

NLWJC - Kagan

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**Northwest Forest Council v. Dan
Glickman and Bruce Babbitt
[Binder] [5]**

March 15, 1995

CONGRESSIONAL RECORD — HOUSE

H 3231

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

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

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

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

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

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

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

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

Forests across the West are in the grip of

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

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

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

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

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

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

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

So I am faced with two unacceptable choices—an extreme salvage program with no environmental safeguards or the status quo

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONGRESS OF THE UNITED STATES,

Washington, DC, March 15, 1995.

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

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

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

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

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

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

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

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

We appreciate your continuing assistance and cooperation on this matter.

Sincerely,

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

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

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

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

The taxpayer loses under the Taylor Salvage Language because whatever profitable

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

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

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

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

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

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

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

Mr. HATFIELD. I will.

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

Mr. HATFIELD. I think so.

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 428 TO AMENDMENT NO. 420

(Purpose: To broaden areas in which salvage timber sales are not to be conducted)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana (Mr. BURNS) proposes an amendment numbered 428 to Amendment No. 420.

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

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

The amendment is as follows:

On page 69, strike lines 7 through 10 and insert the following:

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

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

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

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

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

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

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

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

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

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

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

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

The amendment (No. 428) to amendment No. 420 was agreed to.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 429 TO AMENDMENT 420
(Purpose: To require timber sales to go forward)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington (Mrs. MURRAY) proposes an amendment numbered 429 to amendment No. 420.

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

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

The amendment is as follows:

On page 68, strike line 9 and all that follows through page 79, line 5, and insert the following:

(a) DEFINITION.—In this section:

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

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

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

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

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

(b) SALVAGE TIMBER SALES.—

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

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

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

(ii) any roadless area that—

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

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

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

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

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

(2) SALE DOCUMENTATION.—

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

(B) PROCEDURES TO EXPEDITE SALVAGE TIMBER SALES.—

(1) IN GENERAL.—When it appears to a managing agency that consultation may be required under section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1536(a)(2))—

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

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

(1) CONSULTATION DOCUMENT.—In no event shall a consulting agency issue a final written consultation document with respect to a salvage sale later than 30 days after the managing agency issues the final environmental document required under the National Environmental Policy Act of 1973 (16 U.S.C. 1531 et seq.).

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

(aa) the consulting agency has been actively involved in preparation of the required environmental documents and has requested in writing reasonably available additional information from the managing agency that the consulting agency considers necessary under part 402 of title 50, Code of Federal Regulations, to complete a biological assessment; and

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

(3) STREAMLINING OF ADMINISTRATIVE APPEALS.—Administrative review of a decision of a managing agency under this subsection shall be conducted in accordance with section 322 of the Department of the Interior and Related Agencies Appropriations Act, 1993 (106 Stat. 1419), except that—

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

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

(4) STREAMLINING OF JUDICIAL REVIEW.—

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

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

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

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

taking of other actions that would otherwise apply.

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

(c) OPTION 9.—

(1) DIRECTION TO COMPLETE TIMBER SALES.—The Secretary of the Interior, acting through the Director of the Bureau of Land Management, and the Secretary of Agriculture, acting through the Chief of the Forest Service, shall expeditiously prepare, offer, and award timber sale contracts on Federal lands in the forests specified in Option 9, as selected by the Secretary of the Interior and the Secretary of Agriculture on April 13, 1994.

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

(3) AVAILABILITY OF FUNDS.—

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

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

(d) SECTION 318.—

(1) IN GENERAL.—With respect to each timber sale awarded pursuant to section 318 of Public Law 101-121 (103 Stat. 745) the performance of which is, on or after July 30, 1995, precluded under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to requirements for the protection of the marbled murrelet, the Secretary of Agriculture shall provide the purchaser replacement timber, at a site or sites selected at the discretion of the Secretary, that is equal in volume, kind, and value to that provided by the timber sale contract.

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

(e) EXPIRATION.—Subsections (b) and (c) shall expire on September 30, 1996, but the terms and conditions of those subsections shall continue in effect with respect to timber sale contracts offered under this Act until the contracts have been completely performed.

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

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

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

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

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

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

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

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

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

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

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

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

throughout this Nation. We must not give the agencies free rein to cut timber without regard to environmental considerations.

My amendment is a moderate, reasonable alternative. It expedites salvage. It expedites option 9. It ensures appropriate levels of environmental protection. And most importantly, it protects communities and workers from burdensome, frustrating litigation. Such litigation is sure to result from the underlying bill.

Mr. President, 10 days ago I went to Gray's Harbor in my home State of Washington, and I talked to people who have lived through the nightmare of Congress and the courts deciding their lives. They are just starting to get back on their feet. Hope is beginning to return. They do not want more empty promises. They do not need congressional interference that may backfire. They do need promises kept, and they do need Congress to act with common sense.

That is what my amendment does, and I urge my friends here in the Senate to support it.

Mr. President, I retain the balance of my time.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, who controls the time?

The PRESIDING OFFICER. Does the Senator from Washington yield time?

Mr. GORTON. Does the Senator from Alaska wish to speak in support of the amendment?

Mr. MURKOWSKI. The Senator from Alaska would like to speak in support of the Gorton salvage amendment.

Mr. GORTON. I yield 5 minutes to the Senator from Alaska.

PRIVILEGE OF THE FLOOR

Mr. GORTON. Mr. President, before I do so, I ask unanimous consent that privilege of the floor be granted to Dave Robertson and Art Gaffrey, congressional fellows attached to Senator HATFIELD's staff.

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

The Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair. I thank my colleague from Washington.

Mr. President, I rise to again commend the Gorton salvage amendment. I share, as Senator from the State of Alaska, a dilemma facing all of us: that is, a shortage of timber. We have seen our industry shrink by about three-quarters by a combination of the inability of the Forest Service to meet its proposed contractual agreements. As a consequence, the industry has shrunk. As I see the issue before us, we have an opportunity, because of an unfortunate act of God, to bring into the pipeline a supply of timber that otherwise would not be available. Clearly, without the help of the Gorton salvage amendment the Forest Service is absolutely incapable—make no mistake

about it—incapable of addressing this in an expeditious manner.

So those who suggest that we simply proceed under the status quo will find that the timber will be left where the bugs or the fire last left it when we are here next year and the year after. So, do not be misled by those who are of the extreme environmental bent to see this as an opportunity simply to stop the timber process. It is unfortunate that we could not make the decision on what to do with this timber based on sound forest practice management—what is best for the renewability of the resource.

The Gorton salvage amendment is an essential response to an emergency forest health situation in our Federal forests as evidenced by last year's fire season. Our committee, the Committee on Energy and Natural Resources, has held oversight in the area, has recognized the severity of the problem, and I strongly recommend we do a positive step of forest management practice and support the Gorton amendment as an appropriate emergency response to the problem.

I have listened to the critics of the amendment both on the floor and off the floor. I have come to conclude that they must be discussing some other provision than the one offered by the senior Senator from Washington.

First, they say the Gorton amendment mandates increased salvage timber sales. The Gorton amendment does not mandate timber sales. It provides the administration with the flexibility to salvage sales to the extent feasible. I trust the administration to properly utilize that flexibility. Opponents of the Gorton amendment apparently do not trust this administration. I cannot tell whether they do not want to rehabilitate burned forests or whether they need individual sign off from the Forest Service Chief, Jack Ward Thomas, the Secretary of Agriculture, or maybe even Vice President Gore to trust the administration.

Second, they say that the Gorton amendment suspends all environmental laws. The Gorton amendment expedites existing administrative procedures under the Endangered Species Act, the National Environmental Policy Act, and other measures. If the agency successfully follows the expedited procedure, their performance is deemed adequate to comply with existing environmental and natural resource statutes. These expedited procedures are essential as we must appropriately respond to the forest health emergency, and it is an emergency that we face. If you have an emergency, Mr. President, you respond to it and you expedite a process. That is what the Gorton amendment is all about.

Third, they say the Gorton amendment eliminates judicial review. It simply does not. The amendment provides an expedited form of judicial review that has already been upheld by the Supreme Court in previous litigation.

Fourth, they would say the Forest Service cannot meet the salvage targets. The amendment does not have any targets. I wish it did. Today, the Forest Service is working on its capability statement on the House version of this amendment. There are strong indications that with the expedited procedure the House bill will match in pertinent part the Gorton amendment. The agencies can meet the House targets and still comply with substantive requirements of existing environmental and natural resources.

Fifth, they say the amendment will cost the Treasury. This is simply false. The Gorton amendment has received a positive score from CBO.

Sixth, they say the amendment may disrupt and actually reduce timber sales. Well, if that were true, I would expect them to strongly support the Gorton amendment. But it is not true. The Gorton amendment contains protective language to assure potential environmental litigants cannot disrupt other agencies' functions due to this amendment.

Finally, Mr. President, I have been genuinely perplexed by the misconceptions that accompany the attacks on this amendment, but today perhaps I know why this is the case. Yesterday, Senator GORTON and Congressman CHARLES TAYLOR along with Senator CRAIG, the author of S. 391, which is a measure directed at another aspect of this problem, offered to meet, as I understand, with groups of activists opposed to both the Gorton amendment and S. 391 together. It is my understanding they cleared time on their calendars at 9 a.m., but they found that the activists were evidently more interested in preparing for their 9:30 a.m. press conference than meeting with the authors of the three provisions which they proceeded to lambaste. That sort of interest group behavior I do not think can be tolerated if we are to continue to have informed debates in this body.

So, Mr. President, I rise in support of the Gorton amendment, and against other modifying amendments. I encourage my colleagues to proceed with what this is, an emergency.

I thank the Chair.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Washington.

Mr. GORTON. Mr. President, as recently as half a dozen years ago, there was a booming, successful forest products industry in rural towns all up and down the north Pacific coast of the United States. In region 6, in Washington, Oregon, and northern California, approximately 5 billion board feet of timber was being harvested. Towns were prosperous and optimistic. Families were happy and united. Schools were full. The contribution that these people made to the economy of the United States is difficult to underestimate. It was easier and less expensive to build homes, to publish newspapers, to engage in all of the activities which

arise out of the forest products industry. And even during that time of maximum harvests every year in the Pacific Northwest more board feet of new timber was growing than was being harvested.

Beginning with the controversy over the spotted owl in the Pacific Northwest—in which incidentally, the recovery goal at the time of its listing has now long since been exceeded by the discovery of additional spotted owls—at the time of the beginning of that controversy, that harvest began to drop precipitately, to the point at which in the last few years the harvest on lands of the United States of America has been close to zero. Communities have been devastated. Families have broken up. Small businesses have failed. Homes purchased by the work of many years have become useless because they cannot be sold.

And we have constantly heard from those whose conscious policies drove the litigation leading to this end that the people in these towns should seek other employment in some other place or be the subject of various kinds of relief activities. So where they provided a net income to the United States from their income taxes, they now are a net drain on the people of the United States for welfare programs which have benefited primarily planners and contractors and advisors and not the people who lost their jobs.

Mr. President, these people, these communities, their contributions to America have been largely ignored by the mainstream media of this country. Their professions have been denigrated. They who live in this country and have a greater investment in seeing to it that it remains booming and prosperous have been accused of utter indifference and attacks on the environment.

Mr. President, that only has not been terribly unjust but it has been destructive of balance and destructive of the economy of our country.

Now, into this controversy some 3 years ago came the then candidate for President of the United States, Bill Clinton, promising in a well-attended meeting in Portland, OR, balance and relief, promising to listen to the people of the Pacific Northwest, to protect the environment but at the same time to restore a significant number of the lost jobs and some degree of hope and prosperity to those communities.

The first part of later President Clinton's promise was kept in 1993 when as President he returned to Portland, OR, and held a timber summit.

Long after the completion of that summit came what is now known as option 9, an option which the President stated met all of the environmental laws in the United States which he was unwilling to change in any respect but also promised something more than 1 billion board feet of harvest of timber to the people of the Northwest—1 billion as against 5, or 20 percent of the historic level.

I did not then and I do not now believe that that constitutes balance or that it was at all necessary to protect the environment. But it was a promise, Mr. President, of some form of relief.

Since then, the President has had that option validated by a U.S. district court judge who has taken charge of this area in Seattle. But do our people have 1.1 billion board feet of harvest? No, Mr. President, they do not. In spite of the time at which that promise was made, they are nowhere close to that because the Forest Service in its personnel cuts has cut mostly the people who work in the woods preparing these sales and because the Clinton administration knows that almost no single action taken pursuant to this option will escape an appeal within the Forest Service and a lawsuit being stretched out forever and ever.

