3 In defining the scope of application of both subsections
4 2001(b) (addressing salvage timber sales) and 2001(d) (directing
5 expedited implementation of the Pacific Northwest Forest Plan),
6 Congress chose the specific phrase "as described in" to refer to
7 the relevant geographic area.² Congress departed from its
8 practice of using the term "described in" in subsection
9 2001(k) (1), and instead chose to use the phrase "subject to
10 section 318." Plaintiff's interpretation does not attribute any
11 meaning to this change, and violates established rules of
12 statutory construction.

13 To give meaning to Congress's change in word choice, it is
14 necessary to recognize that section 318 is something more than a
15 geographic descriptor, as the Supreme Court has expressly held.
16 While section 318 did limit the scope of its geographic
17 application (albeit to a much more limited area than suggested by
18 plaintiff), it also was of limited temporal scope. The Supreme
19 Court in Robertson expressly held that section 318 "established a

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21 ² For subsection 2001(b), that area was "Federal lands
22 **described in** subsection (a) (4)," which referred to the lands
23 within the National Forest System and the Federal lands under the
24 jurisdiction of the BLM. Subsection 2001(g) specifically states
25 that no salvage timber sales under subsection (b) shall be
26 undertaken with "respect to lands **described in** paragraph (2),"
27 which refers to particular Federal lands including the National
28 Wilderness Preservation System, certain roadless areas and any
areas where timber harvesting is prohibited by statute. For
subsection 2001(d), that area was "Federal lands **described in** the
[April 1994 ROD]."

1 comprehensive set of rules to govern harvesting within a
2 geographically and temporally limited domain." 503 U.S. at 433
3 (emphasis added). As the Robertson Court explained, section 318
4 expired on September 30, 1990, and only actual sales that had
5 been offered during the effective date of the statute "remain[ed]
6 subject to its terms" Id. Only by recognizing that
7 "subject to section 318" imposes both a temporal as well as
8 geographic limitation, can the term "subject to" be given a
9 meaning other than "as described in." When read in light of the
10 basic statutory construction rule, subsection 2001(k)(1) can only
11 be interpreted as applying to section 318 sales, as those sales
12 are all that remain subject to section 318, consistent with both
13 its temporal and geographic limitations.

14 Indeed, unless the temporal limitation of section 318 is
15 recognized, any interpretation leads to the absurd result of
16 requiring the agencies to revisit all sales ever offered in all
17 of Washington and Oregon. See Defendants' Memorandum in Support
18 of Motion for Summary Judgment at 11-14 (hereafter "Defs' Memo").
19 Such a result does not comport with the purpose of the statute
20 and creates conflicts with other subsections of section 2001.
21 The purpose of section 2001 is to address delays in processing
22 certain timber sales. 141 Cong. Rec. H 5559 (Rep. Taylor
23 describing "section 318 timber that has been approved and been
24 waiting 5 years now, past all regulations, been waiting 5 years
25 to be put on the market"). Without section 318's temporal

1 limitation, under plaintiff's interpretation, subsection 2001(k)
2 could be read to require the immediate release of sales offered
3 anytime up to the date of enactment, July 27, 1995, regardless of
4 whether those sales have been delayed. Such a result clearly is
5 not consistent with the overall purpose of the statute.

6 Moreover, application of subsection 2001(k) to all sales
7 offered before July 27, 1995, with no consideration of section
8 318's temporal limits, could result in conflicts with other
9 portions of section 2001. For example, the BLM had offered a
10 sale in July 1994 pursuant to the Pacific Northwest Forest Plan.
11 See Second Declaration of Lyndon Werner at ¶ 3 (attached hereto
12 as Ex. C). After a protest was brought challenging the sale as
13 not complying with certain buffer requirements under the Plan,
14 the BLM agreed and readjusted the boundaries. Id. at ¶ 5. The
15 BLM has been preparing to reoffer the sale, as per subsection
16 2001(d)'s requirement of expedited implementation of the plan.
17 Id. at ¶ 6. However, under plaintiff's reading of subsection
18 2001(k)(1), because the sale was originally offered before date
19 of enactment, BLM should not be able to proceed with this sale
20 after correcting mistakes to comply with the Forest Plan.
21 Clearly Congress did not intend to create an internal conflict in
22 its statute.

23 B. The Agencies' Interpretation Is Supported
24 By Basic Rules Of Statutory Construction

25 Plaintiff erroneously argues that the agencies'
26 interpretation violates three different rules of statutory

1 construction. First, plaintiff claims that the agencies
2 interpretation of "subject to section 318" violates a rule that a
3 modifying phrase apply only to its immediate antecedent. The
4 rule referred to by plaintiff, however, is subject to a specific
5 exception applicable here: the rule does not apply when it leads
6 to "absurd results." See 2A Sutherland Statutory Construction,
7 §47.18, 47.30 (5th ed. 1992); Defs' Memo at 11-12. Adopting
8 plaintiffs' interpretation that "subject to section 318" applies
9 to modify only "in any unit of the National Forest System or
10 district of the [BLM]," leads to absurd results. See supra at
11 10-13.³ Plaintiff's construction not only requires this Court
12 to convert "subject to" into a mere geographic reference, it
13 would lead to the absurd result of leaving this release provision
14 without a timeframe -- requiring the release of all timber sales
15 offered in this region since the beginning of their management by
16 the Forest Service and BLM. The provision's end point is clear,
17 all remaining timber offered or awarded prior to the date of
18 enactment, but it has no beginning unless "subject to section
19 318" defines the timeframe as well as the area. Moreover,
20 plaintiff's requirement would require the immediate release of
21 timber sales offered as recently as July 26, 1995. These sales
22 have not been subject to the delays Congress intended to address.

23
24 ³ In addition, as no Forest Service or BLM lands remain
25 "subject to" section 318 within the commonly understood meaning
26 of the term, plaintiff's interpretation renders the entire phrase
27 meaningless. See Defs' Memo at 11-14.

1 Since Congress cannot have intended an absurd result, the logical
2 interpretation must be adopted. Pacificcorp v. Bonneville Power
3 Administration, 856 F.2d 95, 97 (9th Cir. 1988).

4 Plaintiff also argues that the agencies' interpretation
5 violates the rule of construction that a statute must be
6 interpreted to give effect to all words. Pl. Mem. at 11.
7 Neither of the examples cited by plaintiff support this argument.
8 First, contrary to plaintiff's assertion, the agencies'
9 interpretation does give effect to the phrase "offered or awarded
10 before that date [of enactment of the law]." By definition,
11 section 318 sales were offered in fiscal years 1989 or 1990.
12 However, what plaintiff continues to conveniently ignore is that
13 many of these offered section 318 sales were not awarded until
14 after expiration of fiscal year 1990, in the later years leading
15 up to enactment of section 2001. See Hofer Dec. at ¶ 7 (See
16 Exhibit 7); Paulson Dec. at ¶ 5 (attached as Ex. A to Defs Opp. to
17 TRO). This is not surprising as under section 318, sales were
18 initially offered up to September 30, 1990; thus, their award
19 necessarily occurred after that date.

20 Plaintiff next argues that the agencies' interpretation does
21 not give meaning to the phrase "in any unit of the National
22 Forest System or district of the [BLM]." Pl. Mem. at 12. The
23 agencies' interpretation recognizes that this phrase clarifies
24 that subsection 2001(k)(1) applies to both Forest Service and BLM
25

1 lands.⁴ Absent recognition of this clarification, plaintiff's
2 interpretation could be accused of violating the same rule. If
3 plaintiff were correct that the phrase "subject to section 318"
4 were a geographic descriptor, as section 318 describes its
5 geographic scope to explicitly cover both BLM and national forest
6 lands, Congress simply could have stated "Federal lands subject
7 to section 318" in defining the scope of subsection 2001(k)(1).⁵
8 Under plaintiff's interpretation, there would have been no need
9 to specify national forest and BLM lands.

10 Plaintiff also incorrectly asserts that the agencies'
11 interpretation violates the statutory construction rule that
12 "Congress does not intend sub silentio to enact statutory
13 language that it has earlier discarded in favor of other
14 language." Pl. Mem. at 13. Plaintiff argues that Congress's
15 rejection of an amendment offered by Senator Murray supports

16
17 ⁴ Section 318 defined this area in terms of geography,
18 time and substantive provisions that "apply solely to the
19 thirteen national forests in Oregon and Washington and Bureau of
20 Land Management districts in western Oregon known to contain
21 northern spotted owls," (318(i)), "until September 30, 1990,"
22 except that all of the remaining section 318 sales continue
23 "subject to the terms and conditions of this section for the
24 duration of those sale contracts." 318(k). Reference to section
25 318 clearly was intended to limit subsection 2001(k)(1)'s release
26 provision to the area and timeframe within which these national
27 forest and BLM lands were "subject to section 318." The
28 government's construction gives meaning to every word of this
provision, and does not attempt to turn the phrase "subject to"
or any other phrase into something it is not.

