

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 054 - FOLDER -006

[01/16/1996-02/01/1996]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Michael Waldman to Elena Kagan; RE: Congratulations (1 page)	01/24/1996	Personal Misfile
002. email	Mail Link Monitor to Elena Kagan at 08:53:44.24. Subject: Confirmation [partial] (1 page)	01/29/1996	P6/b(6), b(7)(C), b(7)(E), b(7)(F)
003. email	Mail Link Monitor to Elena Kagan. Subject: Confirmation [partial] (1 page)	01/31/1996	P6/b(6), b(7)(C), b(7)(E), b(7)(F)
004. email	Mail Link Monitor to Elena Kagan at 08:58:54.25. Subject: Confirmation [partial] (1 page)	01/29/1996	P6/b(6), b(7)(C), b(7)(E), b(7)(F)

COLLECTION:

Clinton Presidential Records
 Automated Records Management System (Email)
 WHO ([Kagan])
 OA/Box Number: 500000

FOLDER TITLE:

[01/16/1996 - 02/01/1996]

2009-1006-F
ke714

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:16-JAN-1996 08:54:12.46

SUBJECT: Timber meeting reminder

TO: Alice E. Shuffield (SHUFFIELD_A) (OMB)
READ:16-JAN-1996 09:50:13.63

TO: FAX (9-720-5437, Greg Frazier) (TLXA1MAIL_\F:9-720-5437\C: Greg Fraier\\
READ:NOT READ

TO: FAX (9-720-4732, Jim Lyons) (TLXA1MAIL_\F:9-720-4732\C: Jim Lyons\\)
READ:NOT READ

TO: FAX (9-208-6956, Ann Shields) (TLXA1MAIL_\F:9-208-6956\C: Ann Shields\\
READ:NOT READ

TO: FAX (9-208-4684, George Frampton) (TLXA1MAIL_\F:9-208-4684\C: George Frampto
READ:NOT READ

TO: FAX (9-208-3144, Bob Armstrong) (TLXA1MAIL_\F:9-208-3144\C: Bob Armstrong\
READ:NOT READ

TO: FAX (9-514-0557, Lois Schiffer) (TLXA1MAIL_\F:9-514-0557\C: Lois Schiffer\
READ:NOT READ

TO: FAX (9-482-6318, Doug Hall) (TLXA1MAIL_\F:9-482-6318\C: Doug Hall\\)
READ:NOT READ

TO: FAX (9-260-0500, Steve Herman) (TLXA1MAIL_\F:9-260-0500\C: Steve Herman\\
READ:NOT READ

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ:16-JAN-1996 11:33:52.71

TO: Shelley N. Fidler (FIDLER_S) (CEQ)
READ:16-JAN-1996 11:13:39.41

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ:16-JAN-1996 11:26:43.77

TO: Ron Cogswell (COGSWELL_R) (OMB)
READ:16-JAN-1996 08:52:32.46

TO: Mark A. Weatherly (WEATHERLY_M) (OMB)
READ:16-JAN-1996 11:31:00.02

TO: Christine L. Nolin (NOLIN_CL) (OMB)
READ:17-JAN-1996 09:31:03.04

TO: Elena Kagan (KAGAN_E) (WHO)
READ:16-JAN-1996 10:04:41.60

TO: Martha Foley (FOLEY_M) (WHO)
READ:16-JAN-1996 09:43:52.99

TO: Kris Balderston (BALDERSTON_K) (WHO)

READ:16-JAN-1996 09:02:05.51

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ:16-JAN-1996 09:43:24.43

TO: Dinah Bear (BEAR_D) (CEQ)

READ:16-JAN-1996 09:13:25.71

TO: Remote Addressee (TLXA1MAIL_\F:97205437\C:Anne Kennedy\\)

READ:NOT READ

TO: FAX (92084684,Don Barry) (TLXA1MAIL_\F:92084684\C:Don Barry\\)

READ:NOT READ

TO: FAX (94821041,Bob Ziobro) (TLXA1MAIL_\F:94821041\C:Bob Ziobro\\)

READ:NOT READ

TO: Remote Addressee (TLXA1MAIL_\F:97204732\C:Mark Gaede\\)

READ:NOT READ

TO: Remote Addressee (TLXA1MAIL_\F:92085242\C:Nancy Hayes\\)

READ:NOT READ

TO: FAX (92191792,Kris Clark) (TLXA1MAIL_\F:92191792\C:Kris Clark\\)

READ:NOT READ

TO: FAX (96902730,Mike Gippert) (TLXA1MAIL_\F:96902730\C:Mike Gippert\\)

READ:NOT READ

TO: FAX (92085584,John Leshy) (TLXA1MAIL_\F:92085584\C:John Leshy\\)

READ:NOT READ

TO: FAX (95144240,Jim Kilbourne) (TLXA1MAIL_\F:95144240\C:Jim Kilbourne\\)