That is one element, Mr. President.

The second is that last summer, regrettably, was a time of major forest fires in almost every corner of the United States—loss of life in Colorado, huge fires in Idaho and Utah, large fires in my own State of Washington. Those fires have left billions of board feet of timber that is now dead, absolutely dead, but for a relatively short period of time harvestable. If it is not harvested, Mr. President, it will become worthless very quickly by rotting away and at the same time will be tinder for future forest fires.

And yet the opponents to harvest say that's nature's way. Forest fires start; let them burn. Very few of them live in communities near where these fires have taken place, whose summers have been ruined by them, may I say, incidentally.

And so in this bill, as in the bill produced by the House, we attempt to enable the President of the United States to keep his own promises; nothing more than that, Mr. President.

It is true that the provisions in the House bill set a mandated harvest level roughly double what the administration deems to be appropriate. The proposal attacked by my colleague from the State of Washington, however, has no such requirement in it. It simply says that, after all of these years, all of these promises, all of this devastation, that we will liberate the administration to do what it wants to do.

And yet, this is attacked as if, somehow or another, this administration had no concern for the environment whatsoever; that Secretary Babbitt was simply out to cut down the forests of the Bureau of Land Management; that President Clinton's Forest Service wanted to do nothing else but that, and to ignore environmental laws from one end of this country to another. It is astounding, Mr. President, that the administration itself does not wish help in keeping its own commitments.

Now, both the amendment which is a part of this bill and the substitute amendment by the junior Senator from Washington cover three distinct, separate but related subjects.

One on salvage timber is nationwide in scope. The administration proposes in this fiscal year to sell something over 1.5 billion board feet of salvaged timber, dead or dying timber. In region 6, which is the Pacific Northwest, the figure is about one-fifth of that total. Four-fifths of it are from other regions of the country and they include every Forest Service region in the United States.

My proposal, the proposal in the bill, does not require the administration to double that offering. In fact, it has no number in it at all. But it says that the administration, having carefully considered every environmental law, is enabled to do what it tells us that it wants to do.

Does this suspend the environmental laws? No, Mr. President. This administration has certainly tried its best to abide by all of them and all of them remain on the books, those I agree with and those I disagree with.

And I cannot imagine that Members of this body will accuse the administration of wanting to ignore those statutes. It simply says that the administration's own decisions will not further be attacked in court by the often inconsistent provisions of six or seven or eight different statutes passed at different times with different goals.

The amendment that is sought to be substituted for that which is in the bill does not reduce litigation in the slightest, Mr. President. It calls for certain expedited procedures, but it still allows every timber sale to be appealed within the Forest Service or the BLM, and every one to go to court. And they all will go to court, Mr. President, because those who will attack them, those who want nothing to be done, will recognize that all they have to do is to delay it for another season and there will not be anything to sell, because it will be worthless. So that portion of the substitute amendment is simply an invitation to have no salvage at all.

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

The proposal that the committee has made simply says that those sales would go ahead unless they involved places in which endangered species are actually found, in which case, substitute lands will take their place.

Our option 9 provision, I repeat, Mr. President, simply says that the President can keep the promises he made some time ago, almost 2 years ago, under option 9 and not be subject to constant harassing lawsuits. That is all that it says. It does not require him to get to the 1.1 billion board feet of harvest that he promised, and he will not.

It does say that he can do what he wishes to do.

Now, the substitute amendment, in each case, for all practical purposes, makes dealing with this issue at the level of Congress pointless. All of the lawsuits will still be able to be brought, but perhaps we will actually find ourselves in a damaging situation.

The Presiding Officer is from the State of New Hampshire. I presume that some small portion of this salvage timber is in his State. But if this substitute amendment passes, all of the personnel of the Forest Service from the rest of the United States will have to go to Washington and Oregon in order to meet the requirements of the substitute amendment, at the cost of every other region in the United States.

Now I would like to have that kind of service in my State, but I do not believe it to be fair. I do not think we can say that we are the only ones who under any circumstances should get anything out of one of these amendments.

The definition of what salvage timber is in the bill is the Forest Service's own definition. The definition in the substitute amendment is a different definition, one highly susceptible to further litigation.

The exceptions provided by the amendment of the Senator from Montana keeps this kind of salvage logging out of wilderness areas and certain other well-defined areas. The proposal by the junior Senator from Washington keeps them out of any area that is under consideration for inclusion in the national wilderness preservation system.

Mr. President, under that proposal, one bill by one Member of the House of Representatives introduced to put the entire National Forest System included in a wilderness preservation system would stop any harvest anywhere. It would be under consideration by Congress. What it does, in effect, is to give any of the 535 Members of Congress a veto power over the entire proposal.

Mr. President, the issue in this case is clear. Do we care at all about people, not just in the Pacific Northwest but all across the United States, who live in timber communities? Do we care about our supply of lumber and of paper products? Or do we only care about the well-being of certain environmental organizations and their lawyers?

That is what we are debating with respect to this amendment. Do we want the President of the United States to be able to keep his commitments, his promises, however inadequate they are? Or do we have so little trust in him that we believe that he will ignore every environmental law and decide suddenly to cut down our national forests?

Mr. President, that is not going to happen. The lawsuits will, under this proposed substitute amendment, pro-

vide relief for people who need relief. Income for the Treasury of the United States will only come from rejecting the substitute amendment and accepting the bill in its present form.

Mr. LEAHY. Mr. President, will the Senator from Washington yield me 5 minutes?

Mrs. MURRAY. I am happy to yield 5 minutes to the Senator.

Mr. LEAHY. Mr. President, I thank my good friend and distinguished Senator from Washington [Mrs. MURRAY].

Mr. President, this timber salvage language in H.R. 1158—so people understand the history, this represents the 12th time since 1984 this body would vote to exempt timber sales from environmental laws; 12 times since 1984.

Frankly, I find that disturbing. It means that the American people are going to be asked to believe that when it comes to cutting national forests, somehow environmental laws do not apply. These exemptions, which should have been, if at all, in emergency situation, instead are becoming routine and standard practice. It is not a short-term solution. I have to wonder how long this will go on. To me the exemption from environmental law is an extreme position. The majority of the American would not accept, nor should they. The distinguished Senator from Idaho, Senator CRAIG, and I streamlined the process in 1992. We are speaking of public lands, and in public lands, every American has a right to express his or her public interest. H.R. 1158 takes away the opportunity to participate in public land management. I do not see how the U.S. Senate can accept a provision that strips people of this right and takes the right out of the people's hands and puts it solely into the hands of bureaucrats. This would not create any more open government. In fact, this seals the same government agents off from public interest.

I respect the concerns of my fellow colleagues from other timber States. Even though I am a tree farmer, that is not my sole source of livelihood. I have talked with people in that area. It makes sense to address the problem, but with a sensible, responsible, moderate solution that respects the true interests of the American people and, in the long term, the political needs of the forest resource.

I believe Senator MURRAY has proposed a fair solution. In fact, she inherited this divisive timber issue when she was elected. She promised the people of Washington a responsible solution. I have discussed this with her since she has come here. I believe that since her election, she has helped put the timber industry on a reliable path that the timber industries can bank on.

In fact, with the work she has done, there has been an increase of 400 jobs, not a decrease in the lumber, paper, and allied wood products industry in the State of Washington since her election. She has an alternative that moves toward long-term sustainability, not a quick fix. Above everything else,

what Senator MURRAY has done is what timber-dependent communities want, especially the younger generations—long-term sustainability. People go into this for the long term, not with the idea that every 10 months, or year, or 14 months we are going to suddenly change the rules of the game.

So I urge my colleagues to support Senator MURRAY and abandon the extreme approaches that failed us in the past and removed any kind of public input from the process. Look at her long-term solution and adopt her amendment.

I am going to yield my time back to the Senator from Washington.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington controls the time.

Mrs. MURRAY. I assume the Senator from Washington, Senator GORTON, will yield time to the Senator from Montana.

Mr. GORTON. I yield 30 seconds to the Senator from Montana.

Mr. BURNS. Mr. President, I rise today to oppose the amendment offered by Senator MURRAY of Washington. This amendment severely weakens what this provision is intended to do—respond to our forest health emergency, restore our forests to health, and create jobs. This substitute amendment is only a clever way to do nothing.

The committee-passed provision is responsive to not only forest health, but to the people who support their families in the wood products industry. But this amendment is no more than status quo. And Montanans do not want status quo.

This substitute amendment does not streamline the process, limit the frivolous appeals, or allow for salvage sales to be expedited. Instead this amendment forces agencies to consult with other agencies, and does nothing to cut through the environmental red tape and still allows for endless delays.

It replaces the Forest Service definition of "salvage timber sale," which is included in the committee's bill, with a new definition. This definition doesn't take into account overcrowded forests which need to be thinned, and it forces the land managers to always consult with biologists.

This amendment also eliminates the legal sufficiency language which is needed in the preparation of sale documents. If we are truly serious about salvaging timber, we need to have sufficiency language included, and we need to retain streamlined timeframes to assure that the environmental procedure process is not abused.

Currently, delays in Federal land management arise primarily from two sources—multiple analysis requirements and administrative appeals and judicial review. Without this sufficiency language, we will continue to have lengthy delays which will substantially lead to the more dead and dying timber in our forests.

on an appropriations bill. It should be in the authorizing committee. It is not. It is the wrong piece of legislation on the wrong bill at the wrong time, and it should be rejected because it sets an incredibly dangerous precedent.

Mr. HATFIELD. Mr. President, in my State, and throughout most of our Federal forest nationwide, we are experiencing a forest health crisis of epic proportions. In 1994, 80 years of fire suppression and almost a decade of drought conditions culminated in one of the worst national fire seasons on record. Thirty-three fire fighters lost their lives and \$900 million was spent fighting these fires. Fourteen of the fire fighters who died were from Prineville, OR, a small town in my home State. Congress must act swiftly to address this situation or face a 1995 fire season as bad or worse than 1994.

Congress has known about the forest health and fire danger problem for a long time. In July 1992, the Senate Energy and Natural Resources Committee held a hearing on forest health. At this hearing, Jack Ward Thomas, then a researcher and now Chief of the Forest Service, stated "we should proceed with salvage as soon as possible, and as carefully as possible." In fact, at that 1992 hearing, the Forest Service identified 850 million board feet of timber in eastern Oregon and Washington alone that needed to be salvaged in 1992 and 1993. Only half of that volume, however, has been actually salvaged.

The forest health crisis exists nationwide, but in my State it is particularly acute. Of the 5 million acres of Oregon's Blue Mountains, 50 to 75 percent contains predominantly dead or dying trees. According to the Forest Service, the land management practices of the past 80 or 100 years are the primary reasons for the poor health of Oregon's, and the Nation's, forests. Fire suppression, the single largest contributing factor, has prevented naturally occurring, low-intensity fires to clear out the understory of forest stands. This has allowed less-resilient, shade tolerant tree species such as white fir, and Douglas fir, to flourish. These trees have been prime targets for disease, insect infestation, and now wildfire.

It is time to begin the healing process in our forests that Jack Ward Thomas felt was so important 3 years ago. Congress can live up to its responsibility to provide direction to the land management agencies by passing the Gorton salvage amendment.

As many of my colleagues know, salvage logging is not without controversy. Although it is part of regular Forest Service practice, some seek now to block the salvage of diseased and bug infested timber as a land management option. To put their position in perspective, these same voices have publicly stated that their preferred goal is to eliminate the harvesting of any and all trees from Federal lands—even for the enhancement of forest health. This dogma is so stringent that the catastrophic loss of our natural re-

sources through disease, insect infestation and fire is preferable to having the health of these forests restored for future generations.

The radical doctrine of no use, which certain groups are now advocating, not only threatens the future health of our forests, it threatens the underlying base of political support for one of our Nation's most important environmental laws—the Endangered Species Act.

I was the original sponsor of the 1972 version of the bill which eventually went on to become the Endangered Species Act. I believe the act epitomizes the respect we, as a nation, hold for our environment and our natural surroundings. While I have made it clear that I believe some fine tuning of the act needs to occur during the upcoming reauthorization debate, I worry that when moderate positions, such as the one put forth in the Gorton amendment, become polarized, fodder is given to those whose goal is to abolish or gut the act. I will do my best to prevent this from happening, but the position of some groups on this salvage amendment simply perpetuates the attitude that all environmental laws, including the ESA, have gone too far and need to be significantly altered or scrapped.