⁵ Indeed, that is how BLM lands and national forests
lands were referred to in subsection 2001(d), describing the
scope of that subsection as applying to "Federal lands described
in [the ROD]."

1 plaintiff's conversion of "subject to" into a geographic
2 descriptor. This argument fails because the Murray language was
3 fundamentally different from the agencies' interpretation of the
4 current law. First, Senator Murray's amendment would have only
5 released "each timber sale awarded pursuant to section 318," not
6 unawarded sales. 141 Cong. Rec. S 4870 (daily ed. March 30,
7 1995). It is this difference, the release of offered or awarded
8 sales, that distinguishes the Murray amendment from section
9 2001(k). See 141 Cong. Rec. H 5050. Indeed, a significant
10 volume of timber is included in unawarded section 318 sales. See
11 Hofer Dec. at ¶ 3 (Exhibit A).

12 Second, Senator Murray's section 318 release language was,
13 like section 2001, part of a larger timber salvage amendment that
14 presented more significant differences from the approach of
15 section 2001. Senator Gorton, in his comparison of the two
16 approaches, described both section 318 release provisions as
17 applying to only the remaining section 318 timber sales:

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

1 141 Cong. Rec. S 4875 (March 30, 1995) (emphasis added). Thus,
2 the Senate's rejection of the Murray amendment can have no
3 significance for this case.

4 II. THE LEGISLATIVE HISTORY OF THE STATUTE
5 DOES NOT CONFIRM PLAINTIFF'S INTERPRETATION
6 OF THE PLAIN LANGUAGE OF THE STATUTE

7 As an initial matter, adherence to the plain meaning rule
8 requires this Court to construe subsection 2001(k)(1) without
9 reference to legislative history. Pursuant to the plain meaning
10 rule, "if the language of a statute is clear and there is no
11 ambiguity, then there is no need to 'interpret' the language by
12 resorting to the legislative history or other extrinsic aids."
13 Church of Scientology v. U.S. Dept. of Justice, 612 F.2d 417, 421
14 (9th Cir. 1979). The rule recognizes that "in the vast majority
15 of its legislation Congress does mean what it says and thus the
16 statutory language is normally the best evidence of congressional
17 intent." Id. The Supreme Court and the Ninth Circuit have
18 emphasized that resort to legislative history is warranted when
19 the plain meaning of a statute yields "unreasonable" results.
20 Id. at 422, (citing American Trucking Assns., 310 U.S. 534, 543-
21 44); United States v. Missouri Pac. R.R. 278 U.S. 269, 278
22 (1929) ("where the language of an enactment is clear and
23 "construction according to its terms does not lead to absurd or
24 impracticable consequences, the words employed are to be taken as
25 the final expression of the meaning intended."). No such
26 unreasonable result obtains by construing subsection 2001(k)(1)

1 as only applicable to the remaining section 318 sales. However,
2 even if the legislative history is considered, it does not
3 undermine the agencies' interpretation of the statute.

4 A. The House And Senate Reports

5 In its selective recitation of legislative history,
6 plaintiff disregards the clear language of the House Report,
7 where Representatives Dicks and Taylor introduced the provision,
8 in favor of an ambiguous Senate report. The House Report states
9 clearly that 2001(k)(1) was intended "to release a group of sales
10 that have been already sold under the provisions of section 318 .
11 . . ." 104 H. Rept. 71 (legislative history referred to herein
12 is attached as Ex. D). The Senate Report is not inconsistent
13 with the agencies' construction. It simply states that the
14 provision releases "a group of sales that have already been sold
15 in the region affected by section 318 . . ." S. Rept. 104-17
16 (daily ed. March 24, 1995). Plaintiff appears to claim that any
17 reference to an area that was "affected by" section 318 can only
18 be read as supporting plaintiff's limited geographic
19 interpretation, rather than a description of the region and sales
20 affected.

21 B. Individual Legislator's Statements

22 Plaintiff can only cite one statement by Representative
23 Taylor, the co-author of section 2001, as alleged clear support
24 for plaintiff's interpretation. However, that statement,
25 describing the provision as including timber sales "offered in
26

1 fiscal year 1991 and some more recently," 141 Cong. Rec. H 3233
2 (March 15, 1995), was made early on in the legislative process
3 and is contradicted by Representative Taylor's later statements
4 that are clearly limited to the remaining section 318 timber
5 sales. 141 Cong. Rec. H 5558 ("the section 318 timber") (relevant
6 portions attached hereto as Ex. E).

7 Senator Gorton, on the other hand, repeatedly described
8 subsection 2001(k)(1) as applying to section 318 sales. See 141
9 Cong. Rec. S 4875 ("the second and third elements in both
10 amendments have to do with option 9 and with so-called section
11 318 sales"); 141 Cong. Rec. S 10464 (the subsection is intended
12 to "release a group of timber sales that have already been sold
13 under the provision of section 318).⁶

14 Consistent with these statements, Senator Hatfield also
15 described Senator Gorton's amendment only in terms of applying to
16 section 318. See Defs' Memo at 20. Plaintiff's creative attempt
17 to use Senator Hatfield's reference to 375 million board feet to
18

19 ⁶ Plaintiff attempts to dismiss these statements by
20 arguing that because Senator Gorton did not say that the
21 amendment applied only to section 318 sales, it should be assumed
22 that he meant that it could also apply to other sales. Pl. Mem.
23 at 24. This proposed method for discounting the significance of
24 Senator Gorton's comments is not supported by any accepted means
25 for interpreting legislative history. Indeed, under plaintiff's
26 theory, unless a congressperson expressly states that a provision
27 applies exclusively to some matter, it should be assumed that it
28 also may apply to other matters not raised. Moreover, looking at
the context of Senator Gorton's statements, there is nothing to
indicate that he understood the subsection to apply to all
previously offered sales but was, for some unspoken reason,
confining his discussion to only 318 sales.

1 argue that Senator Hatfield was really including non-section 318
2 sales is not supported by the facts.⁷ Plaintiff performs a
3 convoluted calculation, based on indefensible assumptions and
4 inaccurate data, in an attempt to argue that Senator Hatfield's
5 reference to 375 mbf of timber supports plaintiff's
6 interpretation that subsection 2001(k) (1) covers non-318 sales.
7 Plaintiff's calculation is wrong. First, to calculate the volume
8 of suspended Forest Service 318 sales, plaintiff subtracts "20-70
9 million board feet" released by the Fish and Wildlife Service's
10 June 12, 1995 biological opinion. As this opinion was issued
11 more than two months after Senator Hatfield's statement regarding
12 the 375 mbf, plaintiff's calculation presupposes that the Senator
13 (or his aide) was able to foresee this future release by FWS.
14 Plaintiff also omits approximately 87 million board feet from
15 unawarded 318 Forest Service sales located in western Oregon from
16 its calculation. If you add these two figures back into
17 plaintiff's final figure (of 335-386 million), the figure jumps
18 to 475 - 526 million.

19
20 ⁷ In an attempt to explain away Senator Hatfield's
21 reference to section 318 sales, plaintiff ignores common
22 grammatical rules in interpreting the statement "[m]ost of these
23 sales, as originally authorized by the Northwest timber
24 compromise amendment of 1989 [i.e., Section 318]," were addressed
25 in the ROD for the Pacific Northwest Forest Plan. 141 Cong. Rec.
26 S 4881. The use of commas to set off the phrase "as originally
27 authorized by [Section 318]," requires that the latter phrase
28 referring to consideration in the ROD be read as describing the
concept of "most of these sales." See Loc v. Secretary of HHS,
22 Cl. Ct. 430, 432 (1991). The "originally authorized" phrase
set off by commas is more logically read as referring to section
318 timber sales.

1 C. The Conference Report

2 Plaintiff continues to rely primarily on a conference report
3 that can be read to support either construction. Its description
4 of the statute as applying to timber sales "within the geographic
5 area encompassed by Section 318" is true if the statute's use of
6 "subject to section 318" is construed as incorporating section
7 318's substantive and temporal limits. Its statement that the
8 bill "releases all timber sales which were offered for sale
9 beginning in fiscal year 1990 to the date of enactment" may be
10 intended to only emphasize that awarded and unawarded timber
11 sales are released, as the second sentence of the description
12 states. 141 Cong. Rec. H 5050 (emphasis added) (See Exhibit E).
13 Insofar as the conference report may refer to timber sales
14 offered before enactment of section 318 or between fiscal year
15 1990 and the date of enactment, the conference report is at odds
16 with the clear language of the law. Where the conference report
17 varies from the statute, the statute must prevail. See Ratzlaf
18 v. United States, 114 S.Ct. 655, 662 (1994); Estate of McAlpine
19 v. Commissioner, 968 F.2d 459 (5th Cir. 1992).