READ:NOT READ

TO: Remote Addressee (TLXA1MAIL_\F:95140557\C:Peter Coppelman\\)

READ:NOT READ

TO: Thomas C. Jensen (JENSEN_T) (CEQ)

READ:16-JAN-1996 09:05:14.02

TO: Ruth D. Saunders (SAUNDERS_R) (OMB)

READ:16-JAN-1996 10:24:15.13

TO: Remote Addressee (TLXA1MAIL_\F:915033266254\C:Tom Tuchman\\)

READ:NOT READ

TO: FAX (92083877,Bob Baum) (TLXA1MAIL_\F:92083877\C:Bob Baum\\)

READ:NOT READ

CC: Brian J. Johnson (JOHNSON_BJ) Autoforward to: Remote Addre

READ:NOT READ

TEXT:

Meeting reminder:

The EOP/Agency timber working group will meet today, Tuesday, January 16th, at 2:00 p.m. at the CEQ conference room.

Please be prepared to discuss your agency's position regarding possible appeal of Judge Hogan's ruling last week regarding, inter alia, sales under injunction and sales without high bidders.

Welcome back.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Jennifer M. O'Connor (OCONNOR_J) (WHO)

CREATION DATE/TIME:16-JAN-1996 17:14:47.46

SUBJECT: You should have been in our earlier meeting...

TO: Elena Kagan (KAGAN_E) (WHO)

READ:16-JAN-1996 17:17:27.02

TEXT:

=====
ATTACHMENT 1
=====
ATT CREATION TIME/DATE:16-JAN-1996 17:09:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Jennifer M. O'Connor

ATT SUBJECT: Appeals of Lawsuits

ATT TO: Kathleen A. McGinty (MCGINTY_K)

ATT TO: Shelley N. Fidler (FIDLER_S)

ATT TO: Thomas C. Jensen (JENSEN_T)

ATT TO: T J Glauthier (GLAUTHIER_T)

TEXT:

I explained to Harold what we knew at the earlier meeting today about the two potential appeals. Based on that information, he felt we should appeal the ruling on the enjoined sales and should also appeal the ruling on the sales where the top bidder went out of business, unless DoJ has a compelling argument that they have no case and we would be hurt by the appeal -- i.e. it would be frivolous and they would be sanctioned. If you get contradictory information, please page me and we can raise this with Harold again. But if you find only that DoJ thinks it is legally acceptable to appeal one or both rulings, then Harold thinks we should go ahead and appeal them.

=====
END ATTACHMENT 1
=====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Deborah L. Fine (FINE_D) (OPD)

CREATION DATE/TIME:16-JAN-1996 18:28:57.09

SUBJECT: OH ban

TO: Carol H. Rasco (RASCO_C) (WHO)

READ:16-JAN-1996 18:31:21.12

TO: Jeremy D. Benami (BENAMI_J) (WHO)

READ:16-JAN-1996 18:34:06.17

TO: Alexis M. Herman (HERMAN_A) (WHO)

READ:NOT READ

TO: Betsy Myers (MYERS_B) (WHO)

READ:16-JAN-1996 18:52:05.24

TO: Nancy-Ann E. Min (MIN_N) (OMB)

READ:16-JAN-1996 18:53:35.97

TO: James Castello (CASTELLO_J) (WHO)

READ:16-JAN-1996 18:29:20.68

TO: Elena Kagan (KAGAN_E) (WHO)

READ:17-JAN-1996 08:40:20.12

TO: Martha Foley (FOLEY_M) (WHO)

READ:16-JAN-1996 18:35:28.93

TO: George Stephanopoulos (STEPHANOPO_G) Autoforward to: Laura Capp

READ:16-JAN-1996 18:51:36.77

TO: Barbara C. Chow (CHOW_B) (WHO)

READ:16-JAN-1996 18:42:54.44

TO: Janet Murguia (MURGUIA_J) (WHO)

READ:23-JAN-1996 15:47:12.33

TO: Tracey E. Thornton (THORNTON_T) (WHO)

READ:16-JAN-1996 18:29:21.54

TO: John P. Hart (HART_J) (WHO)

READ:16-JAN-1996 18:29:48.34

TO: Laura Capps (CAPPS_L) (WHO)

READ:16-JAN-1996 18:51:36.77

TO: James I. Blount (BLOUNT_J) (OMB)

READ:16-JAN-1996 19:09:54.11

TO: Holly Carver (CARVER_H) (WHO)

READ:16-JAN-1996 18:36:01.85

TEXT:

FYI, on Friday the legislation in Ohio banning D&X for all abortions and banning post-viability abortions with narrow exceptions was found unconstitutional because it is too vague and

because the D&X procedure appears to pose less of a threat to the woman's health in some cases.

I do not have the opinion in writing yet, but can get more precise information for anyone who needs it when I do.

(Originally, the Judge had issued a preliminary injunction on the law for many reasons. The state has appealed his ruling.)