These concerns are merely symptoms of a larger problem—the breakdown of our Nation's land management laws. The result of this breakdown is a problem of national significance with little ability in the law for land managers to take care of the problem in a timely manner.

Unfortunately, for those of us who have been around a while, this situation is all too familiar.

Almost 6 years ago, I stood here on the floor with my colleagues from the Pacific Northwest, the Senate Appropriations Committee and the Senate authorizing committees to announce a temporary solution to a crisis in the Pacific Northwest. This compromise was sponsored by myself and then-Senator Adams from Washington State, and was supported by every member of the Pacific Northwest delegation. It was truly an extraordinary measure, meant to address an extraordinary situation.

Recognizing the temporary nature of this solution, many Members of Congress believed that larger issues loomed and needed to be addressed. Namely, that the forest management and planning laws, originally enacted in 1976, were in serious need of revision. During the course of the debate on the Hatfield-Adams amendment I entered into a colloquy with then-chairman of the Senate Agriculture Committee, Senator LEAHY, to proclaim the temporary nature of the amendment and announce our intentions to pursue a long-term solution through the review and revision of our Nation's forest management laws in the authorizing committees.

Six years later, however, our forest management laws are unchanged.

When the Northwest timber compromise was developed in 1989, I took the promises of my colleagues to address our Nation's long-term forest management laws very seriously, and I was determined to do my part to address this growing dilemma. In 1990, I introduced legislation, called the National Forest Plan Implementation Act, to assist with the implementation of forest plans developed as a result of the 10-year planning processes enacted by Congress in 1976. Two years later, another comprehensive bill was introduced by Senator Adams to address the long-term issue. Both of these measures were referred to the Senate Agriculture Committee where no hearings were held and they died in committee.

The next year, in 1991, I was a primary cosponsor of Senator PACKWOOD'S Forest and Families Protection Act, which dealt with a number of the same issues as my 1990 bill and also addressed the issues of rural development and workers. This legislation was referred to the Senate Energy and Natural Resources Committee, of which I am a member, where we were able to hold several hearings and a markup on the bill. Unfortunately, the bill never made it to the floor for consideration.

My point is, Mr. President, many of us have undertaken significant efforts to live up to the commitments of 1989 to address the long-term management of our forest resources through the authorizing committees. Unfortunately for the entire Nation, the other Senate authorizing committees with jurisdiction over this issue have not felt compelled to do the same.

The Gorton amendment to the rescission bill begins to address this problem by doing three things to address the emergency situation that now exists in many forests. The first is national in scope and provides our Federal land management agencies with the flexibility to conduct environmentally sensitive forest health salvage activities. These activities will be done using the agencies' own standards and guidelines for forest and wildlife management.

Second, the Gorton amendment releases 375 million board feet of timber sales in western Oregon that were previously sold to timber purchasers. Most of these sales, originally authorized by the Northwest timber compromise amendment of 1989, were determined by the record of decision for President Clinton's option 9 plan not to jeopardize the existence of any species. To ensure further protections, the Gorton amendment includes provisions prohibiting activities in timber sale units which contain any nesting threatened or endangered species.

Finally, the Gorton amendment gives the Clinton administration more tools with which to implement timber sales in the geographic area covered by its option 9 plan. As a vocal critic of option 9 and the process that was used to develop it, I have some concerns about this section of the Gorton amendment. Nevertheless, I applaud the sponsor's

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

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

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

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

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

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

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

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

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

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

The legislative clerk called the roll.

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

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

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

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

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

The result was announced—yeas 48, nays 46, as follows:

[Rollcall Vote No. 121 Leg.]

YEAS—48

Abraham	Gorton	Murkowski
Ashcroft	Gramm	Nickles
Bennett	Grassley	Packwood
Bond	Gregg	Premier
Brown	Hatch	Reid
Burns	Hatfield	Santorum
Campbell	Helms	Shelby
Coats	Hutchison	Simpson
Cochran	Inhofe	Smith
Coverdell	Kempthorne	Snowe
Craig	Kyl	Specter
D'Amato	Lott	Stevens
DeWine	Lugar	Thomas
Dole	Mack	Thompson
Domenici	McCain	Thurmond
Frist	McConnell	Warner

NAYS—46

Akaka	Feinstein	Lieberman
Baucus	Ford	Mikulski
Biden	Glenn	Moores-Braun
Bingaman	Harkin	Moynihhan
Borser	Heflin	Murray
Bradley	Hollings	Nunn
Breaux	Inouye	Pell
Bryan	Jeffords	Pryor
Bumpers	Johnston	Robb
Byrd	Kennedy	Rockefeller
Chafee	Kerry	Roth
Cohen	Kerry	Sarbanes
Deachle	Kohl	Simon
Dodd	Lastenberg	Wellstone
Eaton	Leahy	
Feingold	Levin	

NOT VOTING—6

Conrad	Faircloth	Grams
Dorjan	Graham	Kassebaum

So the motion was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

HONORING JEREMY BULLOCK

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

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

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

School, by an emotionally troubled fourth grader.

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

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

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

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

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

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

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

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

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

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

Every day in America the voices of 10 of our children are silenced by violent acts. Over three million of our children ages 3 to 17 are exposed to parental violence every year. Our children will witness over 200,000 acts of violence on television by the time they turn 18. A new handgun is manufactured every 20 seconds in America. And many of them wind up in the wrong hands.

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

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

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

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

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

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

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

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

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

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

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

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

NATIONAL SCIENCE FOUNDATION

ACADEMIC RESEARCH INFRASTRUCTURE

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

CORPORATIONS

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC AFFORDABLE HOUSING PROGRAM

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

TITLE II—GENERAL PROVISIONS

EMERGENCY TIMBER SALVAGE

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

emergency processes and procedures provided in the bill.

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

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

Forest Health

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

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

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

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

Volume Levels

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

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

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

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

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

Process

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

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

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

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

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

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

Reporting

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

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

Option 9

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

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

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

Released Timber Sales

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

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

FUNDS AVAILABILITY

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

DOWNWARD ADJUSTMENTS IN DISCRETIONARY SPENDING LIMITS

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

PROHIBITION ON USE OF SAVINGS TO OFFSET DEFICIT

INCREASES RESULTING FROM DIRECT SPENDING OR RECEIPTS LEGISLATION

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

NATIONAL KOREAN WAR VETERANS ARMISTICE DAY

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

ASSISTANCE TO ILLEGAL IMMIGRANTS

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

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

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

SENSE OF THE SENATE REGARDING TAX AVOIDANCE

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

FEDERAL ADMINISTRATIVE AND TRAVEL EXPENSES

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

IMPACT OF LEGISLATION ON CHILDREN

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

TITLE III

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ANTI-TERRORISM INITIATIVES OKLAHOMA CITY RECOVERY

Chapter I

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

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

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

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

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 logically 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 KERREY 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 1996 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, RSVP, 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 \$4,700 per retiree to as much as \$6,300 per retiree by 2002. This is a 45-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 12, 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 32 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 318 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

process, through delaying processes, that they render the harvest in salvaging of timber useless. If timber in the Northwest, in the Southeast, 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 318 timber, it is in Washington and Oregon, this area has already met all the environmental requirements. This is green timber but it has not yet been released. It has been waiting since 1990, over 5 years. And this meets all the environmental requirements, and it meets, it has already been approved to move, but it has been held up for over 5 years while people in Washington and Oregon are without jobs.

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 Acts and some other group disagrees with him, they have the right to appeal. They cannot have endless appeals. 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.

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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 affected by this. I yield to the gentleman from California [Mr. DOOLITTLE].

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 conference 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 Sierras, the percentages range up to one-third of dead and dying

trees. A third of the Sierras 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, then the taxpayer is burdened by shelling out money out of, I guess, the general fund to go remove these trees. There is nothing to be regained 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, unfair, biased report called the Green Scissors 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 show "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. METCALF], whose State is also involved in this, if he would talk to us about the impact in his area.

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

Mr. METCALF. Mr. Speaker, the President will soon have on his desk legislation that would make good use of a valuable natural resources. However, without the President's signature, this resource will rot away.

Tonight I will tell Members the story of just one tree, one in thousands in western Washington State. The Forest Service estimates that over \$20 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 perfect for its growth, the unique combination of heavy rainfall, wet soil, and high winds caused trees like this giant 500-year-old growth Douglas fir tree to blow down. Thousands of these blown-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 Quinault 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 Grays Harbor Federal Sustained Yield Unit 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 terribly wasteful manner. An out-of-work timber worker, armed with a firewood permit and a chain saw, cut up this grand old giant for \$5 a cord and paid about \$115, \$115 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 \$932 in back taxes, while the Quinault 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

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

This year, things are different. 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 included to give direction to the Secretary "to the extent the Secretary concerned, 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 with 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 block 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)(3) 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, 1996. 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, 1996 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, 1996.

When asked why the administration needed the date to be changed to December 31, 1996, 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 9: First, let me make clear that I do not agree with, or support, option 9. 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 9. The administration promised the people in the region of option 9—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 9 and does not restrict future legal challenges to option 9.

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 (I) OF SECTION 2001

Mr. HATFIELD. Mr. President, I want to take a moment to share with my colleagues my understanding of subsection (i) of section 2001 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 2001 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 9" 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. 1158, 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 \$137 million more from HUD than did the bill which he vetoed.

Some have questioned why HUD is being cut by nearly \$6.5 billion, more than three-quarters of a total rescission of \$8.4 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 \$25.7 billion, about 39 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

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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL,

Plaintiff,

v.

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

Defendants.

Civil No. 95-6244-HO

DECLARATION OF
 STEVE SATTERFIELD

I, Steve Satterfield, do hereby depose and say that:

1. My name is Steve Satterfield. I am the Director of the Program Development and Budget Staff in the Washington office of the Forest Service.

2. My responsibilities as Director include preparation of documents related to the Forest Service budget, coordination of Forest Service budget information with the Department of Agriculture, and submission of materials related to the Forest Service budget to relevant Congressional committees.

2. In particular, one of my responsibilities is the preparation of Effects Statements related to legislation affecting the Forest Service budget.

3. Forest Service Effects Statements are developed to assist Members of Congress in the development of legislation related to the Forest Service budget.

4. Prior to enactment of the Rescissions Act (Public Law 104-19, 109 Stat. 194), the Forest Service prepared a document dated April 27, 1995, and titled "Timber Sale Amendments to FY 1995 Rescission." This Effects Statement detailed the effect the Rescissions Act would have on Forest Service operations relative to the provision on the Emergency Salvage sale program.

5. A copy of the Effects Statement was delivered by courier to both the House and Senate Appropriations subcommittee staff.

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

Executed at Washington, District of Columbia on 8/31/95

Steve Satterfield
Steve Satterfield

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST FOREST RESOURCE COUNCIL,)
)
 Plaintiff,)
)
 v.)

Civil No. 95-6244-HO

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

DEFENDANTS' OPPOSITION
TO PLAINTIFF'S CONCISE
STATEMENT OF MATERIAL
FACTS

1 1. Plaintiff alleges that its members are "statutorily
2 entitled to the award and release of one of (sic) timber sales
3 under § 2001(k) of Pub. L. 104-19." Complaint ¶ 4. Plaintiff
4 does not identify the location (including which national forest
5 or BLM district or which state, Washington or Oregon) of any of
6 the demanded sales. Plaintiff does not provide information to
7 identify whether the sales plaintiffs demand are non-section 318
8 fiscal years 1991-95 sales rather than section 318 sales.

9 2. In early April 1995, an attorney representing various
10 timber companies requested a list of all unawarded BLM sales in
11 western Oregon. See Declaration of Lyndon A. Werner at ¶ 3
12 (attached as Ex. B to Defendants' Opposition to Plaintiff's
13 Motion for Summary Judgment, hereafter "Defs' Memo"). The timber
14 companies' attorney did not request a list of all sales that BLM
15 thought would be released pursuant to the then-pending section
16 2001. Id. In response to the attorney's request, the BLM state
17 office prepared tables showing BLM section 318 sales which had
18 been sold but unaccepted, and BLM Fiscal Year 1991 sold and
19 unawarded sales. Id. The preparer of the tables did not think
20 that the tables represented an interpretation of the sales to be
21 released under the pending legislation. Id. at 4. These are the
22 identical tables relied upon by plaintiff. Id.