20 D. The Post-Enactment Letter

21 Finally, plaintiff relies on a post-enactment letter that is
22 not legislative history and cannot be attributed to Congress,
23 though plaintiff describes it as "contemporaneous" to the
24 President's signing of H.R. 1944 into law. This letter, dated
25 July 27, 1995, was not considered by Congress or the President

1 prior to enactment of the Rescissions Act because it was signed
2 by individual members after Congress passed the Rescissions bill.
3 141 Cong. Rec. H 6603 (June 29, 1995, House passage); 141 Cong.
4 Rec. S 10468 (July 21, 1995, Senate passage) (See Exhibit E).
5 Such "post-passage remarks of legislators, however explicit,
6 cannot serve to change the legislative intent of Congress
7 expressed before the Act's passage. Such statements 'represent
8 only the personal views of these legislators, since the
9 statements were [made] after passage of the Act.'" Regional Rail
10 Reorganization Act Cases v. Connecticut Gen. Ins. Corps., 419
11 U.S. 102, 132 (1974) (quoting National Woodwork Mfrs. Ass'n v.
12 NLRB, 386 U.S. 612, 639 n.34 (1967); see also Mt. Graham Red
13 Squirrel v. Madigan, 954 F.2d 1441, 1457 (9th Cir. 1992).

14 Indeed, the Ninth Circuit has repeatedly emphasized what
15 poor evidence of Congressional intent these post-enactment
16 statements are, quoting Justice Scalia:

17 The legislative history of a statute is the
18 history of its consideration and enactment.
19 "Subsequent legislative history" - which
20 presumably means the post-enactment history
21 of a statute's consideration and enactment -
22 is a contradiction in terms. The phrase is
23 used to smuggle into judicial consideration
24 legislators' expressions not of what a bill
25 currently under consideration means (which,
26 the theory goes, reflects what their
27 colleagues understood they were voting for),
28 but what a law previously enacted means. . .
. Arguments based on subsequent legislative
history, like arguments based on antecedent
futurity, should not be taken seriously, not
even in a footnote."

1 Multnomah Legal Serv. Wkrs. U. v. Legal Services, 936 F.2d 1547,
2 155 (9th Cir. 1991) (quoting Sullivan v. Finkelstein, 110 S.Ct.
3 2658, 2667 (1990) (emphasis in original)). See also Brock v.
4 Writers Guild of Am., West, 762 F.2d 1349, 1356 (9th Cir.
5 1985) ("[P]ost-enactment statements . . . constitute poor evidence
6 of Congressional intent"); Libby Rod & Gun Club v. Poteat, 594
7 F.2d 742, 746 (9th Cir. 1979).

8 Moreover, plaintiff's letter is entitled to no weight at all
9 because it represents an apparent change of position for at least
10 one of the signatories. Mt. Graham Red Squirrel v. Madigan, 954
11 F.2d 1441, 1457 (9th Cir. 1992). Insofar as Senator Gorton is
12 concerned, this letter represents a change in position from his
13 pre-enactment statement that the provision is intended to release
14 approximately 300 million board feet of remaining section 318
15 sales. Compare 141 Cong. Rec. S 10464 (Senator Gorton stating
16 "Subsection (k) releases sales that were authorized under section
17 318 of the fiscal year 1990 Interior appropriations bill.
18 Roughly 300 mbf of timber sales have been held up due to agency
19 gridlock over the marbled murrelett. [sic]") with (July 27, 1995
20 letter stating subsection (k) "requires release of all previously
21 offered or awarded timber sales, including section 318 sales as
22 well as all sales offerd or awarded in other years"). In view of
23 the contradictory nature of these statements, they are entitled
24 to no weight at all. Mt. Graham Red Squirrel, 954 F.2d at 1457
25 (quoting County of Washington v. Gunther, 452 U.S. 161, 176 n.16

1 (1981)). It is notable that the interpretation stated in this
2 letter was never clearly expressed during the consideration of
3 this bill by Congress, or before the President signed the bill
4 into law. It is also notable that Chairmen of the Appropriations
5 Committees, Senator Hatfield and Representative Livingston, are
6 not signatories.

7 III. THE AGENCIES' INTERPRETATION IS
8 ENTITLED TO DEFERENCE

9 The agencies' interpretation is entitled to deference if it
10 represents a permissible construction of the statute. See
11 Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,
12 467 U.S. 822 (1984). It need not be the only possible
13 interpretation in order to warrant deference. See
14 Good Samaritan Hospital v. Shalala, 113 S.Ct. 2151, 2156
15 (1993) ("In the circumstances of this case, where the agency's
16 interpretation of a statute is at least as plausible as competing
17 ones, there is little if any reason not to defer to its
18 construction. We should be especially reluctant to reject the
19 agency's current view which, as we see it, so closely fits 'the
20 design of the statute as a whole and ... its object and policy'")
21 (citing Crandon v. United States, 494 U.S. 152, 158 (1990); Mt.
22 Diablo Hospital v. Shalala, 3 F.3d 1226 (9th Cir. 1993)).

23 Plaintiff argues that this court-sanctioned principle of
24 deference should not be applied here because the agencies'
25 interpretation allegedly is not accurate in every respect. See
26 Pl. Mem. at 26-27. As an initial matter, even assuming arguendo

1 immaterial errors, that would not warrant discarding the well-
2 established rule of deference to the agencies charged with
3 administering a statute. This is true, especially when the
4 consequence would be adoption of a one-sided interpretation urged
5 by a private litigant, which is based on incorrect assumptions
6 and miscalculations.

7 Moreover, plaintiff has drastically overstated the claims of
8 alleged inaccuracies. For example, plaintiff incorrectly
9 suggests that the agencies were somehow wrong in claiming that
10 Congress used section 318 as its model in drafting section
11 2001.⁸ Plaintiff ignores the essential fact that like section
12 318, Congress designed section 2001 to address delays in
13 releasing timber sales resulting from a variety of factors for a
14 specified period. See Gifford Pinchot v. Alliance, 742 F. Supp.
15 1077, 1079 (D. Or. 1990) (noting enactment of section 318 to
16 address timber shortfalls resulting from number of reasons,
17 including court injunctions); 141 Cong. Rec. S 4875 (Senator
18 Gorton's statement noting that sales contemplated by section 2001
19 will not be unnecessarily delayed by further litigation but will

20
21 ⁸ Plaintiff argues that the agencies' interpretation
22 implies that fiscal year 1991-1995 sales were subject to less
23 judicial review than section 318 sales. Plt's Memo at 27.
24 Nowhere does the interpretation suggest such a position.
25 Moreover, the Supreme Court in Robertson did approve one aspect
26 of section 318 which effectively limited judicial review. The
27 Robertson Court upheld that portion of the section 318 stating
28 that management of certain areas according to other subsections
of 318 was adequate for purpose of meeting the statutory
requirements that were the basis of pending litigation. 503 U.S.
at 435.

1 be subject to "expedited procedures"). To address delays,
2 Congress borrowed the expedited review procedure from section 318
3 in crafting section 2001, and like section 318, specified
4 application of the procedures for a limited period. Thus,
5 section 318 procedures for expedited review became an integral
6 part of section 2001's underlying structure designed to assist in
7 achieving the overall goal of expedited release of certain sales.

8
9 In an attempt to diminish the importance of the Forest
10 Service's effects statement which provides clear evidence that
11 the Forest Service thought subsection 2001(k)(1) applied only to
12 section 318 sales, plaintiff relies on the insupportable claim
13 that "there is no indication any member of Congress ever saw such
14 a statement." Pl. Mem. at 28. The facts, once again, contradict
15 this claim. The effects statement was delivered by courier at
16 Forest Service direction to the committee staff of both the House
17 and Senate Appropriations Committees that had jurisdiction over
18 the 1995 Rescissions Act, including section 2001. See
19 Declaration of Steve Satterfield at ¶ 5 (attached hereto as Ex.
20 F).

21 Finally, the lack of any factual support for plaintiff's
22 theory is further highlighted by plaintiff's misplaced reliance
23 on two tables prepared by the BLM Oregon state office. Plaintiff
24 points to these two tables as alleged evidence that BLM
25 "understood since March that the FY 1991-95 sales were to be

1 released." Pl. Mem. at 25. Plaintiff inaccurately claims that
2 "[t]here is no reason the BLM would have prepared these tables
3 unless it thought these sales were to be released under the then-
4 proposed law." Id. These statements drastically mischaracterize
5 the circumstances underlying preparation of the two subject
6 tables. In early April 1995, an attorney representing various
7 timber companies requested a list of all unawarded BLM sales in
8 western Oregon. See Declaration of Lyndon A. Werner at ¶ 3
9 (attached hereto as Ex. B). The timber companies' attorney did
10 not request a list of all sales that BLM thought would be
11 released pursuant to the then-pending section 2001. Id. In
12 response to the attorney's request, the BLM state office prepared
13 tables showing BLM section 318 sales which had been sold but
14 unaccepted, and BLM Fiscal Year 1991 sold and unawarded sales.
15 Id. At no time did the preparer of the tables think that they
16 represented an interpretation of the sales to be released under
17 the pending legislation.⁹ Id. at 4. These are the identical
18 tables relied upon by plaintiff. Id.