Please let me know if you need more information.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Marna E. Madsen (MADSEN_M) (WHO)

CREATION DATE/TIME:17-JAN-1996 09:04:22.21

SUBJECT: RE: clips

TO: Elena Kagan (KAGAN_E) (WHO)

READ:17-JAN-1996 09:14:18.97

TEXT:

actually, no one's actually been telling me anything. I've been e-mailing and leaving messages all over the place, but nobody returns my calls. I tried calling the news analysis office again, but no one answered - left another message. Do you know if Vicki's been getting hers or are they missing as well?

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:17-JAN-1996 10:48:51.45

SUBJECT: FYI

TO: Dinah Bear (BEAR_D) (CEQ)

READ:17-JAN-1996 10:49:15.62

TO: Elena Kagan (KAGAN_E) (WHO)

READ:17-JAN-1996 11:57:03.21

TEXT:

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE:16-JAN-1996 17:09:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Jennifer M. O'Connor

ATT SUBJECT: Appeals of Lawsuits

ATT TO: Kathleen A. McGinty (MCGINTY_K)

ATT TO: Shelley N. Fidler (FIDLER_S)

ATT TO: Thomas C. Jensen (JENSEN_T)

ATT TO: T J Glauthier (GLAUTHIER_T)

TEXT:

I explained to Harold what we knew at the earlier meeting today about the two potential appeals. Based on that information, he felt we should appeal the ruling on the enjoined sales and should also appeal the ruling on the sales where the top bidder went out of business, unless DoJ has a compelling argument that they have no case and we would be hurt by the appeal -- i.e. it would be frivolous and they would be sanctioned. If you get contradictory information, please page me and we can raise this with Harold again. But if you find only that DoJ thinks it is legally acceptable to appeal one or both rulings, then Harold thinks we should go ahead and appeal them.

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:17-JAN-1996 12:54:49.94

SUBJECT: RE: FYI

TO: Elena Kagan (KAGAN_E) (WHO)

READ:17-JAN-1996 13:20:50.99

TEXT:

Electronic redundancy -- don't you hate it?

Actually, I assumed you'd seen it long ago, but thought I'd err on the side of overkill.

Happy new year. I hope everything is going well for you.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:17-JAN-1996 17:24:21.61

SUBJECT: First and Last

TO: Elena Kagan (KAGAN_E) (WHO)

READ:17-JAN-1996 17:40:14.82

TEXT:

The First sale contains 5,100 mbf and the Last sale has 6,700 mbf, for a grand total of 11,800 mbf.

Of perhaps more importance than the volume is the fact that the National Marine Fisheries Service has stated that the First and Last sales will have result in adverse effects, including potential jeopardy to coastal coho salmon (Oregon Coast) and a distinct population of Umpqua River cutthroat trout.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Roger V. Salazar (SALAZAR_R) (WHO)

CREATION DATE/TIME:18-JAN-1996 06:44:10.41

SUBJECT: RE: Missing Clips

TO: Elena Kagan (KAGAN_E) (WHO)

READ:18-JAN-1996 09:10:25.39

CC: Marna E. Madsen (MADSEN_M) (WHO)

READ:18-JAN-1996 08:56:26.35

TEXT:

I'm sorry I haven't been able to respond to your inquiry sooner. The last couple of weeks have been pretty hectic.

Jodie Torkelson makes the ultimate decision as to who is on the clips list. Her office recently updated the list and your office was likely removed; no doubt due to Clarissa's departure. Only Ms. Torkelson's office has the authority to place new people on the clips list. You might want to contact Lorraine Donovan in her office. I will be able to provide you with a set of clips as soon as they give me authorization.

Hope this is helpful.

If you have any questions, I should be in this morning until 11:00 a.m. or so. 6-5693.

R.S.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dennis Burke (BURKE_D) (OPD)

CREATION DATE/TIME:18-JAN-1996 16:24:42.23

SUBJECT: Callback

TO: Elena Kagan (KAGAN_E) (WHO)

READ:18-JAN-1996 16:43:36.82

TEXT:

Sorry, for asking you to help me and then disappearing. I am working on that Missing Children Memorandum for tomorrow and it has had a few major blow ups.

I will call you as soon as I can get out of the woods. Thanks.

This is an interesting place to work.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Ingrid M. Schroeder (SCHROEDER_I) (OMB)

CREATION DATE/TIME:18-JAN-1996 16:27:43.09

SUBJECT: LRM#3292 - S. 136 - Clarification of the App. of Legis.