23 3. As of April 1995, BLM data showed an estimated volume
24 of approximately 70 million board feet of section 318 sales that
25 were unawarded or delayed or suspended. See Declaration of

6
DEFENDANTS' OPPOSITION
TO PLAINTIFF'S CONCISE
STATEMENT OF MATERIAL FACTS

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

7 4. Section 318 of the Department of the Interior and
8 Related Agencies appropriations Act, Fiscal year 1990, Pub. L.
9 101-121 (Section 318), "established a comprehensive set of rules
10 to govern harvesting within a geographically and temporally
11 limited domain. By its terms, it applied only to 'the thirteen
12 national forests in Oregon and Washington and [BLM] districts in
13 western Oregon known to contain northern spotted owls.'" §
14 318(i). Section 318 expired automatically on September 30, 1990,
15 the last day of Fiscal Year 1990, except that timber sales
16 offered under § 318 [hereafter section 318 sales] were to remain
17 subject to its terms for the duration of the applicable sales
18 contracts. §318(k)." Robertson v. Seattle Audubon Soc., 503
19 U.S. 429, 433 (1992).

20 4. The thirteen national forests in Oregon and Washington
21 known to contain northern spotted owls are Olympic, Mt. Baker-
22 Snoqualmie, Gifford Pinchot, Okanogan, Wenatchee, Siuslaw, Mt.
23 Hood, Willamette, Deschutes, Winema, Umpqua, Rogue River, and
24
25

1 Siskiyou.¹ While section 318 sales were initially offered in
2 fiscal years 1989 or 1990, a number of section 318 sales were
3 awarded after September 30, 1990. See Declaration of Jerry Hofer
4 at ¶ 3 (attached as Ex. A to Defs' Memo); Declaration of Stephen
5 J. Paulson at ¶ 5 (attached to defendants' opposition to
6 plaintiff's motion for temporary restraining order). Several
7 section 318 sales have not yet been awarded. Hofer Dec. at ¶ 3.

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

20 6. As of August 25, 1995, the Forest Service data also
21 shows that there are 58 section 318 sales that had been offered
22 and awarded, but subsequently delayed or suspended, in six of the
23

24 ¹ See Standards and Guidelines C-2, accompanying Record
25 of Decision for Amendments to Forest Service and Bureau of Land
Management Planning Documents Within the Range of the Northern
Spotted Owl (ROD).

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

9 7. In addition to the amounts described above, since April
10 1995, a number of previously suspended or delayed units of
11 section 318 sales have been released by the Forest Service. Id.
12 at ¶5. Of that amount, approximately 6 million board feet was
13 from sales located in national forests in western Washington and
14 approximately 53 million board feet was from sales located in
15 national forests in western Oregon. Id.

16 8. In addition to the section 318 sales described above,
17 the Forest Service has estimated, according to its most recent
18 review of timber sale files for all national forests located in
19 Washington and Oregon, that approximately 109 million board feet
20 of timber was offered or awarded (but delayed or suspended)
21 pursuant to sales offered in fiscal years 1991 through July 27,
22 1995 (non-318 sales). Id. at ¶ 6.

23 9. The Forest Service forwarded the Effects Statement,
24 "timber Sale Amendments to FY 1995 Rescission" to both the House
25 and Senate appropriations subcommittee staff working on the 1995

1 Rescissions Act by courier. See Declaration of Steve Satterfield
2 at ¶ 5 (attached to Defs' Memo as Ex. F).

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DEFENDANTS' OPPOSITION
TO PLAINTIFF'S CONCISE
STATEMENT OF MATERIAL FACTS

1 Respectfully submitted,

2 KRISTINE OLSON ROGERS
3 United States Attorney

4 LOIS J. SCHIFFER
5 Assistant Attorney General

6 

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20 United States Department of the Interior
Washington, DC

21 Dated: September 1, 1995

22

23

24

25

DEFENDANTS' OPPOSITION
TO PLAINTIFF'S CONCISE
STATEMENT OF MATERIAL FACTS

1 CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that on September 1, 1995,
3 she caused one copy of the foregoing **FEDERAL DEFENDANTS'**
4 **OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT and**
5 **STATEMENT OF FACTS IN OPPOSITION TO PLAINTIFF'S STATEMENT OF**
6 **CONCISE MATERIAL FACTS** to be served via Federal Express upon the
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1 17. There are no marbled murrelets known to be nesting
 2 within Scott Timber Co.'s timber sale units. The defendants'
 3 refusal to release these units is a violation of
 4 Section 2001(k)(2) contrary to the Administrative Procedure Act,
 5 5 U.S.C. § 706(2)(A).

6 **SECOND CLAIM FOR RELIEF**
 7 **Violation of the Administrative Procedure Act**

8 18. Plaintiff realleges paragraphs 1 through 17 above.

9 19. Defendants' interpretation of Section 2001(k)(2)
 10 of the Emergency Salvage Timber Sale Program prohibiting release
 11 of Scott Timber Co.'s units given that there are not marbled
 12 murrelets "known to be nesting" in these units is arbitrary and
 13 capricious in violation of the Administrative Procedure Act, 5
 14 U.S.C. § 706(2)(A).

15 **PRAYER FOR RELIEF**

16 WHEREFORE, plaintiff respectfully petitions this court
 17 for relief.

18 1. A declaration that Section 2001(k)(2) does not
 19 prohibit the release of Scott Timber Co.'s sale units.

20 2. An injunction mandating that the defendants
 21 release and permit to be completed Scott Timber Co.'s timber sale
 22 units.

23 3. An award of reasonable attorneys' fees and costs.

24 : : :
 25 : : :
 26 : : :

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4. Other relief as the court finds reasonable and necessary.

Dated this 20th day of August, 1995.

HAGLUND & KIRTLEY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SCOTT TIMBER CO.,

Plaintiff,

v.

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

Defendants.

Civil No. 95-6267-HO

**DEFENDANTS' OPPOSITION
TO PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING
ORDER**

I. INTRODUCTION

Plaintiff, a commercial timber company, challenges the defendant's implementation of Section 2001(k)(2) of the Rescissions Act of 1995 (the Act), Pub. L. 104-19 §2001 (1995). Section 2001(k) generally addresses the award and release of remaining sales planned pursuant to Section 318 of the Department

of the Interior and Related Agencies appropriations Act, Fiscal year 1990, Pub. L. 101-122 (Section 318).¹

Section 2001(k) (1) directed the Secretaries of the Interior and Agriculture (the Secretaries) to act to award remaining Section 318 sales within 45 days from enactment of the Act, or by September 10, 1995. The Act also provided, in Section 2001(k) (2), that sales should not be released in units where threatened or endangered species are known to be nesting. Plaintiff contends that the Secretaries' interpretation of this provision, as detailed in the August 23, 1995, Memorandum from the Under Secretary of Agriculture and the Director of the Bureau of Land Management,² exempts from release areas used for activities other than nesting.

Plaintiff asserts that preliminary relief is warranted because plaintiff fears that the defendants will contend that, after September 10, 1995, defendants can no longer release sales pursuant to Section 2001(k) (1). Plaintiff is wrong. Defendants understand the Act as conferring discretion on defendants to release sales under Section 2001 (k) (1), as otherwise permitted, even after September 10, 1995. Thus, there is no basis for any temporary relief and plaintiff's speculation in this regard is groundless.

¹ This Court has before it, in the matter of NFRC v. Glickman, briefing on cross motions for summary judgment which also address these statutes. Thus, for the purposes of plaintiff's motion for temporary restraining order herein, defendants will submit only an abbreviated statement summarizing relevant details of the statutes.

² Attached as Exhibit 1 to this opposition.

On the substance of plaintiff's claim that the agencies' interpretation of Section 2001(k)(2) is arbitrary, plaintiff ignores the practical realities brought to bear in implementing the Act by the biological characteristics of the murrelet. Murrelets simply do not construct a "nest" as is typically envisioned. Thus, the Secretaries have complied with the requirement that units not be released where murrelets are known to be nesting by applying a set of criteria to determine nesting activity. Because these criteria constitute the best available scientific information to make such determinations, the Secretaries' interpretation of Section 2001(k)(2) should be upheld. Further, the Secretaries' interpretation is consistent with the overall legislative intent underlying the Act as a whole.

II. STATEMENT

The marbled murrelet was listed as a threatened species on October 1, 1992, see, 57 Fed. Reg. 45328, October 1, 1992.³ The murrelet is a small seabird which feeds on fish in near-shore

³ As the Court has previously heard several cases under the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 et seq., defendants will not detail those provisions for the purposes of this opposition. In sum, the provisions relevant as background to this controversy are Section 4, which mandates that the Secretary of the Interior (or the Secretary of Commerce in the case of certain marine species) shall, under Section 4 of the ESA, list as either endangered or threatened species any species which is in danger of extinction. 16 U.S.C. § 1533. Once listed, Section 7 of the ESA requires that federal agencies must insure that actions funded, authorized, or carried out by them will not be likely to jeopardize the continued existence of any listed species, and that the agency shall consult with the U.S. Fish and Wildlife Service of the Department of the Interior in meeting this obligation. 16 U.S.C. § 1536(a)(2).

marine waters, travelling onshore only for nesting and breeding activities, utilizing primarily older, large-limbed trees for this purpose. Id. at 45328-29. After the species was listed, the land management agencies with coastal forests utilized by murrelets -- the U.S. Forest Service (FS) and the Bureau of Land Management (BLM) -- entered into consultation with the U.S. Fish and Wildlife Service (FWS) pursuant to Section 7(a)(2) of the Endangered Species Act to insure that harvesting in these forests would not be likely to jeopardize the continued existence of the murrelet.

The Section 318 sales at issue here were the subject of such consultations. See, e.g., Defendants' Exhibit 2, Biological Opinion of June 12, 1995. Of the Section 318 sales submitted by the Forest Service for consultation,⁴ the harvest of 60 of the sales was determined by the FWS to be likely to jeopardize the continued existence of the murrelet. Exhibit 2 at 5. These determinations were based on the criteria set forth in the Pacific Seabird Group (PSG) survey protocol, attached as Defendants' Exhibit 3. This protocol was developed by a group of federal, state, private and academic biologists, and is designed to detect murrelets for a variety of purposes. See, PSG Protocol, at 2. Thus, at the time the Act was passed, the sale units subject to the "jeopardy" biological opinion had not been released for harvest.

⁴ While plaintiffs allege that their claims lie as to both Forest Service and Bureau of Land Management sales, defendants understand, on the basis of the limited information presented by plaintiff, that the BLM sales are not occupied by murrelets.

As noted, Section 2001(k)(2) requires that the Secretaries not release for harvest those sales where threatened or endangered species are "known to be nesting." As is explained in the Secretaries' August 23 Memorandum, the Secretaries determined, given the nesting behavior of the murrelet, that application of the protocol criteria was the way to provide for meaningful implementation of Section 2001(k)(2):

[A]gency experts inform us that murrelets do not "nest" or "reside," that is, nest or breed, in a way that permits of typical nest detection, yet their nesting and breeding behavior is just as critically dependent on availability of nesting habitat as any other species. In order to comply with the directive to withhold sales where the murrelet is nesting, the scientifically valid approach is to utilize the criteria in the protocol.

Defendants' Exhibit 3, at 3.

III. APPLICABLE LAW

Plaintiff challenges the Secretaries interpretation of Section 2001(k)(2) of the Act, which states that:

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.

This subsection is followed by Section 2001(k)(3), which provides that, if for any reason a sale cannot be released, the Secretary concerned shall make the purchaser an alternative offer of timber.

III. ARGUMENT

A. Standards for Preliminary Relief.

A temporary restraining order or preliminary injunction is an extraordinary remedy the entitlement to which the plaintiff bears the burden of proving by clear and convincing evidence.

See Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 442-442 (1974). "An injunction should only issue where the intervention of a court of equity 'is essential in order effectually to protect property rights against injuries otherwise irremediable.'" Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982).

Under the traditional test used by the Ninth Circuit, a preliminary injunction may be issued if the moving party demonstrates that: (1) it will suffer irreparable injury if the requested relief is denied; (2) it will likely prevail on the merits; (3) the balance of potential harm tilts in its favor; and (4) the public interest favors granting the requested relief. Burlington Northern RR Co. v. Department of Revenue, 934 F.2d 1064, 1074 n.6 (9th Cir. 1991). Under an alternative test used by the Ninth Circuit, a movant must establish either that: (1) a combination of probable success on the merits and the possibility of irreparable injury; or (2) serious questions are raised on the merits and the balance of hardships tips sharply in its favor.⁵

Id.