19 IV. PLAINTIFF IS NOT ENTITLED TO MANDAMUS
20 RELIEF AS AN ALTERNATIVE STATUTORY REMEDY EXISTS

21 Plaintiff fails to meet its burden of proof to establish
22 that it is entitled to the extraordinary relief of a writ of
23 mandamus. As this Court has stated:

24 _____
25 ⁹ In any event, the preparer of the tables was not the
26 official responsible for issuing the agency's interpretation of
27 subsection 2001(k)(1).

1 Mandamus under Section 1361 is only proper when an
2 agency is failing or refusing to do an act which is so
3 plainly prescribed as to be free from doubt, and the
4 entitlement of the plaintiff is clear and certian.

5 Gifford Pinchot, 742 F. Supp. at 1083. In addition to satisfying
6 these two tests, plaintiff also must establish that there is no
7 alternative remedy available, before a court will issue a
8 mandatory injunction. Id. Plaintiff has failed to meet any of
9 these tests. See Defs' Memo. at 25-26.

10 As demonstrated above, the agencies are not "failing or
11 refusing to do an act which is so plainly prescribed as to be
12 free from doubt." Moreover, plaintiff cannot satisfy the last
13 prong. In any event, even if plaintiff were to satisfy the three
14 -part test, "[t]he extraordinary remedy of mandamus lies within
15 the discretion of the tiral court." Plaintiff has failed to
16 present sufficient facts that would support the exercise of that
17 discretion here. See Oregon Natural Resources Council v.
18 Harrell, 52 F.3d 1499, 1508 (9th Cir. 1995).

19 Plaintiff's argument for mandamus relief is built on an
20 indefensible construction of subsection 2001(k)(3), which
21 explicitly provides that "[i]f for any reason" sales cannot be
22 released within the 45-day period, the agencies are authorized to
23 provide alternative timber. Plaintiff insists this is an
24 inadequate remedy by urging a tortured interpretation of
25 subsection 2001(k)(3) as applying only to those sales not
26 released due to requirements of 2001(k)(2) ("Threatened or
27 Endangered Bird Species"). Pl's Memo at 30.

1 Plaintiff's argument falls upon application of standard
2 rules of statutory construction. Paragraph 2001(k)(3)'s
3 authorization of replacement timber "[i]f for any reason a sale
4 can not be released and completed" under the terms of subsection
5 2001(k) is unambiguous. As the plain language of the statute
6 could not be clearer, no further inquiry is warranted. See
7 Church of Scientology, 612 F.2d at 421; Missouri Pac. R.R., 310
8 U.S. at 543-44; see also Ratzlaf v. United States, 114 S. Ct.
9 655, 662 (1994) (recognizing that statute's legislative history
10 may contain language contrary to the plain meaning of the
11 language, but directing court to not "resort to legislative
12 history to cloud a statutory text that is clear").

3 Scattered comments by a few members of Congress cannot be
4 used to twist this plain language into the restrictive reading
5 urged by plaintiff. See City of Burbank v. Lockheed Air Terminal
6 Inc., 411 U.S. 624, 642 n.1 (1973); Coalition for Clean Air v.
7 Southern Cal. Edison, 971 F.2d 219, 227 (9th Cir. 1992).
8 Proceeding in such a manner would allow the intent of Congress to
9 be overridden by judicial interpretation of individual
10 legislators' comments which preceded final adoption of the plain
11 language by the entire Congress.¹⁰

22
23 ¹⁰ Plaintiffs further incorrectly argues that the
24 Administrative Procedure Act, 5 U.S.C §706, requires the Court to
25 compel the agencies to act under 2001(k). In circumstances where
26 parties seek to compel agency action, Section 706 limits relief
27 to "agency action unlawfully withheld or unreasonably delayed."
28 5 U.S.C. 706(1). See Rank v. Nimmo, 677 F.2d 692, 698 (9th Cir.
(continued...)

1 Finally, plaintiff has failed to satisfy its burden for
2 obtaining injunctive relief, as demonstrated in defendants'
3 opposition to plaintiff's motion for a temporary restraining
4 order (incorporated herein). Most importantly, plaintiff cannot
5 establish irreparable injury as Congress expressly deemed it
6 sufficient to authorize the provision of alternative timber in
7 subsection 2001(k)(3).

8 CONCLUSION

9 For the reasons set forth above, and as further explained in
10 defendants' other memoranda filed before the Court, plaintiff is
11 not entitled to summary judgment.

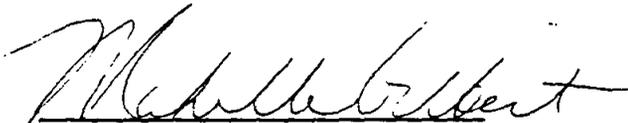
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21 _____
22 ¹⁰(...continued)
23 1982); see also Soler v. Scott, 942 F.2d 597, 603 (9th Cir.
24 1991). Defendants have conclusively demonstrated that steps are,
25 and will continue to be taken, to comply with the provisions of
2001(k). See Defs' Memo at 10 and Exhibit D attached
thereto(Declaration of Elaine Zielinski). Thus, any action
required under 2001(k) is not unlawfully withheld nor is it
unreasonably delayed.

1 Dated this 1st day of September, 1995.

2 Respectfully submitted,

3 KRISTINE OLSON ROGERS
4 United States Attorney

5 LOIS J. SCHIFFER
6 Assistant Attorney General

7 

8 WELLS D. BURGESS
9 MICHELLE L. GILBERT
10 ANDREA L. BERLOWE
11 EDWARD A. BOLING
12 United States Department of Justice
13 Environment and Natural
14 Resources Division
15 General Litigation Section
16 P.O. Box 663
17 Washington, DC 20044-0663
18 (202) 272-6217

19 Attorneys for Defendants

20 Of Counsel:

21 MICHAEL GIPPERT
22 Office of the General Counsel
23 United States Department of Agriculture
24 Washington, DC

25 KAREN MOURITSEN
26 Office of the Solicitor
27 United States Department of the Interior
28 Washington, DC

8



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1 Mark C. Rutzick, OSB # 84336
 2 Alison Kean Campbell, OSB #93011
 3 MARK C. RUTZICK LAW FIRM
 4 A Professional Corporation
 5 500 Pioneer Tower
 6 888 S.W. Fifth Ave.
 7 Portland, Oregon 97204-2089
 8 (503) 499-4573

Attorneys for Plaintiff

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

11 NORTHWEST FOREST RESOURCE)
 12 COUNCIL, an Oregon corporation,)

Civil No. 95-6244-HO

Plaintiff,)

vs.)

13 DAN GLICKMAN, in his capacity)
 14 as Secretary of Agriculture;)
 15 BRUCE BABBITT, in his capacity)
 16 as Secretary of the Interior,)

Defendants.)

17
 18
 19 PLAINTIFP'S MEMORANDUM IN OPPOSITION
 20 TO
 21 DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION 1

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2. The administration cites no legislative history excluding FY 1991-95 sales from release, or supporting its view that only fiscal year 1990 sales were released 3

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INTRODUCTION

1
 2 Plaintiff Northwest Forest Resource Council ("NFRC") seeks
 3 declaratory and injunctive relief to compel defendants Dan
 4 Glickman, Secretary of Agriculture and Bruce Babbitt, Secretary
 5 of the Interior, to comply with § 2001(k)(1) of Pub. L. 104-19,
 6 109 Stat. 240, by awarding and releasing by September 10, 1995
 7 all timber sales offered between October 1, 1990 and July 27,
 8 1995 in the national forests of Oregon and Washington and the
 9 Bureau of Land Management ("BLM") administrative districts in
 10 western Oregon, which defendants have refused to award and
 11 release.¹

12 NFRC rests its case for the award and release of the FY
 13 1991-95 sales on the natural reading of the phrase "all timber
 14 sale contracts offered or awarded before th[e] date [of enact-
 15 ment] in any unit of the National Forest System or district of
 16 the Bureau of Land Management subject to section 318," on three
 17 rules of statutory interpretation that support the natural
 18 reading of the statute, and on the four most authoritative pieces
 19 of legislative history on the bill - the Conference Report, the
 20 Senate Report, the author's interpretation and the six sponsors'
 21 interpretation - which all support the natural reading of the
 22

23
 24 ¹ The only statutory exception is for sale units where a
 25 threatened or endangered bird species is known to be nesting
 26 within the sale unit. § 2001(k)(2). NFRC has moved for leave to
 amend its complaint to challenge defendants' interpretation of
 that section, which is also challenged in the companion case
 Scott Timber Co. v. Glickman, Civil No. 95-6267-HO (filed August
 28, 1995). The § 2001(k)(2) issue is not raised in this motion.