TO: Elena Kagan (KAGAN_E) (WHO)
READ:18-JAN-1996 16:44:15.25

TO: David J. Haun (HAUN_D) (OMB)
READ:18-JAN-1996 16:38:12.53

TO: Steven D. Aitken (AITKEN_S) (OMB)
READ:18-JAN-1996 17:31:56.69

TO: Jefferson B. Hill (HILL_J) (OMB)
READ:22-JAN-1996 08:47:01.07

TEXT:

Back in December DOJ requested clearance on a letter regarding S. 136 - dealing with the effect and application of legislation (i.e., legislation would be prospective and would not pre-empt State law unless the Act specifically provided otherwise). I would like to clear this letter this week, if possible. Please provide comments on the Justice letter by 3pm tomorrow, January 19th.
Thanks

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Ingrid M. Schroeder (SCHROEDER_I) (OMB)

CREATION DATE/TIME:18-JAN-1996 16:55:01.69

SUBJECT: RE: LRM#3292 - S. 136 - Clarification of the App. of Legis.

TO: Elena Kagan (KAGAN_E) (WHO)

READ:18-JAN-1996 17:43:59.17

TEXT:

sure

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dennis Burke (BURKE_D) (OPD)

CREATION DATE/TIME:19-JAN-1996 11:28:19.10

SUBJECT: RE: drugs

TO: Elena Kagan (KAGAN_E) (WHO)

READ:19-JAN-1996 11:34:30.37

TEXT:

Yes, the event is done and it went well; Chris Cerf did an awesome job on this one.

Unfortunately, I have to do some background research for the State of the Union and Bruce Reed is about to fire me if I don't get it done immediately. I have to give a speech out of town and my flight leaves at 5:30 -- looks like I might be cancelling it.

Do you have anytime on Monday? This thing can't move until you have everything you need on it, anyways, so I am going to have to tell Rahm that we are backed up because of me.

I sent this info to Cathy Russell, too. She claims that some guy on the Deputy's staff says that Jurith is right but she was distracted and didn't remember much about her conversation w/ him.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dennis Burke (BURKE_D) (OPD)

CREATION DATE/TIME:19-JAN-1996 11:58:27.60

SUBJECT: RE: drugs

TO: Elena Kagan

(KAGAN_E) (WHO)

READ:19-JAN-1996 12:10:43.04

TEXT:

Good, I will come down.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)

CREATION DATE/TIME:19-JAN-1996 13:34:42.20

SUBJECT: RE: franking

TO: Elena Kagan (KAGAN_E) (WHO)

READ:19-JAN-1996 13:36:44.75

TEXT:

thanks. I am running around of state of the union stuff but will call as soon as I get a moment.

Again, many thanks.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:19-JAN-1996 20:10:30.01

SUBJECT: Hogan decision on murrelets

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)

READ:19-JAN-1996 20:22:27.92

TO: Martha Foley (FOLEY_M) (WHO)

READ:22-JAN-1996 11:21:37.39

TO: T J Glauthier (GLAUTHIER_T) (OMB)

READ:20-JAN-1996 10:47:58.52

TO: Elena Kagan (KAGAN_E) (WHO)

READ:20-JAN-1996 11:59:49.15

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ:20-JAN-1996 11:30:27.25

TO: Thomas C. Jensen (JENSEN_T) Autoforward to: Remote Address

READ:NOT READ

TEXT:

Judge Hogan just issued his decision on the murrelet issue. We lost.

Peter Coppelman assures me that it is well understood at Justice that we intend to appeal the decision.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: T J Glauthier (GLAUTHIER_T) (OMB)

CREATION DATE/TIME:20-JAN-1996 11:42:34.76

SUBJECT: RE: Hogan decision on murrelets

TO: Martha Foley (FOLEY_M) (WHO)

READ:22-JAN-1996 11:22:06.36

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)

READ:22-JAN-1996 09:02:20.33

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ:20-JAN-1996 11:43:44.73

TO: Barbara C. Chow (CHOW_B) (WHO)

READ:22-JAN-1996 08:42:48.72

TO: Elena Kagan (KAGAN_E) (WHO)

READ:20-JAN-1996 12:00:40.24

TO: Dinah Bear (BEAR_D) (CEQ)

READ:20-JAN-1996 12:30:12.86

TO: Thomas C. Jensen (JENSEN_T) Autoforward to: Remote Address

READ:NOT READ

TO: Shelley N. Fidler (FIDLER_S) (CEQ)

READ:22-JAN-1996 12:17:22.90

TEXT:

I agree with the earlier emails that we should move ahead with our meeting with Gorton. This court decision makes it all the more essential.

Given the delays in the reconciliation schedule and the time it will take us to work through the key issues on the Interior bill, we do have a little time. I would not accelerate our meeting with Gorton ahead of whenever we are going to meet next on the Interior bill.

But I would try to schedule a meeting on the timber issue with him as soon after that as possible. That should be mid- to late-week coming up.

We also need to carry out the other consultations we discussed at our "western issues" meeting early this week. I am scheduled to have a phone conversation with Peter DeFazio on Monday. We all agreed that Wyden needs to be informed, too. But I don't recall that anyone actually took responsibility for it. I'm happy to help out, but has anyone been in touch with him or his staff?