B. Plaintiff Has Failed To Establish That It Will Suffer Irreparable Harm.

⁵ This test is not modified even in those cases where a statutory violation is proven. See Amoco Production Co. v. Village of Gambell, 480 U.S. 531 (1987) ("Village of Gambell") (where an agency fails to comply with a statutory procedure, courts cannot presume irreparable harm from that violation); see, also, Save the Yaak Committee v. Block, 840 F.2d 714, 722 (9th Cir. 1988); Town of Huntington v. Marsh, 884 F.2d 648, 651 (2nd Cir. 1989) ("injunctive relief does not follow automatically upon a finding of statutory violations, including environmental violations").

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

In the instant case, plaintiff advances several theories for why it will be irreparably harmed without a temporary restraining order.⁶ First and foremost, plaintiff asserts that preliminary relief is warranted because if the Court does not order a contingent release of the sales at issue, defendants will argue that, after September 10, 1995, defendants no longer have authority to act under Section 2001(k)(2). However, as stated above, defendants understand the Act to have conferred discretion on defendants to take actions pursuant to Section 2001(k)(1), even after September 10, 1995. Thus, there is no basis for plaintiff's concern, and no need for preliminary relief.

Further, the concern alleged by plaintiff does not provide evidence of true irreparable harm. The plaintiff has instead

⁶ As a preliminary matter, it should be determined if plaintiff is entitled to the relief it seeks, which may be dependent, in part, on the resolution of legal issues pending before the Court in Northwest Forest Resource Council v. Glickman and Babbitt, Civ. No. 95-6244-HO, as to the scope of Section 2001(k)(1). It may be that the sales plaintiff here seeks to have released in this case will be deemed not within the scope of Section 2001(k)(1).

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

Finally, plaintiff claims that it will be irreparably harmed in the absence of a temporary restraining order because it does not believe that it will obtain replacement volume as provided for under Section 2001(k)(3) for sales withheld pursuant to Section 2001(k)(2). Pl. TRO Memo at 3. Plaintiff's conclusion is based on its reading of the Agencies' Interpretation, is entirely speculative, and should be disregarded.

C. The Balance Of The Harms And The Public Interest Weigh Against Granting Temporary Restraining Order.

As discussed above, plaintiff's fears of harm are groundless, and there is no basis for ordering the preliminary relief plaintiff seeks. On the other hand, defendants may well be harmed, and the public interest disserved, by an order requiring even the contingent release of these sales, since it is entirely unclear what result would obtain from a contingent

release of sales in important murrelet nesting areas. Plaintiff's assertion that release of existing timber sale contracts is in the public interest ignores the public interest in protecting these species. In the absence of any demonstration of harm to plaintiff, the possibility of harm to this threatened species by unwarranted release of the sales weighs heavily against issuance of preliminary relief.

D. Plaintiff Is Not Likely To Succeed On The Merits.

In support of its position that it will be likely to succeed on the merits, plaintiff has incorporated its memorandum in support of its motion for summary judgment which was improperly filed only two days after plaintiff filed its complaint -- in clear violation of the specific mandates of Fed. R. Civ. Proc. 56(a) -- and which defendants have moved to strike on that ground. In essence, plaintiff seeks to force defendants to respond to their motion for summary judgment -- a 19 page memorandum with numerous exhibits and declarations -- within the confines of an opposition to a motion for temporary restraining order prepared under extreme time pressure. Plaintiff should not be permitted to proceed in this fashion.

However, in the interests of facilitating this important litigation, defendants will summarily address herein plaintiff's main arguments as presented in its motion for summary judgment, to show that plaintiffs are not likely to succeed on the merits.

1. Defendants' interpretation of Section 2001(k)(2) is not inconsistent with the plain meaning of the statute.

Plaintiff contends that the plain language of Section 2001(k)(2) prohibits the Secretaries from utilizing the protocol criteria to determine nesting. However, plaintiff's argument in this regard undermines its position, since it is entirely based on biological propositions which are not encompassed in the statute.

Clearly, the phrase "known to be nesting" depends on the biology of the species involved and is not plain on its face as to every threatened or endangered species of bird which may be nesting in a Section 318 sale. In terms of the murrelet, which is the species most likely to be the subject of Section 2001(k)(2)'s protections, the Secretaries have interpreted this phrase as detailed in the August 23, 1995, Memorandum, based on the species' biology as understood by the agency experts. Under the applicable analysis mandated by the Supreme Court in Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), the agencies' interpretation is due deference:

[I]f the statute is silent or ambiguous, with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. . . . "The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress." Morton v. Ruiz, 415 U.S. 199, 231 (1974).

Chevron, 467 U.S. at 843.

As detailed below, because the Secretaries' interpretation is a permissible one, it should be upheld.

2. The Secretaries' interpretation is based on the best available scientific information and is consistent with overall congressional intent.

Plaintiff contends, based on declarations of its' experts, that the Secretaries' interpretation is impermissible because the PSG protocol only determines "occupancy," and that "nesting" is an entirely different activity. This contention ignores the biology of this species.

As noted above, the protocol is utilized for several purposes, including to determine the probable presence or absence of murrelets, and whether a stand is occupied by murrelets. The protocol defines an occupied stand as follows:

An occupied stand is defined as the stand of potential habitat where murrelets have been observed exhibiting behaviors which have been observed in stands with evidence of nesting. These behaviors have been termed **subcanopy behaviors** We feel that subcanopy behaviors strongly indicate the stand is a nest stand or that the stand has some importance for breeding.

Defendants' Exhibit -, p. 4 (emphasis in original).

The protocol makes clear that detections only indicating presence do not rise to the level of occupancy detections. Id. The criteria for determining that a stand is occupied are set forth in the protocol, and include active nesting, detection of eggshell fragments, fecal rings, subcanopy flight and perching and certain bird calling. Defendants' Exhibit 3, p. 13.

The obvious purpose of determining what the protocol refers to as "occupied" is to protect nesting murrelets. The primary reason the species utilizes these forest areas is for nesting and breeding. 57 Fed. Reg. 45328-29. As described in defendants'

August 23, 1995, Memorandum, it was precisely because of the species nesting habits -- combined with its highly secretive behavior -- that the protocol was developed, and it is the judgment of the agencies' experts that actual detection of a nest "is not the only, or the exclusive, reliable indicator of nesting." Defendants' Exhibit 1, p. 2.

The main import of plaintiff's argument is that, in the view of plaintiff's experts, a nesting determination may be made based only on those criteria which include active nesting, eggshell fragments, or fecal rings. However, it is the judgment of the agencies' experts that nesting can be detected through evidence other than these criteria, as set forth in the protocol. Because the judgment of the agencies' experts is due deference, this Court should not engage in a weighing of expert opinion, but should uphold the agencies' position. Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 376-377 (1989) ("[W]e must defer to the 'informed discretion of the responsible federal agencies'"); Mt. Graham Red Squirrel v. Espy, 986 F.2d 1568, 1576 (9th Cir. 1993) (though court may find contrary views more persuasive, "an agency must have discretion to rely on the reasonable opinions of its own qualified experts. . .").

Defendants interpretation of Section 2001(k)(2) provides for full and meaningful implementation of Congress' express direction that sales should not be released if there were in areas where endangered or threatened species are nesting. Further, nothing in the legislative history reflects that Congress intended for the agencies to pursue less protective measures that would not

protect against jeopardy to the species. Though the legislative history is far from clear, references in the floor debate indicate that Congress did not intend for the agencies to proceed with sales that would jeopardize listed species:

The Gorton amendment releases 375 million board feet of timber sales in western Oregon that were previously sold to timber purchasers. Most of these sales, originally authorized by the Northwest timber compromise amendment of 1989, were determined in the record of decision for President Clinton's option 9 plan not to jeopardize the existence of any species. To ensure further protections, the Gorton amendment includes provisions prohibiting activities in timber sale units which contain any nesting threatened or endangered species.

141 Cong. Rec. § 4881. *al 100's 1000's*

This passage clearly conflicts with plaintiff's contention that Congress intended these sales to be harvested, even though to do so would jeopardize the murrelet. Plaintiff relies on other statements from floor debates and activities in House committee to support its contention that Congress expressly intended the agencies to harvest sales which would jeopardize the murrelet, but such statements conflict with that above. While defendants do not have the opportunity to address each instance of legislative reference cited by plaintiff, defendants note that activities in House committees never presented for a vote to the full House are not meaningful indicators of Congressional intent, see, Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 114 (1989), and that post-enactment statements of legislators are entitled to little, if any weight. See, Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 118 (1980).

Plaintiff also relies heavily on the remarks of Senator Gorton,

but the remarks are not clear evidence that Congress intended the expert agencies to ignore their best scientific information and make determinations about nesting based only on certain specific criteria, to the exclusion of other criteria judged by the agencies to be probative. In any event, as noted, the legislative history is not clear, and should not be utilized as a basis for rejecting an otherwise permissible interpretation of a statute by the administrative agency charged with implementing the statute.

V. CONCLUSION

Plaintiff's request for preliminary and extraordinary relief should be denied. There is no need for such relief because the agencies retain the discretion to release sales under Section 2001(k)(1) beyond September 10, 1995. Further, plaintiff can demonstrate no harm, and has not demonstrated a likelihood of success on the merits.

Dated: 7 September 1995

Respectfully submitted,

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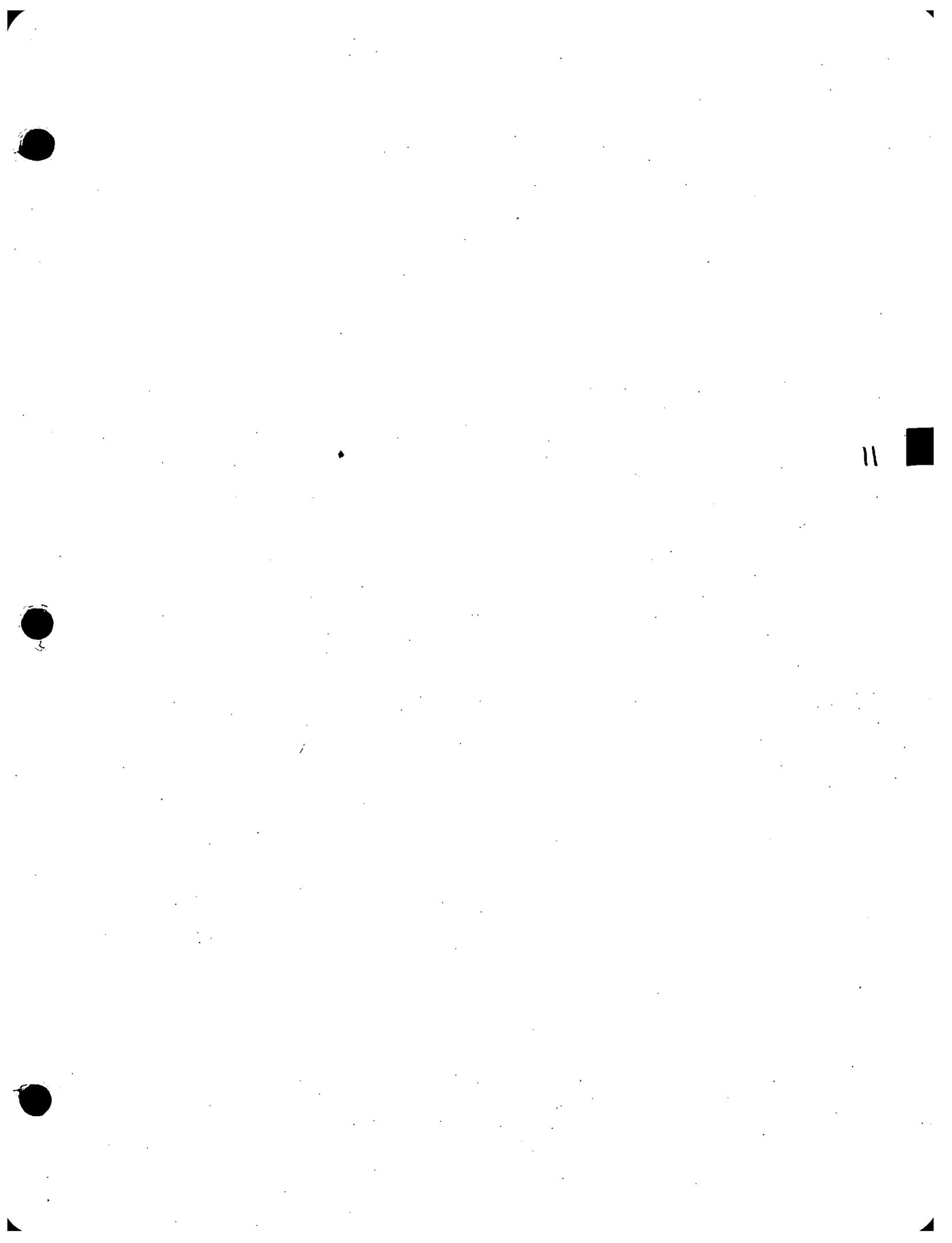
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

PILCHUCK AUDUBON SOCIETY;)
OREGON NATURAL RESOURCES COUNCIL;)
PORTLAND AUDUBON SOCIETY;)
BLACK HILLS AUDUBON SOCIETY; and)
COAST RANGE ASSOCIATION)

Plaintiffs,)

v.)