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1 statute.

2 The administration has moved for summary judgment dismissing
3 NFRC's claims concerning the FY 1991-95 timber sales. It
4 contends that the statute only releases fiscal year 1990 sales.
5 By and large, the administration's motion papers add nothing to
6 the brief it filed two weeks ago opposing NFRC's motion for a
7 temporary restraining order. Since NFRC has already addressed
8 those arguments in its summary judgment memorandum filed August
9 25, 1995, NFRC will only respond to a few discrete points in this
10 memorandum.

11 1. *The administration never explains how the text of*
12 *subsection (k)(1) supports its interpretation.*

13 Neither the administration's summary judgment memorandum
14 ("S.J. Memo.") nor the August 22 Interpretation Memorandum
15 explains how the words of subsection (k)(1) produce the adminis-
16 tration's cramped interpretation:

17 The memorandum offers no meaning of the phrases "offered
18 before th[e] date [of enactment]" or "in any unit of the National
19 Forest System or district of the Bureau of Land Management" in
20 § 2001(k)(1) under the administration's view of the statute,
21 although every word in a statute is supposed to mean something.
22 Why did Congress limit the statute to sales "offered prior to"
23 the date of enactment if every timber sale it was releasing was
24 offered by September 30, 1990? The administration never answers
25 this question.

26 While admitting that a phrase must be construed to modify

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1 the immediate antecedent phrase unless the result is "absurd,"
2 the memorandum seeks to ignore that rule without explaining why
3 NFRC's interpretation of the statute that is based on that rule
4 is "absurd," other than the fact that the administration dis-
5 agrees with it.

6 In short, the administration articulates no coherent defense
7 of its interpretation based on the words of the statute.

8 2. *The administration cites no legislative history exclud-*
9 *ing FY 1991-95 sales from release, or supporting its*
10 *view that only fiscal year 1990 sales were released.*

11 The administration does not cite a single remark in the
12 congressional reports or a single statement from any member of
13 Congress that § 2001(k) excludes FY 1991-95 sales. Instead, its
14 legislative history argument is mainly premised on the notion
15 that Congress was very confused about what it intended, and that
16 each of the five pieces of legislative history directly support-
17 ing NFRC's natural reading of the statute is somehow unreliable
18 or should be ignored.²

19 a. The administration tries to discount the conference
20 report, "the most persuasive evidence of congressional intent,"

21 ² *Amicus Oregon Natural Resources Council, on the other*
22 *hand, explains § 2001(k) as the product of a sinister but inept*
23 *plot by members of Congress. While it describes the statutory*
24 *language as "careful word choices" by "a crafty legislator*
25 *seeking to conceal their hidden meaning," it nonetheless denounc-*
26 *es the product of this effort as "poorly drafted language"*
applying to "an inartfully described category of timber sales."
ONRC Amicus brief at 6, 13, 14. Its substitution of invective
and speculation for reasoned legislative history analysis betrays
its dislike of this law, but does not call the plain meaning of
the statute into question.

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1 Dept. of Health & Welfare, State of Idaho v. Block, 784 F.2d 895,
 2 901 (9th Cir. 1986), by arguing that its authors did not really
 3 understand what they were writing when they said the statute
 4 releases sales "beginning in fiscal year 1990 to the date of
 5 enactment . . . which are located in any unit of the National
 6 Forest System or District of the Bureau of Land Management within
 7 the geographic area encompassed by Section 318."³ The conference
 8 committee used the phrase "within the geographic area encompassed
 9 by section 318" to summarize the meaning of "subject to section
 10 318" - just as NFRC has argued. The administration has no
 11 response to this very telling reference.

12 b. The administration simply ignores the language of the
 13 Senate Report that the bill will "release a group of sales that
 14 have already been sold in the region affected by section 318."

15 c. The administration suggests that Senator Hatfield was
 16 also confused when he explained that the bill would release 375
 17 million board feet of timber in western Oregon alone, contrary to
 18 the administration's claim that only 300 million feet of section
 19 318 sales are released in the two state region.

20 d. The administration likewise suggests that Rep. Taylor,
 21 the author of the bill, was confused between the "offer" and
 22 "award" of timber sales when he delivered his very precise floor
 23 statement on March 15 stating that the bill releases sales
 24

25 ³ Amicus Oregon Natural Resources Council's 20 page brief
 26 filed September 1, 1995 never even acknowledges the existence of
 the conference report.

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1 "offered in fiscal year 1991 and some more recently. . . ." Rep.
 2 Taylor, a professional forester, showed no confusion in his very
 3 precise and accurate use of the term "offered" in his floor
 4 statement. He meant exactly what he said: the sales "offered in
 5 fiscal year 1991 and . . . more recently" were released.

6 e. The administration does not claim confusion in the July
 7 27 letter from the six sponsors and committee chairman (including
 8 those in whom it had previously tried to conjure up confusion)
 9 instructing the Secretaries that "[t]he reference to Section 318
 10 in subsection (k) (1) defines the geographic area that is subject
 11 to subsection (k)" and applies to "all sales offered or awarded
 12 in other years (such as Fiscal Years 1991-95) that are not
 13 subject to Section 318." Nor does the administration have any
 14 response to this letter on the merits. Instead, the administra-
 15 tion merely asks the court to ignore the letter.

16 Lacking any direct support for its position, the administra-
 17 tion quotes several passages of history where members of Congress
 18 described the bill, accurately, as releasing section 318 sales.
 19 The quotes are correct, but the important point is that no member
 20 ever said that **only** section 318 sales are released. NFRC must
 21 take very firm exception to the administration's editorial
 22 addition of the word "only" in characterizing these passages on
 23 pages 19 and 20 of its memorandum. The word "only" was never
 24 used, no doubt because no member of Congress believed it true.

25 The references to section 318 sales are an accurate short-
 26 hand, in that the majority of the released sales are fiscal year

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1 1990 sales sold under section 318. No rule of legislative
 2 history interpretation says that a member of Congress must
 3 provide a complete description of a statute every time he refers
 4 to it. Senator Gorton and Senator Hatfield would surely be
 5 justified in believing that the words of the statute, backed up
 6 by the Senate and Conference Reports they wrote, accurately set
 7 forth the meaning of the statute, and they did not need to repeat
 8 a full description of the law every time they discussed it.

9 Another quote from the legislative history illustrates this
 10 same point. Although § 2001(k)(2) protects nesting sites for
 11 both "threatened" and "endangered" species, Senator Gorton's
 12 shorthand reference to the subsection on March 30, 1995 merely
 13 referred to "places in which endangered species are actually
 14 found." 141 Cong. Rec. S4875 (daily ed. March 30, 1995). Would
 15 administration claim that the section excludes "threatened"
 16 species because Senator Gorton did not refer explicitly to
 17 "threatened" species in his floor remark? Similarly, the
 18 shorthand references in floor remarks to section 318 sales in no
 19 way contradicts the words of the statute and the carefully
 20 considered statements in the reports, the author's floor state-
 21 ment and the July 27 letter.

22 **3. The administration's additional legislative history**
 23 **arguments are factually and legally unsound.**

24 a. The administration knocks down a strawman in arguing
 25 that "subject to section 318" does not mean "in Oregon and
 26 Washington." S.J. Memo. at 10-11. This is not NFRC's position,

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1 and in fact NFRC agrees that "subject to section 318" does not
 2 mean "in Oregon and Washington." The phrase "subject to section
 3 318" means all the national forests of Oregon and Washington, but
 4 only includes six BLM administrative districts in western Oregon
 5 (Salem, Eugene, Roseburg, Coos Bay, Medford and Lakeview).⁴ This
 6 definition excludes the BLM's administrative districts in eastern
 7 Oregon, which conduct commercial timber sales. Second Ragon
 8 Declaration, ¶ 6. It also excludes all BLM districts in Washing-
 9 ton.⁵

10 In reality, Section 318 had a very different geographic
 11 reach for the Forest Service than for the BLM. For this reason
 12 Congress' use of the shorthand phrase "units . . . and . . . dis-
 13 tricts . . . subject to section 318" to describe the rather
 14 complex application of § 2001(k) is understandable since using
 15 the section 318 shorthand phrase is much simpler than attempting
 16 to articulate in a statute addressing both agencies the different
 17 geographic application for each agency.

18 Equally, using Section 318 to define the geographic reach of
 19 § 2001(k) reflects Congress' intent to deliver previously offered
 20 sales to a timber-starved region. The timber supply needs of the
 21

22 ⁴ The BLM created the Lakeview district after section 318
 23 was enacted, and it was previously part of the Medford district.
 24 The BLM treated Lakeview district timber sales as part of the
 section 318 program.