With respect to paper, when are we doing to give our text out? So far, very few people on the Hill have our text and none of it appears to have leaked out. We could complete these pre-Gorton discussions without paper and then review and finalize the text to reflect what we've heard. That way we can "consult", not have it get out before we're ready, and honestly consider reactions. There's at least one change we may want to make already, to the "like kind and volume" requirement for replacement timber to respond to some Oregon recommendations.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:20-JAN-1996 12:38:43.28

SUBJECT: TJ's e-mail re timber legislation

TO: Elena Kagan (KAGAN_E) (WHO)

READ:22-JAN-1996 08:52:40.92

TEXT:

TJ is certainly correct in so far as his assessment that the language has not gotten around yet.

That reminds me: did you ever get the "minor technical change" into the word processor at OMB and out again? I feel no compelling need to have a copy right now, but at least one of us who is regularly plugged into these discussions should have a clean copy of the latest version handy.

The thought about a change in "like kind and volume" comes from discussions that Tom Tuchmann, head of the Interagency Office of Forestry and Economic Development in Portland had with several people, including T.J. and myself, yesterday. Tom had a joint visit recently by one of the Umpqua sale purchasers and an environmentalist. The purchaser expressed concern about the controversy over the sale under the "original terms" and also had come to the realization that "like kind" was going to be equally difficult to come by without a "like" degree of controversy over environmental impacts. Apparently, after having long talks with his environmentalist friend, he had come to the idea of accepting replacement timber that wouldn't necessarily be of like kind. In the course of the discussion, there were suggestion that other purchasers of the really controversial sales were beginning to feel the public heat and might be amenable to something other than the strict terms of the current statute. The other thought expressed during these disucssions was a willingness to explore a much longer time period than 45 days (the industry side is set to argue that we must provide replacement timber also within 45 days, although the rider is not specific on that point.)

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:22-JAN-1996 10:51:26.30

SUBJECT: DOI appros. mtg.

TO: Elena Kagan (KAGAN_E) (WHO)

READ:22-JAN-1996 11:02:28.86

TEXT:

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE:22-JAN-1996 10:44:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Robert C. Vandermark

ATT SUBJECT: Katie would like to go with her as well as Wes...

ATT TO: Dinah Bear (BEAR_D)

TEXT:

===== END ATTACHMENT 1 =====

===== ATTACHMENT 2 =====

ATT CREATION TIME/DATE:22-JAN-1996 10:11:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Alice E. Shuffield

ATT SUBJECT: Interior Appropriations Meeting today

ATT TO: Jacob J. Lew (LEW_J)

ATT TO: Charles E. Kieffer (KIEFFER_C)

ATT TO: Martha Foley (FOLEY_M)

ATT TO: Barbara C. Chow (CHOW_B)

ATT TO: Kathleen A. McGinty (MCGINTY_K)

ATT TO: Shelley N. Fidler (FIDLER_S)

ATT TO: Ron Cogswell (COGSWELL_R)

ATT CC: Jill M. Blickstein (BLICKSTEIN_J)

ATT CC: Sandra L. Via (VIA_S)

ATT CC: Robert C. Vandermark (VANDERMARK_R)

ATT CC: Marvis G. Olfus (OLFUS_M)

TEXT:

There will be an Interior Appropriations meeting this afternoon at 4:00 in T.J.'s office. Bonnie Cohen, Greg Frazier, and Jim Lyons will also attend.

Please let me know if you have any questions about the meeting.

===== END ATTACHMENT 2 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:22-JAN-1996 11:00:00.22

SUBJECT: Tongass 12:15 mtg.

TO: Martha Foley (FOLEY_M) (WHO)
READ:22-JAN-1996 11:17:27.92

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ:22-JAN-1996 13:06:39.29

TO: Elena Kagan (KAGAN_E) (WHO)
READ:22-JAN-1996 11:14:28.14

TEXT:

FYI, the Tongass mtg. that was going to be in Katie's office has been switched to the CEQ conference rm. at 722 Jackson Pl.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:22-JAN-1996 11:29:50.44

SUBJECT: murrelet decision

TO: Elena Kagan (KAGAN_E) (WHO)

READ:22-JAN-1996 12:17:07.58

TEXT:

in response to query from Martha . . .

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE:22-JAN-1996 11:22:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Dinah Bear

ATT SUBJECT: RE: Hogan decision on murrelets

ATT TO: Martha Foley (FOLEY_M)

TEXT:

Hogan neither endorses the "physical evidence" standard set forth by plaintiffs, nor the Pacific Seabird Protocol defended by us. He ends up - heaven help us - formulating his own "Hogan protocol" for finding murrelet nests, and practically calling for a sale by sale determination in courtrooms.