DAN GLICKMAN, in his official)
capacity as Secretary of the)
United States Department of)
Agriculture; and UNITED STATES)
FOREST SERVICE)

Defendants.)

FILED
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ENTERED
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CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON DEPUTY

No. C95-1234 *WR*

MEMORANDUM IN SUPPORT
OF MOTION FOR PRELIMINARY
INJUNCTION OR, IN THE
ALTERNATIVE, TEMPORARY
RESTRAINING ORDER

DEFENSE
EXHIBIT
C

1 INTRODUCTION

2 Plaintiffs Pilchuck Audubon Society, et al. (collectively,
3 "Audubon") respectfully seek a preliminary injunction to halt the
4 imminent destruction of old-growth national forest stands used for
5 nesting by the threatened marbled murrelet.¹ The U.S. Fish and
6 Wildlife Service ("FWS") has determined that logging of these
7 stands is likely to jeopardize the continued existence of the
8 murrelet. Harvest of these areas would violate the logging rider
9 to the Fiscal Year 1995 Emergency Supplemental Appropriations for
10 Disaster Relief and Rescissions Act, which prohibits the release
11 and logging of acreage where threatened birds are "known to be
12 nesting." A preliminary injunction is necessary to avoid
13 irreparable harm to the murrelet and preserve the status quo until
14 the case can be decided on its merits.

15 FACTUAL BACKGROUND

16 I. THE MARBLED MURRELET AND THE PACIFIC SEABIRD GROUP PROTOCOL

17 The marbled murrelet is a shy, robin-sized seabird that nests
18 in old-growth and mature coastal forests in Washington, Oregon, and
19 California. See Declaration of S. Kim Nelson at ¶ 5. The murrelet
20 spends most of its time feeding and resting at sea and comes inland
21 only for nesting purposes. Id. at ¶¶ 8, 11.

22 The marbled murrelet is extremely secretive during its inland
23 flights. Id. at ¶ 9. The murrelet relies on stealth, speed, and
24 the concealment provided by a closed forest canopy to protect its

25
26 ¹ If the U.S. Forest Service ("USFS") releases the disputed
27 timber sales for logging before resolution of this motion,
Audubon requests that the motion be treated as a motion for
temporary restraining order.

1 nests from avian predators. *Id.* Moreover, the murrelet does not
2 construct nests, but uses large limbs, natural deformations, and
3 other structures characteristic of old-growth trees as nesting
4 platforms. *Id.* at ¶ 8. For these reasons, it has been extremely
5 difficult for human researchers and observers to locate actual
6 murrelet nests. *Id.* at ¶¶ 5, 9, 11-13.

7 In response to this difficulty, the Pacific Seabird Group
8 ("PSG"), the lead scientific society coordinating research on the
9 species, has developed and periodically refined a survey protocol
10 to detect the presence or probable absence of murrelets in a forest
11 stand. *Id.* at ¶ 10. This protocol has gained "nearly universal
12 acceptance by the scientific community and public agencies" and "is
13 the generally accepted scientific methodology employed to determine
14 whether marbled murrelets are located in, or making use of, a
15 particular inland forested site for nesting purposes." Marbled
16 Murrelet v. Pacific Lumber Co., 880 F. Supp. 1343, 1350-51 n.15
17 (N.D. Cal. 1995) (appeal docketed). The protocol has been adopted
18 for use by the USFS, the FWS, and other land management and
19 wildlife agencies. Nelson Dec. at ¶ 10.

20 The PSG protocol classifies certain types of behavior as
21 evidence of occupancy of a forest stand by marbled murrelets. *Id.*
22 at ¶¶ 10-11. Studies have linked these behaviors to nesting in a
23 forest stand. *Id.* at ¶¶ 11-12. Based on these factors and the
24 extreme difficulty in locating actual murrelet nests, researchers
25 and agency land managers conclude a forest stand is being used for
26 nesting when surveyors have observed occupied behavior in the
27 stand. *Id.* Further investigation to locate a nest is extremely

1 difficult and expensive, is not required under the protocol or USFS
2 policy, and has not been pursued on the timber sales at issue in
3 this case. Id. at ¶¶ 12-13.

4 II. THE OCCUPIED § 318 TIMBER SALES

5 The FWS added the Washington, Oregon, and California
6 populations of the murrelet to the federal list of threatened
7 species on September 28, 1992, primarily because of the destruction
8 and fragmentation of the species' nesting habitat. 57 Fed. Reg.
9 45328 (Oct. 1, 1992); Nelson Dec. at ¶¶ 6-7. Following the
10 listing, the USFS reinitiated consultation with the FWS under
11 Endangered Species Act § 7(a)(2), 16 U.S.C. § 1536(a)(2), regarding
12 the effects of 88 timber sales on the murrelet. The sales had been
13 awarded under Section 318 of the Department of Interior and Related
14 Agencies Appropriations Act for Fiscal Year 1990, Pub. L. 101-121
15 (103 Stat. 745), and are commonly referred to as § 318 sales. Much
16 of the timber volume in the sales had been logged prior to listing.
17 FWS, Final Biological Opinion regarding the 60 remaining Section
18 318 timber sales at 3, 7-9 (June 12, 1995) ("1995 BiOp") (appended
19 as Exh. C to Declaration of Adam J. Berger, filed herewith).

20 The FWS concluded that further logging of 77 of the sales
21 would likely jeopardize the continued existence of the marbled
22 murrelet because the sales were occupied by murrelets or had not
23 been properly surveyed to determine occupancy. See FWS, Final
24 Biological Opinion regarding the Section 318 timber sales (May 11,
25 1994) ("1994 BiOp") (Berger Dec. Exh. A); Letter from FWS to Forest
26 Supervisor, Siskiyou NF, (June 15, 1994) (Berger Dec. Exh. B).
27 Seventeen sales subsequently were released when surveys failed to

1 detect occupancy; three more sales were modified to exclude
2 occupied units and released. 1995 BiOp at 1-2.²

3 III. THE FISCAL YEAR 1995 RESCISSIONS ACT

4 On July 27, the President signed into law the FY 1995
5 Rescissions Act, Pub. L. 104-19 (109 Stat. 194). Section 2001 of
6 the Act is a lengthy rider devoted to timber issues principally in
7 the Pacific Northwest. Section 2001(k) deals specifically with
8 timber sales awarded under § 318 that have been delayed by
9 environmental review (complete text appended as App. A).

10 Section 2001(k)(1) requires the USFS to release most § 318
11 sales for logging within 45 days "[n]otwithstanding any other
12 provision of law" and without any change in the original terms of
13 the sale. However, the Act also states that "[n]o sale unit shall
14 be released or completed under this subsection if any threatened or
15 endangered bird species is known to be nesting within the acreage
16 that is the subject of the sale unit." § 2001(k)(2). The Act
17 requires the USFS to provide the purchaser an equal volume of
18 replacement timber within 45 days for any unit that cannot be
19 released under § 2001(k)(2). See § 2001(k)(3).

20 DISCUSSION

21 I. STANDARD OF REVIEW

22 In the Ninth Circuit, a court must consider three factors in
23 ruling on a motion for preliminary injunction: (1) plaintiffs'
24 likelihood of success on the merits; (2) whether the balance of
25 irreparable harm favors plaintiffs; and (3) whether the public

26 ² The 1995 BiOp also contained a reasonable and prudent
27 alternative that would allow harvest of surveyed, unoccupied
units in other sales. Id. at 19.

1 The USFS's chief marbled murrelet researcher, the federal
2 Forest Ecosystem Management Assessment Team ("FEMAT"), and the
3 Marbled Murrelet Recovery Team have stressed the need to protect
4 all known murrelet-occupied nesting sites. See Ralph, C.J., et al.
5 Ecology and Conservation of the Marbled Murrelet in North America.
6 USDA Forest Service Gen. Tech. Rep. PSW-152 (1995) at 17 ("[W]e
7 strongly suggest that a prudent strategy would be to curtail
8 further loss of occupied nesting habitat in at least Washington,
9 Oregon, and California.") (Berger Dec. Exh. D); FEMAT, Forest
10 Ecosystem Management: An Ecological, Economic and Social Assessment
11 at IV-164 (July 1993) (Berger Dec. Exh. E); Letter from Marbled
12 Murrelet Recovery Team to Marvin Plenert at 2 (April 14, 1994)
13 (Berger Dec. Exh. F). The § 318 sites represent some of the best
14 remaining murrelet nesting habitat in the Pacific Northwest.
15 Nelson Dec. at ¶¶ 4, 15.

16 Logging that jeopardizes the continued existence of the
17 marbled murrelet threatens "incalculable harm." Sierra Club v.
18 Marsh, 816 F.2d 1376, 1383 (9th Cir. 1987). Replacement nesting
19 habitat cannot be created or bought; its destruction is irreparable
20 and cannot be compensated by monetary damages. See Seattle Audubon
21 Soc'y v. Evans, 771 F. Supp. 1081, 1093 (W.D. Wash. 1991), aff'd,
22 952 F.2d 297 (9th Cir. 1991) ("SAS").

23 On the other side of the scales, a preliminary injunction
24 would cause no irreparable harm to the USFS or the timber sale
25 purchasers. The sales have been suspended for almost three years;
26 another few weeks will make no difference. Moreover, the
27 Rescissions Act requires the USFS to provide replacement timber for

1 any sale units that ultimately are not released; even a permanent
2 injunction would work no irreparable harm. The balance of harms
3 clearly favors issuance of a preliminary injunction.

4 III. THE PUBLIC INTEREST FAVORS A PRELIMINARY INJUNCTION

5 This case implicates three public interests of the highest
6 order: "the declared national policy of saving endangered
7 species," Tennessee Valley Auth. v. Hill, 437 U.S. 153, 184 (1978);
8 the "manifest interest in the preservation of old growth trees,"
9 Pilchuck Audubon Soc'y v. MacWilliams, 19 ELR 20526, 20529 (W.D.
10 Wash. 1988); and "the interest in having government officials act
11 in accordance with the law." SAS, 771 F. Supp. at 1096. These
12 interests support grant of a preliminary injunction.

13 IV. AUDUBON IS LIKELY TO PREVAIL ON THE MERITS OF ITS CLAIM

14 Section 2001(k)(2) of the Rescissions Act prohibits the USFS
15 from releasing any timber sale unit in which a threatened species
16 is "known to be nesting." For the past five years, occupancy as
17 determined under the PSG protocol has been accepted by the USFS,
18 the FWS, and independent murrelet experts as the criterion for
19 establishing nesting use of forest stands. Settled agency practice
20 and the best available scientific data dictate that occupied units
21 are areas where murrelets are "known to be nesting" and cannot
22 lawfully be logged under the Act.

23 This conclusion is explained in the declaration of S. Kim
24 Nelson, former chair of the PSG's Marbled Murrelet Technical
25 Committee and one of the nation's leading murrelet researchers.
26 Ms. Nelson describes the extreme difficulty in finding actual
27 murrelet nests, the established links between occupied behavior and

1 nesting use, and the adoption of the PSG protocol by all concerned
2 agencies as the determinant of known nesting areas. See Nelson
3 Dec. at ¶¶ 8-14. She further explains that the agencies do not
4 bother looking for individual nests after occupancy has been found
5 and that "efforts to find nests in the § 318 sales have been non-
6 existent." *Id.* at ¶ 12. Ms. Nelson concludes that "Marbled
7 Murrelets are nesting in stands where occupied behavior has been
8 observed" and "nests would be found in all stands of suitable
9 habitat where occupied behaviors are observed" if limited agency
10 resources allowed. *Id.* at ¶ 14.

11 These conclusions are confirmed by the USFS's own practice.
12 In the agency's recent comprehensive report on the murrelet, C.J.
13 Ralph, the USFS's leading murrelet researcher and co-author of the
14 PSG protocol, writes:

15 We believe that the most objective method of determining
16 habitat relationships is the detection of birds in the
17 forest.... Stands where murrelets exhibit this behavior
18 should be treated as if they contain nesting murrelets.