25 ⁵ For this reason amicus ONRC's argument that section 318
 26 applies to all "BLM districts in Washington and Oregon" is
 incorrect, and invalidates its strained effort to find a differ-
 ent meaning for § 2001(k) (1). ONRC Memorandum at 11.

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1 section 318 geographic region deserved and received special
2 congressional attention in 1989, and Congress acted again in 1995
3 because the promise of the 1989 law was never completely ful-
4 filled. Not only were many fiscal year 1990 sales disrupted, but
5 the timber sale program in succeeding years also suffered.

6 The promise - and the disappointment - was not limited to
7 western Washington and western Oregon. In Section 318(a)
8 Congress ordered the Forest Service to sell 1.9 billion board
9 feet of timber from the six national forests in eastern Oregon
10 and Washington (the Malheur, Klamath, Ochoco, Umatilla, Wallowa-
11 Whitman and Colville) separate and apart from the mandated timber
12 sale program in the western part of the two states.

13 Since 1990, timber sales in eastern Oregon and Washington
14 have dropped off sharply for many reasons, including the Forest
15 Service's illegal use of the "eastside screens," see *Prairie Wood*
16 *Products, Inc. v. Espy*, Civil No. 93-6288-HO (October 19, 1994)
17 and delays arising from the listing of Snake River salmon under
18 the Endangered Species Act, see *Pacific Rivers Council v. Thomas*,
19 30 P.3d 1050 (9th Cir. 1994), cert. denied 115 S. Ct. 1793
20 (1995). Congress was well aware of these disruptions, and
21 enacted § 2001(k) to release delayed Forest Service timber sales
22 in eastern Oregon and Washington as well as to provide needed
23 timber in the western part of the states. Using the phrase
24 "subject to 318" to describe the geographic region it was helping
25 was in fact the easiest way for Congress to describe exactly what
26 it intended to achieve.

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1 b. The administration seeks to make much of a document it
2 calls a Forest Service effects statement, and argues that the
3 document somehow carries weight in statutory interpretation. It
4 carries no weight for several reasons.

5 There is absolutely no indication in the legislative
6 history, or in the record of this case, that this Forest Service
7 document was ever seen, read or relied on by any member of
8 Congress. No member of Congress ever referred to it, or to any
9 submission by the Forest Service.

10 In any event, it is well-settled that the views or comments
11 of persons other than members of Congress do not shed light on
12 the intent of Congress. *Ernst & Ernst v. Hochfelder*, 425 U.S.
13 185, 203 n.24, *reh'g denied* 425 U.S. 986 (1976). Even statements
14 of congressional staff carry no weight in statutory interpreta-
15 tion. *Vance v. Hegstrom*, 793 F.2d 1018, 1024-25 (9th Cir. 1986).

16 This rule applies fully to remarks of executive branch
17 officials. In *U.S. v. South Half of Lot 7*, 910 F.2d 488, 490
18 (8th Cir. 1990), *cert. denied* 499 U.S. 936 (1991), the court
19 refused to give any significance to the view of a statute
20 expressed by an assistant attorney general in the Department of
21 Justice in a congressional hearing before the bill was passed.
22 In *In Re Madia*, 68 B.R. 11 (D.N.J. 1986), the court refused to
23 give weight to a similar executive branch submission:

24 A statement contained in a letter from an
25 Assistant Secretary of the Treasury to the
26 Chairman of the House Judiciary Committee is
 not and cannot be considered part of the
 legislative history. It is binding on no one

1 and represents a mere expression of opinion.
2 It does not even appear to be an official
3 interpretation of the law which might be
4 given some special consideration.

5 *Id.* at 13. The Forest Service effects statement deserves no
6 better weight. Its author is anonymous, and it is not a legal
7 document but rather an administrative analysis of volumes of
8 timber that might be sold or released under the proposed salvage
9 bill. It never expresses any interpretation of any provision of
10 the salvage bill. It never explains the source of its informa-
11 tion, or which version of which bill it was looking at. Indeed,
12 it never states that FY 1991-95 sales are excluded. It is
13 impossible to attribute any significance to this document, and as
14 a matter of law no weight can be given to it.

15 c. The administration contends that logging the fiscal
16 year section 318 sales was contemplated under the President's
17 Forest Plan, while logging FY 1991 sales was not. With this
18 premise, it argues by implication that Congress would not have
19 wanted to upset the President's Forest Plan. S.J. Memo. at 16-
20 17.

21 There is no legal significance to this argument, since there
22 is no indication Congress knew or cared about any of this. In
23 any event, NFRS must point out that in making this argument the
24 administration has totally contradicted the position it took in
25 front of Judge Dwyer last year when it was defending the
26

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1 President's Forest Plan.⁶

2 Last year, the administration argued to Judge Dwyer that the
3 President's Forest Plan assumed that the remaining section 318
4 Forest Service sales - about 75% of the remaining section 318
5 volume - would not be logged.⁷ Exhibit 15. In contrast, the
6 administration informed Judge Dwyer that the BLM's fiscal year
7 1991 timber sales - 125 million board feet of the volume at issue
8 in this case - were all assumed to be logged in the President's
9 Forest Plan. Compare Exhibit 16 (list of BLM timber sales
10 assumed to be logged showing fiscal year 1991 timber sales) with
11 Exhibits 2 and 3 attached to Ragon Dec. (naming 27 currently
12 unreleased fiscal year 1991 BLM timber sales that are all listed
13 on Exhibit 16 as assumed to be logged).

14 Thus, if the administration believes Congress was interested
15 in consistency with the Forest Plan, it should be arguing that
16 Congress favored the release of the BLM fiscal year 1991 sales
17 and opposed the release of fiscal year 1990 sales - just the

18
19 ⁶ NFRC realizes that this argument must seem like incompre-
20 hensible "inside baseball" to a court that is not steeped in the
21 nuances of the federal timber sale program, but since the
22 administration has raised the issue NFRC must point out the
23 errors and contradictions in the administration's current
24 argument.

25 ⁷ In its brief to Judge Dwyer, the administration argued:
26 "All BLM Section 318 timber sales ... were explicitly shown as
harvested in the data base on which the agencies performed their
analysis in the FSEIS. . . . While the same is not true for the
Forest Service Section 318 sales, the harvest of all but eight of
them have been determined will be likely to jeopardize the
continued existence of the marbled murrelet, and thus, will not
be harvested in their current form, if at all." Exhibit 15
(emphasis added).

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opposite of the position the administration currently advances.*

4. The August 23 Interpretation Memorandum is entitled to no weight because the statute and legislative history reveal a clear congressional intent.

The administration has suggested an erroneous standard of statutory interpretation for the court in urging deference to its August 23 Interpretation Memorandum. The administration suggests that if the statute is not clear on its face, the court should defer to an administrative interpretation without considering legislative history. S.J. Memo at 14. This is not a correct statement of law.

The case cited by the administration, *Chevron U.S.A., Inc. v. Natural Resource Defense Council, Inc.* 467 U.S. 837 (1984), *reh'g denied* 468 U.S. 1227 (1984), actually holds that "[i]f a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect." *Id.* at 842 n.9. Reference to legislative history is, of course, a traditional tool of statutory interpretation, *Blum v. Stenson*, 465 U.S. 886, 896 (1984) (in interpreting statute, courts "look first to the statutory language and then to the legislative history if the statutory language is unclear"), and a court looks to the legislative history before considering an agency's

* For this reason amicus ONRC's argument that releasing the FY 1991-95 sales would somehow hurt the environment more than releasing Section 318 sales is factually incorrect. It is also legally irrelevant since there is no indication Congress shared ONRC's extreme views of desirable environmental protection.

MARK C. RUTZICK LAW FIRM
A Professional Corporation
Attorneys at Law
500 Pioneer Tower
888 S.W. Fifth Avenue
Portland, OR 97204-2089
(503) 499-4572 • Fax (503) 246-0915

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interpretation of a statute. *Rust v. Sullivan*, 500 U.S. 173, 186 (1991).

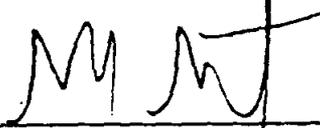
In this case the statute is clear on its face, and any doubt is resolved convincingly by the legislative history. Under *Chevron*, the court "must reject administrative constructions which are contrary to clear congressional intent." *Chevron*, 467 U.S. at 843 n.9. The August 23 Interpretation Memorandum is contrary to clear congressional intent and must be rejected.

CONCLUSION

The administration's motion for summary judgment should be denied, and NFRC's motion for summary judgment should be granted.

Dated this 1st day of September, 1995.

MARK C. RUTZICK LAW FIRM
A Professional Corporation

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

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL,)
)
Plaintiff,)
)
v.)
)
DAN GLICKMAN, in his capacity)
as Secretary of Agriculture,)
BRUCE BABBITT, in his capacity)
as Secretary of Interior)
)
Defendants.)