My own sense is that many - but not all - of the sales at issue meet his standard. Justice and the Fish and Wildlife Service wants to spend some time today looking at our actual survey determinations to get a sense of how many sales at really at issue. We will have our usual interagency timber meeting tomorrow afternoon in the CEQ conf. room, 2 - 4, and get a sense of their assessment at that time. However, at least some sales don't meet his standard and I have already discussed with Justice that regardless of whether it's one sale or lots of them, we need to appeal this. As soon as sales are identified that don't meet Hogan's criteria, Justice will move for a stay and appeal. They expect that to happen later this week.

Hogan is expected to rule against a stay, of course, and DOJ already knows they'll be on the way to the 9th Cir. I have said repeatedly (and will repeat tomorrow) that if the 9th Cir. denies a stay, this time we want to have a SERIOUS discussion about going to the Supreme Ct. immediately. Actually, I think we should have that prior to argument in front of the 9th Cir.

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Jeremy D. Benami (BENAMI_J) (WHO)

CREATION DATE/TIME:22-JAN-1996 12:01:06.88

SUBJECT: attached

TO: Elena Kagan (KAGAN_E) (WHO)

READ:22-JAN-1996 12:17:34.91

TEXT:

Attached is a memo that went in on Friday to the President.
Wanted to be sure you saw it. Also, Dole wrote us a letter that
we have to work on a response for. Let's work together on that.
I will get a copy faxed to you.

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE:22-JAN-1996 11:58:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Jeremy D. Benami

TEXT:

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Sheila D. Turner (TURNER_S) (WHO)

CREATION DATE/TIME:22-JAN-1996 12:49:01.85

SUBJECT: Timber Meeting

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ:22-JAN-1996 13:14:22.85

TO: Kris Balderston (BALDERSTON_K) (WHO)
READ:22-JAN-1996 14:15:11.85

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ:22-JAN-1996 13:05:56.36

TO: Elena Kagan (KAGAN_E) (WHO)
READ:22-JAN-1996 13:03:34.63

TO: Thomas C. Jensen (JENSEN_T) (CEQ)
READ:22-JAN-1996 13:05:45.54

TO: Ray Martinez (MARTINEZ_R) (WHO)
READ:22-JAN-1996 12:53:04.94

TO: Daniel Tate (TATE_D) (WHO)
READ:22-JAN-1996 13:31:17.21

CC: Robert C. Vandermark (VANDERMARK_R) (CEQ)
READ:22-JAN-1996 12:50:28.13

CC: Alice E. Shuffield (SHUFFIELD_A) (OMB)
READ:22-JAN-1996 12:57:49.80

CC: Daniel E. Bernal (BERNAL_D) (WHO)
READ:22-JAN-1996 12:56:52.27

TEXT:

Please let me know ASAP if you are available for a Timber meeting tomorrow morning sometime between 10-11:45. Thanks.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Edward H. Jurith (JURITH_E) (DON)

CREATION DATE/TIME:22-JAN-1996 13:38:02.42

SUBJECT: Subpoena for Documents

TO: Jane C. Sherburne (SHERBURNE_J) (WHO)

READ:27-JAN-1996 15:44:07.03

TO: Elena Kagan (KAGAN_E) (WHO)

READ:22-JAN-1996 15:44:21.44

TEXT:

ONDCP staff has reviewed agency records and are not in possession of any documents subpoenaed by the Independent Counsel relating to the location, efforts to locate, production, efforts to produce, etc., of documents relating to the (a) legal representation provided by, legal work performed by, or Rose Law Firm compensation allocated to Hillary Rodham Clinton; or (b) legal representation provided to or legal work performed for Madison Guaranty Savings and Loan.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Sheila D. Turner (TURNER_S) (WHO)

CREATION DATE/TIME:22-JAN-1996 17:43:05.18

SUBJECT: Timber Meetingh

TO: Martha Foley (FOLEY_M) (WHO)

READ:22-JAN-1996 18:29:15.19

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ:22-JAN-1996 19:12:20.85

TO: Kris Balderston (BALDERSTON_K) (WHO)

READ:22-JAN-1996 18:55:50.34

TO: T J Glauthier (GLAUTHIER_T) (OMB)

READ:23-JAN-1996 13:23:52.00

TO: Elena Kagan (KAGAN_E) (WHO)

READ:22-JAN-1996 18:25:26.36

TO: Thomas C. Jensen (JENSEN_T) Autoforward to: Remote Address

READ:NOT READ

TO: Ray Martinez (MARTINEZ_R) (WHO)

READ:22-JAN-1996 17:47:51.67

TO: Daniel Tate (TATE_D) (WHO)

READ:22-JAN-1996 20:53:07.38

CC: Robert C. Vandermark (VANDERMARK_R) (CEQ)

READ:22-JAN-1996 17:44:28.46

CC: Alice E. Shuffield (SHUFFIELD_A) (OMB)

READ:22-JAN-1996 18:47:08.18

CC: Daniel E. Bernal (BERNAL_D) (WHO)

READ:22-JAN-1996 18:05:38.41

TEXT:

There will not be a Timber meeting tomorrow. The meeting will take place on Wednesday - I'll be back in touch in the morning. Thanks.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Todd Stern (STERN_T) (WHO)

CREATION DATE/TIME:22-JAN-1996 20:10:38.95

SUBJECT: securities

TO: Elena Kagan (KAGAN_E) (WHO)

READ:22-JAN-1996 20:31:11.69

TEXT:

I actually did have something specific to talk to you about, but it can wait til the morning. Give me a call when you get a chance. todd

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:23-JAN-1996 12:14:32.21

SUBJECT: SALVAGE LOGGING: Judge loosens protections for murrelet.