19[S]tand use during the breeding season should remain
20 the criterion of breeding for management purposes....

21 Ralph, *et al.*, *supra*, at 8 (emphasis added).

22 Similarly, the Forest Supervisor of the Siuslaw National
23 Forest, which contains the vast majority of the occupied § 318
24 units, recently wrote, "I believe that the harvest of sale units
25 that we have determined to be occupied by murrelets would violate
26 [the Rescissions Act]." Memorandum from James R. Furnish to
27 Regional Forester, R-6 (July 24, 1995) (Berger Dec. Exh. G). The
supervisor notes that protocol surveys "1) incorporate the best
information from the scientific community, and 2) have received
extensive interagency review and have been accepted as the means to

1 determine when habitat is being used for nesting." *Id.* (emphasis
2 added). He concludes that "surveys done according to established
3 protocol are our only prudent means to determine whether a stand
4 contains nesting murrelets, and have been accepted as the means to
5 determine nesting by Federal agencies in the Pacific Northwest
6 concerned with management of marbled murrelets." *Id.*

7 The FWS also treats occupancy under the PSG protocol as
8 determinative of nesting use. The § 318 biological opinions refer
9 to the occupied units as "occupied murrelet nesting habitat," 1995
10 BiOp at 1, 13, 18; 1994 BiOp at 15, and note that it is "extremely
11 difficult to detect [] nesting stands, even when using the best
12 available survey resources." 1995 BiOp at 20.

13 Finally, the PSG protocol has received judicial imprimatur as
14 "the generally accepted methodology employed to determine whether
15 marbled murrelets are located in, or making use of, a particular
16 inland forested site for nesting purposes." Marbled Murrelet, 880
17 F. Supp. at 1350 n.15.

18 The intent of § 2001(k) of the Rescissions Act is to release
19 awarded timber sales that have been detained by environmental
20 reviews while protecting the active nesting areas of threatened
21 birds. No report accompanied the enacted law. However, an
22 earlier, vetoed version of the Act contained an identical provision
23 that was explained in an accompanying committee report:

24 The harvest of many of these sales was assumed under the
25 President's Pacific Northwest forest plan, but their release
26 has been held up in part by extended subsequent review by the
27 U.S. Fish and Wildlife Service. The only limitation on
release of these sales is in the case of any threatened or
endangered bird species with a known nesting site in a sale
unit.

1 141 Cong. Rec. H5050 (daily ed. May 16, 1995).

2 As explained above, the USFS, the FWS, and independent
3 murrelet experts all consider occupied units to be "known nesting
4 site[s]." Moreover, release of occupied units specifically was not
5 assumed in the President's Forest Plan. See 1995 BiOp at 13.
6 Harvest of the occupied nesting units is neither compelled by nor
7 permitted under the Rescissions Act.

8 Defendants may rely on the floor statement of Senator Gorton
9 on the day the Rescissions Act passed the Senate to argue for a
10 more restrictive construction of § 2001(k)(2). See 141 Cong. Rec.
11 S10464 (daily ed. July 21, 1995). Senator Gorton claims that the
12 authors of the logging rider rejected an Administration request to
13 include the definition of "occupancy" in (k)(2) following the veto
14 of the earlier bill. Id. The Senator also claims that "the
15 administration must provide physical evidence that the bird is
16 'nesting' in that unit" before invoking the provisions of (k)(2).
17 Id. The Senator's statements do not change the conclusion that
18 logging of the occupied units would violate the Rescissions Act.

19 First, no resort to legislative history is necessary or
20 appropriate, because the language and purpose of § 2001(k)(2) are
21 clear on their face. Rumsey Indian Rancheria Wintun Indians v.
22 Wilson, 41 F.3d 421, 426 (9th Cir. 1994). Congress passed a law
23 that protects "known nesting sites" of threatened birds, which in
24 the case of the marbled murrelet are occupied forest stands. See
25 Asgrow Seed Co. v. Winterboer, 115 S.Ct. 788, 793 (1995) ("When
26 terms used in a statute are undefined, we give them their ordinary
27 meaning").

1 Second, a single legislator cannot ascribe content to a
2 statutory phrase that is contrary to the plain meaning of the words
3 and to settled agency and scientific usaga. Cf. United States v.
4 Shaw, 936 F.2d 412 (9th Cir. 1991). Indeed, "[s]tatements or
5 comments of individual Senators or Representatives on the floor of
6 either House are not to be given great, let alone controlling,
7 weight in ascertaining the intent of Congress as a whole." City of
8 Burbank v. Lockheed Air Terminal Inc., 411 U.S. 624, 642 n.1 (1973)
9 (Rehnquist, J., concurring); see also Garcia v. United States, 469
10 U.S. 70, 76 (1984); Coalition for Clean Air v. Southern Cal.
11 Edison, 971 F.2d 219, 227 (9th Cir. 1992), cert. denied, 113 S. Ct.
12 1361 (1993). This is especially so when these statements pertain
13 to technical minutia of a rider to a multifaceted bill dealing at
14 its core with unrelated matters -- disaster relief and deficit
15 reduction -- that command overwhelming Congressional support.
16 Giving undue weight to Senator Gorton's eleventh hour remarks would
17 condone 'stealth legislation' of the worst kind. See Friedrich v.
18 City of Chicago, 888 F.2d 511, 517 (7th Cir. 1989), judgment
19 vacated, 499 U.S. 933 (1991).³

20
21
22 ³ In addition, the Court should note the factual errors in
23 Senator Gorton's floor statements. For example, the Senator
24 asserts that "harvest of these sales was assumed under the
25 President's Pacific Northwest forest plan." 141 Cong. Rec.
26 S10464. Logging of the occupied sites specifically was not
27 assumed. 1995 BiOp. at 13. There is absolutely nothing in the
record to suggest that Congress as a whole voted to override the
Forest Plan or jeopardize the continued existence of the marbled
murrelet. See Schwegmann Bros. v. Calvert Distillers Corp., 341
U.S. 384, 395-96 (1951) (Jackson, J., concurring) (eschewing
reliance on "statements from floor debates, not always
distinguished for candor or accuracy").

1 Third, the refusal of the authors to include the definition of
2 occupancy has little probative value. Following the initial veto,
3 Congressional managers pushed the new rescissions bill through so
4 quickly that no reports accompanied the bill. The managers strove
5 to keep changes to the original bill to a minimum. 141 Cong. Rec.
6 S10463. The failure to mention "occupancy" one way or the other
7 may be an artifact of this process. It certainly does not
8 represent rejection by Congress as a whole of the universally
9 accepted method for identifying known murrelet nesting habitat.
10 See Babbitt v. Sweet Home Chapter of Communities for a Greater
11 Oregon, - U.S. -, No. 94-859, slip op. at 18 (June 29, 1995).

12 Fourth, to the extent Senator Gorton demands "physical
13 evidence" of nesting, the PSG protocol meets his concern. All
14 indicators of occupancy require actual, visual observation of
15 marbled murrelets in specific forest stands. Nelson Dec. at ¶ 11.
16 Identifying suitable habitat is not enough.

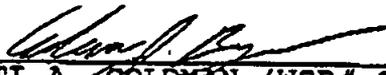
17 In short, the plain language of § 2001(k)(2) and the prior
18 committee report express a clear intent to protect known nesting
19 areas. For the marbled murrelet, the best available science and
20 longstanding agency practice define occupied sites as known nesting
21 areas. Accordingly, these areas cannot be logged consistent with
22 the Rescissions Act. In addition, interpreting the phrase "known
23 to be nesting" to exclude occupied sites is arbitrary and
24 capricious because it is contrary to the best available scientific
25 data, the consensus on management and study of the species, and the
26 settled practice of the USFS itself.

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CONCLUSION

For the reasons stated above, the Court should grant Audubon's motion for a preliminary injunction.

Respectfully submitted this 10th day of August, 1995.


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ADAM J. BERGER (WSB# 20714)
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Seattle, Washington 98104
(206) 343-7340

Attorneys for Plaintiffs

704 6901
704-3890

United States District Court

WESTERN DISTRICT OF WASHINGTON

Pilchuck Audubon Society; Oregon
Natural Resources Council; Portland
Audubon Society; Black Hills Audubon
Society; Coast Range Association,
plaintiffs

v.

Dan Glickman, in his official
capacity as Secretary of the United
States Department of Agriculture;
United States Forest Service,
defendants

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

C95-1234

HAND DELIVERED

MSGR: ABL REC'D BY: CLP
COPY RECEIVED

AUG 10 1995

TIME: 4:30
UNITED STATES ATTORNEY
Seattle, WA

TO: (Name and Address of Defendant)

Daniel R. Glickman
Secretary of Agriculture
Administration Building, Room 200A
14th Street & Independence Avenue SW
Washington, DC 20250

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

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

an answer to the complaint which is herewith served upon you, within 60 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

BRUCE RIFKIN

AUG 10 1995

CLERK



DATE

BY DEPUTY CLERK

2003

704 6901

704-3890

1 PATTI A. GOLDMAN (WSB# 24426)
2 ADAM J. BERGER (WSB# 20714)
3 Sierra Club Legal Defense Fund
4 705 Second Avenue, Suite 203
5 Seattle, Washington 98104
6 (206) 343-7340

7 Attorneys for Plaintiffs

FILED _____ ENTERED _____
LODGED _____
★ AUG 10 1995

8 IN THE UNITED STATES DISTRICT COURT CLERK U.S. DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON WESTERN DISTRICT OF WASHINGTON

10 PILCHUCK AUDUBON SOCIETY;)
11 OREGON NATURAL RESOURCES COUNCIL;)
12 PORTLAND AUDUBON SOCIETY;)
13 BLACK HILLS AUDUBON SOCIETY; and)
14 COAST RANGE ASSOCIATION)

15 Plaintiffs,)

16 v.)

17 DAN GLICKMAN, in his official)
18 capacity as Secretary of the)
19 United States Department of)
20 Agriculture; and UNITED STATES)
21 FOREST SERVICE)

22 Defendants.)

No. C95-1234 *W*

COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

HAND DELIVERED

MSGR: ABC REC'D BY: CEP
COPY RECEIVED

AUG 10 1995

TIME: 4:30

UNITED STATES ATTORNEY
Seattle, WA

23 INTRODUCTION

24 1. By this action, plaintiffs Pilchuck Audubon Society, et
25 al. (collectively, "Audubon") seek to protect the threatened
26 marbled murrelet from risk of extinction caused by logging of its
27 old-growth and mature coastal forest habitat. Specifically,
Audubon seeks a declaration that logging of national forest
timber sale units occupied by marbled murrelets is arbitrary and
capricious and violates the logging rider to the Fiscal Year 1995
Emergency Supplemental Appropriations and Rescissions Act, Public

COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF -1-

Sierra Club Legal Defense Fund
705 Second Avenue, Suite 203
Seattle, Washington 98104
Phone (206) 343-7340

1 Law 104-19 (109 Stat. 194). Audubon also seeks an injunction to
2 prevent logging of these units and avoid jeopardy to the
3 continued existence of the threatened marbled murrelet.

4 JURISDICTION

5 2. This Court has jurisdiction over this action under 28
6 U.S.C. § 1331 (federal question).

7 3. Venue is proper in this district under 28 U.S.C. §
8 1391(e) because a substantial number of the timber sale units in
9 controversy are located in this district and one or more of the
10 plaintiffs resides in this district.

11 PARTIES

12 4. The plaintiffs in this action are:

13 A. Pilchuck Audubon Society, a registered Washington
14 non-profit corporation dedicated to protecting, conserving, and
15 enjoying the State of Washington's wildlife and other natural
16 resources. Pilchuck Audubon Society's principal place of
17 business is in Everett, Washington and its approximately 800
18 members live in and around Everett, Washington.

19 B. Portland Audubon Society, a registered Oregon non-
20 profit corporation dedicated to protecting and conserving the
21 wildlife, lands, waters, and natural resources of the Pacific
22 Northwest. Portland Audubon Society's approximately 5,000
23 members live in and around Portland, Oregon.

24 C. Black Hills Audubon Society, a registered
25 Washington non-profit corporation dedicated to protecting,
26 conserving, and enjoying the State of Washington's wildlife and
27 other natural resources. Black Hills Audubon Society's principal

1 place of business is in Olympia, Washington and its approximately
2 750 members live in and around Olympia, Washington.