Civil No. 95-6244-HO

Declaration of
Jerry Hofer

I, Jerry Hofer, hereby declare the following to be true and correct:

1. I am the section head for Contracts and Contract Administration for the Pacific Northwest Region of the United States Forest Service. That region covers all of the national

Declaration
of Jerry Hofer
-1-

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION
GENERAL LITIGATION SECTION
P.O. BOX 663
WASHINGTON, DC 20044-0663
TELEPHONE: (202) 272-8036

1 forests in Washington and Oregon. I have worked for the Forest
2 Service for 27 years and have held my current position since June
3 1989. In that position I am responsible for various duties
4 associated with timber sales contracts, including contract award
5 and administration.

6 2. The Forest Service has been collecting information
7 regarding the status of sales that were offered pursuant to
8 section 318(b) - (j) of Public Law 101-121 (103 stat. 745), but
9 which were either not awarded, or if awarded, subsequently
10 suspended (hereafter "section 318 sales").

11 3. Of the section 318 sales that were offered but not
12 awarded, the Forest Service data, current as of August 25, 1995,
13 shows that there are 17 unawarded section 318 sales located in
14 eight national forests in the western portions of Washington and
15 Oregon, including two national forests in Washington (the Gifford
16 Pinchot and Olympic), and six national forests in Oregon (Mt.
17 Hood, Rogue River, Siskiyou, Siuslaw, Umpqua and Willamette). As
18 of August 25, 1995, the total estimated volume of unawarded
19 section 318 sales is approximately 99 million board feet, and of
20 that amount, approximately 87 million board feet is located in
21 western Oregon.

22 4. As of August 25, 1995, the Forest Service data also
23 shows that there are 58 section 318 sales that had been offered
24 and awarded, but subsequently delayed or suspended, in six
25 national forests located in western portions of Washington and

6
8 Declaration
of Jerry Hofer
-2-

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION
GENERAL LITIGATION SECTION
P.O. BOX 663
WASHINGTON, DC 20044-0663
TELEPHONE: (202) 272-8056

1 Oregon, including two national forests in Washington (Mt. Baker-
2 Snoqualmie and Olympic) and four national forests in Oregon
3 (Siskiyou, Siuslaw, Umpqua and Willamette). As of August 25,
4 1995, the total estimate of awarded, but delayed or suspended
5 section 318 sale volume was approximately 237 million board feet,
6 and of that amount, approximately 207 million board feet is
7 located in western Oregon.

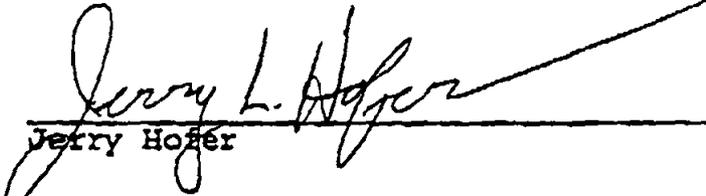
8 5. Due to the completion of the 1995 marbled murrelet
9 surveys and issuance of the June 1995 Biological Opinion by the
10 Fish and Wildlife Service, a number of previously delayed or
11 suspended units of section 318 sales have been released since
12 April 1995. Approximately six million board feet has been
13 released on five sales in national forests in western Washington
14 and approximately 53 million board feet has been released on 18
15 sales in national forests in western Oregon.

16 6. Currently available Forest Service data also shows a
17 total estimated volume of approximately 109 million board feet of
18 timber that had been offered during fiscal years 1991 - 1995 and
19 are either unawarded or delayed or suspended in all national
20 forests in Washington and Oregon. Of that volume, approximately
21 104 million board feet represents volume located in national
22 forests on the eastside of Washington and Oregon, and
23 approximately 5 million board feet represents volume located in
24 national forests on the westside of Washington and Oregon.

25 7. A number of section 318 sales were awarded after fiscal
26

1 year 1990, with at least one having been awarded as recently as
2 this year.

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

5
6 
7 Jerry Hofer

8 Dated: August 31, 1995

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

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

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL,)

Plaintiff,)

v.)

DAN GLICKMAN, in his capacity as)
 Secretary of Agriculture,)
 BRUCE BABBITT, in his capacity as)
 Secretary of Interior)

Defendants.)

Civil No. 95-6244-HO

DECLARATION OF
 LYNDON A. WERNER

I, Lyndon A. Werner, do hereby depose and say that:

1. My name is Lyndon A. Werner. On January 9, 1995, I began a temporary detail to the Branch of Biological Sciences in the Division of Resource Planning, Use and Protection in the Oregon/Washington State Office of the Bureau of Land Management (BLM). My permanent position at that time was the Chief, Division

of Resources in the Roseburg, Oregon District of the BLM. On May 28, 1995, my temporary position in the Oregon/Washington State Office became permanent. In this current position, my responsibilities include technical senior specialist staff work in support of the BLM timber sale program in Oregon.

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

3. On either April 4, 1995, or April 5, 1995, (I do not specifically recall which day) Mr. Scott Horngren requested a list of the western Oregon unawarded sales. I specifically recall that he did not request a list of the sales which BLM interpreted as being affected by the Salvage Amendment (Rescissions Act). I provided three tables to Mr. Horngren by facsimile transmission on April 5, 1995. The facsimile cover sheet and the three tables are attached. The tables grouped the unawarded sales into three categories; (Table 1) BLM Section 318 Sold, Unaccepted Timber Sales, (Table 2) BLM Fiscal Year 1991 Sold, Unawarded, Previously Enjoined, "Viable" Timber Sales, and (Table 3) BLM Fiscal Year 1991 Sold, Unawarded, Previously Enjoined, "Non-Viable" Timber Sales Bid Bonds Returned. I explained to Mr. Horngren that Table 1 was entitled "BLM Section 318 Sold, Unaccepted Timber Sales" because the listing included sales which had been awarded to the purchaser and not accepted by the purchaser.

4. I reviewed the tables attached to Bob Ragon's declaration filed in this case. These tables are the same as the tables I provided to Mr. Horngren on April 5, 1995. The preparation of these tables does not indicate one way or the other the BLM's determination of what sales would be covered by the Emergency Salvage legislation.

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

Executed at Portland, Oregon on

August 31, 1995

Lyndon A. Werner

Lyndon A. Werner

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

LOIS J. SCHIFFER
 Assistant Attorney General
 WELLS D. BURGESS
 MICHELLE L. GILBERT
 ANDREA L. BERLOWE
 EDWARD BOLING
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IN THE UNITED STATES DISTRICT COURT
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NORTHWEST FOREST RESOURCE COUNCIL,)
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 DAN GLICKMAN, in his capacity as)
 Secretary of Agriculture,)
 BRUCE BABBITT, in his capacity as)
 Secretary of Interior)
)
 Defendants.)

Civil No. 95-6244-HO

SECOND DECLARATION OF
 LYNDON A. WERNER

I, Lyndon A. Werner, do hereby depose and say that:

1. My name is Lyndon A. Werner. I have previously prepared a declaration for this case, in which I described my position with the Bureau of Land Management and the nature of my responsibilities.

2. I am familiar with the Rescissions Act, Public Law 104-19

(109 Stat. 194), including the provisions regarding "Award and Release of Previously Offered and Unawarded Timber Sales Contracts," Section 2001(k). In my work with the BLM timber sale program in the State Office, I am familiar with the timber sale offerings made by the BLM under the Northwest Forest Plan, including a sale known as "Cat Tracks".

3. The Cat Tracks timber sale was prepared under the Standards and Guidelines of the President's Northwest Forest Plan. The sale was sold by the Eugene District of the Bureau of Land Management on July 28, 1994, to Seneca Sawmill Company. The sale was not awarded due to a protest filed by Oregon Natural Resources Council (ONRC).

4. ONRC alleged in their statement of reasons in support of the protest that the stream buffer widths marked on the sale were insufficient in width to comply with the Standards and Guidelines of the Forest Plan. Although initially denying the protest, upon appeal by the ONRC to the Interior Board of Land Appeals (IBLA), the Eugene BLM District determined that the ONRC's allegations concerning buffer widths were correct and requested the IBLA to remand the decision to the District so that it could make the necessary corrections to the sale.

5. The Board granted this request. On September 29, 1994, the Eugene District sent a letter to Seneca Sawmill rejecting all bids and returning the bid bond. The grounds stated for taking this action was the need to adjust the terms of the sale to comply with the Forest Plan.

6. The sale boundaries were remarked to bring the buffers into conformance with the Forest Plan. The BLM intended to auction the sale again in August 1995. This has now been delayed because of the pending litigation over interpretation of the Reversion Act. I declare under penalty of perjury that the foregoing is true and correct.