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)

READ:23-JAN-1996 14:23:01.63

TO: Shelley N. Fidler (FIDLER_S) (CEQ)

READ:23-JAN-1996 12:41:31.12

TO: Martha Foley (FOLEY_M) (WHO)

READ:29-JAN-1996 09:34:05.91

TO: Barbara C. Chow (CHOW_B) (WHO)

READ:23-JAN-1996 12:44:31.88

TO: T J Glauthier (GLAUTHIER_T) (OMB)

READ:23-JAN-1996 13:19:26.53

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ:23-JAN-1996 17:25:38.90

TO: Kris Balderston (BALDERSTON_K) (WHO)

READ:23-JAN-1996 14:42:58.84

TO: Ray Martinez (MARTINEZ_R) (WHO)

READ:23-JAN-1996 12:50:30.90

TO: Dinah Bear (BEAR_D) (CEQ)

READ:23-JAN-1996 13:14:39.42

TO: Elena Kagan (KAGAN_E) (WHO)

READ:23-JAN-1996 12:18:48.29

TEXT:

SALVAGE LOGGING: JUDGE LOOSENS PROTECTIONS FOR MURRELET

A federal judge on 1/19 "threw out the protocol the US Forest Service used to keep loggers from cutting old-growth forests" where the threatened marbled murrelet is believed to be nesting. The ruling by US District Judge Michael Hogan was "another loss for environmentalists" fighting the salvage-logging law signed by Pres. Clinton in 7/95 (AP/mult., 1/21).

The timber industry had asked the district court to order the release of dozens of timber sales being held up because of the murrelet. This request was opposed by the federal government and enviro groups (Sierra Club Legal Defense Fund release, 1/19).

CLARIFYING PROOF OF NESTING

The salvage law stipulates that no logging can occur if the murrelet is "known to be nesting" in a timber sale unit (GREENWIRE sources). The scientific protocol used by the USFS to determine nesting areas was based on bird sightings, but the timber industry argued that nesting must be proven by finding physical evidence such as a nest or eggshell fragments.

Hogan ruled that when Congress enacted the rider, it rejected the USFS protocol and put in place a new standard for judging whether murrelets are nesting in a timber sale. Hogan

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME: 23-JAN-1996 12:15:43.89

SUBJECT: NW FORESTS: USFS may reject enviro bid to buy timber.

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ: 23-JAN-1996 14:28:41.47

TO: Shelley N. Fidler (FIDLER_S) (CEQ)
READ: 23-JAN-1996 12:41:48.40

TO: Dinah Bear (BEAR_D) (CEQ)
READ: 23-JAN-1996 13:14:55.41

TO: Barbara C. Chow (CHOW_B) (WHO)
READ: 23-JAN-1996 12:45:45.01

TO: Martha Foley (FOLEY_M) (WHO)
READ: 29-JAN-1996 09:34:57.16

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ: 23-JAN-1996 13:22:35.27

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ: 23-JAN-1996 17:25:46.89

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 23-JAN-1996 13:06:50.71

TO: Kris Balderston (BALDERSTON_K) (WHO)
READ: 23-JAN-1996 16:13:30.92

TEXT:

NW FORESTS: USFS MAY REJECT ENVIRO BID TO BUY TIMBER

The Northwest Ecosystem Alliance was the highest bidder in a recent federal timber sale in Washington state, but the US Forest Service may reject the \$29,000 bid because the group doesn't plan to cut the trees, NPR's Jennifer Schmidt reports. The 275-acre parcel in the Okanogan Nat'l Forest, called the "Thunder sale," was burned by wildfires in 1994. It lies in a large tract of undeveloped forest providing habitat for chinook salmon and one of the last remaining Lynx populations in the lower 48 states.

Alliance Dir. Mitch Friedman says the Thunder sale violates water quality and other enviro laws, but the group can't sue to stop the sale because of the salvage law signed by Pres. Clinton in 7/95. Friedman says no matter who buys the timber, its a bad deal for taxpayers: "The public is still only going to get 10 cents on the dollar for the investment and the market is bad."

USFS is expected to decide the sale in the next few weeks. The alliance said if it loses the bid, it will appeal to the Agriculture Dept. ("Morning Edition," NPR, 1/22).