3 D. Oregon Natural Resources Council ("ONRC"), a
4 registered Oregon non-profit corporation with its principal place
5 of business in Portland, Oregon and 6,000 members throughout the
6 State of Oregon and the Pacific Northwest. ONRC and its members
7 are dedicated to protecting and conserving Oregon's wildlife,
8 lands, waters, and natural resources, including the marbled
9 murrelet and the coastal old-growth forests.

10 E. Coast Range Association ("CRA"), a non-profit
11 organization formed under the laws of the State of Oregon with
12 its primary place of business in Newport, Oregon. CRA is
13 dedicated to the goals of protecting the forests of the Oregon
14 Coast Range from unwise use and fostering new visions of
15 environmental stewardship, long-term sustainability, and
16 biological diversity that include healthy populations of the
17 animals that occur naturally throughout the Coast Range. CRA
18 represents hundreds of members who enjoy the birdwatching and
19 other recreation that marbled murrelets provide, as well as
20 business members and individuals whose livelihood depends on the
21 Coast Range tourist industry, which is in turn dependent on the
22 healthy forests and bird populations of the Oregon Coast Range.

23 5. Plaintiffs and their members use coastal old-growth
24 forests, the habitat of the marbled murrelet, for birding,
25 wildlife observation, nature photography, aesthetic enjoyment,
26 and other recreational and educational activities. Plaintiffs'
27 members derive scientific, recreational, aesthetic, and

1 conservational benefit and enjoyment from the existence of the
2 marbled murrelet in the wild. These interests will be
3 irreparably damaged if defendants disregard their statutory
4 duties, as described below, and permit the destruction of the
5 marbled murrelet's occupied nesting habitat.

6 6. The aesthetic, conservational, recreational, and
7 scientific interests of plaintiffs and their members have been,
8 are being, and, unless the relief prayed for herein is granted,
9 will continue to be adversely affected and irreparably injured by
10 logging of the murrelet's occupied old-growth nesting habitat on
11 national forest lands. Plaintiffs have no adequate remedy at
12 law.

13 7. Defendants in this action are:

14 A. Dan Glickman, in his official capacity as
15 Secretary of United States Department of Agriculture.

16 B. The United States Forest Service, an agency of the
17 Department of Agriculture charged with management of the national
18 forest system.

19 **FACTUAL BACKGROUND**

20 8. The marbled murrelet is a shy, robin-sized seabird that
21 spends most of its time feeding at sea and comes inland in order
22 to nest. In the Washington, Oregon, and California portion of
23 its range, the murrelet nests exclusively in old-growth and
24 mature forest habitat primarily within 50 miles of the coast.

25 9. The marbled murrelet does not construct nests, but uses
26 large limbs, natural deformations, and other structures
27 characteristic of old-growth trees as nesting platforms. The

1 murrelet relies on stealth, speed, and the concealment provided
2 by a closed forest canopy to protect its nests from avian
3 predators. For these reasons, it is also extremely difficult for
4 human researchers and observers to locate actual murrelet nests.

5 10. In response to this difficulty, the Pacific Seabird
6 Group ("PSG"), the professional scientific organization that has
7 taken the lead in coordinating and promoting marbled murrelet
8 research, has developed and periodically refined a survey
9 protocol to detect the presence or probable absence of murrelets
10 in a forest stand. This protocol has been universally accepted
11 by the scientific community and federal and state wildlife and
12 land management agencies as the best available scientific method
13 to determine when marbled murrelets are making use of a
14 particular forest stand for nesting purposes. The protocol has
15 been adopted for use by both the United States Fish and Wildlife
16 Service ("FWS") and the United States Forest Service ("USFS").

17 11. The PSG protocol classifies certain types of behavior
18 as evidence of occupancy of a forest stand by marbled murrelets.
19 Studies have linked these occupied behaviors to nesting in a
20 forest stand. Occupied behavior, as defined in the PSG protocol,
21 is generally accepted as an indication of birds making use of a
22 suitable forest stand for nesting purposes. Based on these
23 factors and the extreme difficulty in locating specific murrelet
24 nests, murrelet researchers and agency land managers consider a
25 forest stand to contain a nesting site when surveyors have
26 detected occupied behavior in the stand.

1 12. On September 28, 1992, the FWS listed the Washington,
2 Oregon, and California populations of the marbled murrelet as a
3 threatened species under the Endangered Species Act ("ESA"), 16
4 U.S.C. § 1531 et seq. Murrelet populations within the three
5 states have declined dramatically during historic times and
6 continue to fall at present. The primary threat to the
7 murrelet's continued existence is destruction and fragmentation
8 of its old-growth nesting habitat and associated problems
9 including increased nest predation.

10 13. Following the listing of the marbled murrelet, the USFS
11 consulted with the FWS pursuant to ESA § 7(a)(2), 16 U.S.C. §
12 1536(a)(2), on the effects of existing timber sale activities on
13 the threatened seabird. On May 11, 1994, the FWS issued a
14 biological opinion to the USFS regarding 88 timber sales awarded
15 under Section 318 of the Department of Interior and Related
16 Agencies Appropriations Act for Fiscal Year 1990, Public Law 101-
17 121 (103 Stat. 745). Most of the sales already had been
18 partially logged. The biological opinion concluded that further
19 logging of 76 of the sales would be likely to jeopardize the
20 continued existence of the marbled murrelet. On June 15, 1994,
21 the FWS amended the biological opinion to add an additional sale
22 to the jeopardy list.

23 14. The biological opinion, as amended, found that 43 of
24 the 77 sales contained sale units occupied by marbled murrelets
25 as determined by surveys in accordance with the PSG protocol.
26 The biological opinion concluded that there was no reasonable and
27 prudent alternative to suspension of logging on these sales. The

1 remaining 34 sales had not been surveyed to the PSG protocol.
2 The biological opinion concluded that logging of these sales had
3 to be suspended until proper surveys could be completed.
4 Following proper surveys, unoccupied sales could be released
5 while occupied sales could not be logged.

6 15. On June 12, 1995, the FWS released an updated
7 biological opinion regarding the § 318 sales. The opinion
8 reports that 17 of the previously unsurveyed sales have been
9 released as unoccupied. The opinion further authorizes the
10 logging of three sales that have been modified to exclude
11 occupied sale units. Of the remaining 57 sales, 46 contain
12 occupied units and 11 have not been surveyed to protocol. The
13 biological opinion concludes that unoccupied units in the 57
14 sales can be logged after completion of proper surveys. On
15 information and belief, all logging operations are currently
16 suspended on all units of the 57 sales.

17 16. On July 27, 1995, the President signed into law Public
18 Law 104-19 (109 Stat. 194), the Fiscal Year 1995 Emergency
19 Supplemental Appropriations and Rescissions Act. Section
20 2001(k)(1) of the Act requires the Forest Service to release most
21 § 318 sales for logging within 45 days of the law's enactment
22 "[n]otwithstanding any other provision of law." The Forest
23 Service is not permitted to change the original terms or volumes
24 of the sales for environmental or other reasons. *Id.* However,
25 the Act also provides that "[n]o sale unit shall be released or
26 completed under this subsection if any threatened or endangered
27 bird species is known to be nesting within the acreage that is

1 the subject of the sale unit." § 2001(k)(2). The Act requires
2 the Forest Service to provide the purchaser an equal volume of
3 replacement timber for any sale units that cannot be released for
4 logging within 45 days. § 2001(k)(3).

5 17. Subparagraph (k)(1) of the Rescissions Act threatens
6 imminent release and logging of the 60 occupied and potentially
7 occupied § 318 sales encompassed by the FWS's jeopardy biological
8 opinions. Logging of these sales will harm individual marbled
9 murrelets and substantially reduce the likelihood of survival of
10 the threatened species in the wild.

11 18. On July 27, 1995, Audubon sent a letter to the USFS and
12 the FWS asserting that logging of the occupied § 318 sale units
13 would destroy known murrelet nesting areas, jeopardize the
14 continued existence of the species, and violate the Rescissions
15 Act and ESA §§ 7(a)(2) and 9, 16 U.S.C. §§ 1536(a)(2) & 1538.
16 The letter requested the agencies to respond to Audubon's
17 assertions and notified the agencies of Audubon's intent to sue
18 if the jeopardy sales are released for logging. Neither the USFS
19 nor the FWS has responded to Audubon's letter or provided any
20 assurance that the occupied § 318 sales will not be imminently
21 released and logged.

22 **FIRST CLAIM FOR RELIEF**
23 **VIOLATION OF THE FY 1995 RESCISSIONS ACT**
24 **AND THE ADMINISTRATIVE PROCEDURE ACT**

25 19. Plaintiffs incorporate by reference all preceding
26 paragraphs.

27 20. Section 2001(k)(2) of the FY 1995 Rescissions Act
prohibits release and logging of national forest timber sale

1 units that are being used for nesting by threatened bird species,
2 including the marbled murrelet.

3 21. According to the best scientific information available,
4 murrelet-occupied sites, as determined in accordance with the
5 Pacific Seabird Group protocol, are known nesting areas for the
6 threatened marbled murrelet.

7 22. Logging of § 318 timber sale units found to be occupied
8 by marbled murrelets violates § 2001(k)(2) of the FY 1995
9 Rescissions Act and is not in accordance with law, in violation
10 of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

11 SECOND CLAIM FOR RELIEF
12 VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

13 23. Plaintiffs incorporate by reference all preceding
14 paragraphs.

15 24. According to established practice of the USFS and other
16 federal and state agencies and established usage in the
17 scientific community, marbled murrelets are "known to be nesting"
18 in occupied forest stands.

19 25. Any interpretation or implementation of § 2001(k)(2) of
20 the FY 1995 Rescissions Act that allows occupied § 318 timber
21 sale units to be released for logging is contrary to this
22 established practice and usage and is arbitrary and capricious,
23 in violation of the Administrative Procedure Act, 5 U.S.C. §
24 706(2)(A).

25 PRAYER FOR RELIEF

26 WHEREFORE, plaintiffs respectfully petition the Court for
27 the following relief:

A. A declaration that release and logging of § 318 timber

1 sale units found to be occupied by the threatened marbled
2 murrelet is arbitrary and capricious and violates § 2001(k)(2) of
3 the FY 1995 Emergency Supplemental Appropriations and Rescissions
4 Act.

5 B. An injunction prohibiting release and logging of § 318
6 timber sale units found to be occupied by the threatened marbled
7 murrelet.

8 C. A temporary restraining order or preliminary injunction
9 as necessary to preserve the status quo and prevent irreparable
10 harm to the threatened marbled murrelet.

11 D. An award of reasonable attorney fees and costs incurred
12 in this action.

13 E. Such other relief as the Court deems reasonable and
14 necessary.

15 Respectfully submitted this 10th day of August, 1995.

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

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

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

Effect of House Action:

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

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

The three fiscal years total salvage program currently planned and required by the amendment is shown in the following table. The exact volume required for FY 1995 and FY 1997 can not be precisely specified because of the amendment requirements that 1.5 billion board feet be offered in the first 90 days of each of the two years. Typically, the bulk of the regular current program is offered in the second half of the year. The following table also reflects the time frame anticipated for the current program. For FY 1995, the exact volume that would be established would depend on the actual date of enactment and the volume that had been offered in the fiscal year to date. For FY 1997, it is assumed that after the end of the two year period that the program would return to its current level of about 1.5 billion board feet. Given these assumptions, the total volume for the three fiscal years would be 7.150 billion board feet.

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

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

Estimated Timing and Volume Requirements

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

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

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

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

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

Organizational Capability, Existing Organization with Existing Rules

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

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

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

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

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

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

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

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

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

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

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

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

Volume Mandated by the Amendment:

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

Other Effects:

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

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

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

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

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

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

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

Range Amendments:

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

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

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

Option 9 Sales:

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

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

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

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

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

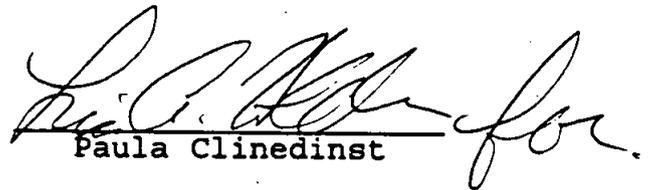
(318 Sales- 700 million board feet with additional receipts of \$161 million.)
 (Does not include the \$60 million which would be saved because of sale cancellations which would otherwise be necessary).

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 14, 1995, she caused one copy of the foregoing DEFENDANTS' OPPOSITION TO MOTIONS FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION to be served via telefacsimile machine and by U.S. mail upon the counsel of record hereinafter named:

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Name	Date
<i>Steven Reich</i>	<i>6/4/99</i>

Counsel

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