Executed at Portland, Oregon on

September 1, 1995.

Lyndon A. Werner

Lyndon A. Werner

16TH REPORT of Level 1 printed in FULL format.

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Committee Reports

104th Congress; 1st Session

House Rept. 104-71

104 H. Rpt. 71

MAKING SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 1995, AND FOR OTHER
PURPOSES

DATE: March 8, 1995. Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

PONSOR: Mr. Livingston, from the Committee on Appropriations, submitted the following

REPORT (To accompany H.R. 1159)

together with DISSENTING VIEWS

TEXT:

The Committee on Appropriations submits the following report in explanation of the accompanying bill making supplemental appropriations and rescissions for the fiscal year ending September 30, 1995, and for other purposes.

COMMITTEE ACTIONS

The Committee has completed action on rescissions, included in four separate bills, that total over \$20 billion. Some of the savings that will occur as a result of these rescissions have been used to offset supplemental appropriations requests for the Department of Defense, FEMA Disaster Assistance, debt relief for Jordan, payment to the Coast Guard for refugee support in the Caribbean, and several other necessary supplementals for fiscal year 1995. This bill includes supplemental funding for debt relief for Jordan, food inspection services, and others.

The rescissions have been made across the Government. They are our first step in the direction of downsizing the Government. By taking this action in fiscal year 1995, the Committee is taking the opportunity to accelerate savings proposed in several legislative actions already taken or under way in the House, proposed by the National Performance Review activity of the Vice President and proposed in the Presidents budget request for fiscal year 1996. Taking these actions now is putting us on a course to provide better government at lower cost that better meet the needs of all the people of the United States and the beneficiaries of the programs served. Not only will making these rescissions enable us to offset the supplementals for those people hurt by last years natural disasters, but it also means we are taking steps necessary to insure the nations financial future that affects our children and grandchildren. Saving

The Committee recommends a general provision (Section 301) to prohibit the use of any funds in any appropriations act for fiscal year 1995 to issue, administer or enforce any executive order, or other rule or order, that prohibits Federal contracts with companies that hire permanent replacements for striking employees. The Committee has taken this action because it believes that the Congress, and not the Executive Branch, has the responsibility to write the nations labor laws.

The Committee is recommending nullification for the one-for-one public housing replacement requirement through September 30, 1995 (Section 302). During this time period, the Department is urged to approve expeditiously applications for public housing demolition and disposition.

The Committee has recommended three general provisions which impact activities of the Environmental Protection Agency associated with implementation of the Clean Air Act. Restrictions of funds have been recommended for the imposition and enforcement of requirements that States must implement both an inspection and maintenance program for vehicular emissions and trip reduction measures to reduce vehicular emissions (Sections 303 and 304). While not required to include these two programs, State implementation plans under the Clean Air Act could still contain such programs at the discretion of the States. In those States where such programs have already been initiated, the Committee believes that every effort should be made to recognize the substantial investment by the private sector. The remaining provision (Section 305) nullifies that the promulgation of a Federal implementation plan under the Clean Air Act for three areas of California shall have no further force and effect. This action removes the cloud which exists as a result of promulgating a Federal implementation plan at the same time a State implementation plan is undergoing the approval process by the Environmental Protection Agency.

Section 306. The Committee hereby expressly declares that this provision is necessary not to effectuate any change in federal law or policy, but rather to correct erroneous administrative and judicial understandings of its prior enactments.

Timber Salvage Sales

The Committee has included bill language (Section 307) to establish a 90-year emergency timber salvage program to address the short term aspects of the emergency fire, insect and disease situation on Forest Service and Bureau of Land Management (BLM) lands.

Millions of acres of trees on public lands have burned in recent years. In 1994, more than 4 million acres of public lands burned. On Forest Service lands alone, over 6 billion board feet of timber was killed by fire, while a mere 1 billion board feet of salvage timber volume was offered. More timber burned in 1994 than was harvested from Forest Service land, and 33 firefighters died fighting the forest fires of 1994. The federal costs to fight the 1994 fires approached \$1 billion.

Since 1986, timber mortality due to insects and disease is up nearly 25%. In 1994, 64 million acres of National Forest timber land in eleven western states were infested with pine beetles and spruce budworms. Those 11 billion acres contain enough wood to build 13 million new homes.

The gypsy moth and a parasitic fungus have defoliated 2 million acres in the southeast and central states. In 1992-93, pine beetles and other southern pests damaged 14 million acres of southern pine forests.

Despite an estimated backlog of 21 billion board feet of dead and dying timber due to insect, disease, or fire on public forests, the Forest Service timber salvage program has averaged approximately 1.8 billion board feet during the last five years. For fiscal 1995, 1.57 billion board feet are programmed by the Forest Service. In fiscal year 1996, 1.449 billion board feet are programmed for harvest.

Within 6 to 24 months, much of the salvage timber deteriorates and becomes unmerchantable. This underscores the need to expedite salvage timber sales. However, the current lengthy Forest Service process for providing salvage timber, delayed further by appeals and lawsuits, is not conducive to providing early enough salvage timber to the marketplace before it rots.

The Committee has recommended the creation of an emergency, two-year timber salvage program to address this dire situation, revitalize public land forests, and enhance the ability of the Forest Service to expeditiously prepare environmental documentation to provide salvage timber to market.

Using the procedures of the amendment, the Secretaries of Agriculture and Interior must prepare, advertise, offer, and award contracts for not less than 3 billion board feet of salvage timber sales in each of two years. The document for each sale combines an environmental assessment under the National Environmental Policy Act and a biological evaluation under the Endangered Species Act. Each Secretary has flexibility in that the volume that receives an environmental assessment may total in excess of the volume requirements of the bill; however, each Secretary may select among the sales prepared in order to obtain the minimum volume required. Flexibility in the first year of the program has been added which allows the Secretary to offer sales which total fifty percent of the total volume within three months of enactment and the remaining volume evenly distributed throughout the first year period. Each Secretary is required to report to appropriate House and Senate committees on their attainment of volume requirements during the two year emergency period.

The two agencies are urged to use all available authorities to meet the deadlines, including contracting for private sector timber cruising and other sales preparation activities. The total time period permitted for the preparation and offering of salvage timber sales under the amendment is 120 days for the one-half of first year sales. The remaining first year emergency salvage sales shall occur in an evenly distributed time frame. Second year sales shall have similar flexibility.

The Forest Service and BLM are free to redesign or disapprove sales, particularly if warranted by the analysis contained in the consolidated documents, so long as they substitute other sales to satisfy the annual volume requirements. Those documents and agency decisions based on them are the only documents and procedures required to conduct the salvage timber sales and are required to satisfy federal environmental laws and regulations by the provision. The emergency salvage timber provision also overrides any court orders and restraining orders or decisions issued prior to enactment.

Each Secretary's duties include reforestation after emergency salvage sales are harvested, consistent with the agencies regulations.

The emergency salvage sale provision bars administration appeals of sales conducted pursuant to the provision. This allows challengers to go directly to court and hastens a final disposition of the challenge, while the dead and dying timber can still be sold and harvested if the courts ultimately determine that the sales are valid. The maximum timeframe for the total process for preparing the document to harvest of the sale is 120 days for half of the first year volume.

Finally, in language borrowed verbatim from previously enacted law, the amendment sets deadlines for filing and appealing lawsuits challenging salvage timber sales (15 days and 30 days respectively) and for the district courts to decide the lawsuits (45 days unless otherwise required by the Constitution). To protect challengers, the amendment requires an automatic 45 days stay while the district court hears and decides the case. Thus, restraining orders and preliminary injunctions are unnecessary and therefore barred. If the court decides the sale is valid prior to expiration of the automatic stay, the stay is lifted and harvesting can begin.

The emergency salvage provision 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.

The section also includes subsection (i), a provision to release a group of sales that have already been sold under the provisions of Section 318 of the fiscal year 1990 Interior and Related Agencies Appropriations Act. The harvest of these sales was assumed under the President's Pacific Northwest Forest Plan, but their release has been held-up due to 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. Also, the revenues from timber receipts will increase by over \$155 million from current estimates.

The President's Pacific Northwest Forest Plan has recently been upheld in a federal district court challenge brought by environmental groups and the timber industry. Paragraph 2 of this provision specifies that compliance with the terms of subsection (i) shall not permit a second court review of the President's Plan.

bureau of labor statistics

consumer price index

The Committee has heard testimony from officials at the Bureau of Labor statistics regarding efforts to improve the accuracy of the Consumer Price Index. The CPI does not only determine spending in a variety of government programs, but it also is used widely in the private sector, because it carries the imprimatur of an official government measure. For this reason, any inaccuracies in that measurement not only effect the federal budget, but also cause distortions in the overall economy. Therefore, improving the accuracy of the CPI is urgent and important.

The Committee believes BLS must redouble and accelerate its efforts to produce a more accurate CPI.