(c) The American Political Network, Inc.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:23-JAN-1996 17:43:50.05

SUBJECT: FYI - Full NPR transcript on timber contracts

TO: Ruth D. Saunders (SAUNDERS_R) (OMB)

READ:23-JAN-1996 17:46:24.11

TO: Elena Kagan (KAGAN_E) (WHO)

READ:23-JAN-1996 17:46:52.61

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ:23-JAN-1996 18:30:33.48

TO: Dinah Bear (BEAR_D) (CEQ)

READ:23-JAN-1996 19:25:19.36

TO: Martha Foley (FOLEY_M) (WHO)

READ:23-JAN-1996 18:57:47.37

TO: T J Glauthier (GLAUTHIER_T) (OMB)

READ:24-JAN-1996 11:43:23.27

TEXT:

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE:23-JAN-1996 15:26:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Brian J. Johnson

ATT SUBJECT: timber NPR

ATT TO: Kathleen A. McGinty (MCGINTY_K)

ATT TO: Dinah Bear (BEAR_D)

ATT TO: Thomas C. Jensen (JENSEN_T)

TEXT:

===== END ATTACHMENT 1 =====

===== ATTACHMENT 2 =====

ATT CREATION TIME/DATE:23-JAN-1996 15:26:00.00

ATT BODYPART TYPE:A

ATT CREATOR: Brian J. Johnson

TEXT:

Message Creation Date was at 23-JAN-1996 15:22:00

Copyright 1996 National Public

Radio

NPR

SHOW: Morning Edition (NPR 6:00 am ET)

January 22, 1996
Transcript # 1786-4

SECTION: News; Domestic

LENGTH: 991 words

HEADLINE: Timber Land Bid by Environmental Group May be Rejected

GUESTS: MITCH FREEDMAN, Director, Northwest Ecosystem Alliance; BRAD

FLATTEN, U.S. Forest Service; RON SIMON, Longview Timber; ROB STAVEN, Harvard
Environmental Economist

BYLINE: JENNIFER SCHMIDT

HIGHLIGHT:

The environmental group, Northwest Ecosystem Alliance, put in the highest bid on a 275-acre tract of burned forest land, but the U.S. Forest Service may reject it because the group won't sell the burned timber.

BODY:

BOB EDWARDS, Host: An environmental group has been declared the high bidder in a federal timber sale in the state of Washington, but the U.S. Forest Service says it may reject the bid because the group has no intention of harvesting any of the trees. Jennifer Schmidt [sp], of member station KPLU, reports from Seattle.

JENNIFER SCHMIDT, Reporter: In 1994, wild fires swept across the West, blackening millions of acres of forest land. On the Okanogan National Forest in Northcentral Washington state, nearly 20,000 acres burned. The Forest Service is now selling some of that damaged timber as salvage for logging. One parcel, called the Thunder Timber sale, lies at the heart of a large tract of undeveloped forest land that provides habitat for Chinook salmon, and one of the last remaining populations of lynx in the lower 48 states.

MITCH FREEDMAN, Director, Northwest Ecosystem Alliance: The area that we're talking about is high elevation, continuous beautiful forests. We see this as the last bastion of refuge for the rare wildlife that really needs these places.

JENNIFER SCHMIDT: Mitch Freedman is director of the Northwest Ecosystem Alliance, a local environmental group. Freedman contends the 275-acre Thunder salvage sale violates water quality and other environmental laws. His group might have sued to stop the sale, but it can't. Last year Congress passed a law that prohibits most legal challenges of federal salvage timber sales.

MITCH FREEDMAN: We're helpless, so when this sale came across our desk and our hands were tied, the only thing that I could think to do was to put our money where our mouth was, and try and buy it.

JENNIFER SCHMIDT: So, at a recent timber auction in Eastern Washington, the alliance bid higher than two other logging companies, offering \$29,000 for the sale. But, there's still no guarantee it will ultimately win the contract. Brad Flatten [sp] of the U.S. Forest Service is the head of timber sales for the Okanogan National Forest. He says the alliance might not get the contract because it says it won't cut down any of the trees.

BRAD FLATTEN, U.S. Forest Service: We've heard what they've said in the newspapers and on the radio, and they're saying the same thing to us, and that's reason for concern on our part. We would not be acting, probably, in good faith to enter into a contract - this is a contract with the American people - to cut and remove timber, and we will probably not enter into that contract unless we have some indication that they really intend to comply with the provisions of the contract.

JENNIFER SCHMIDT: But the alliance's Mitch Freedman says at least from a financial standpoint the contract doesn't make much sense. It costs the federal government more than \$300,000 to auction the tract. Freedman says no matter who buys it, it's a bad deal for tax payers.

MITCH FREEDMAN: The big question in my mind is why the Forest Service even sees a need to do this. The public is still only going to get 10 cents back on the dollar that we invested. The market is bad. There's no economic value in this timber, and they're still going to do environmental damage. Why?

JENNIFER SCHMIDT: Forest Service officials say the main objective is ensuring

the area will provide timber into the future, and the best way to do that, they say, is to remove the burned timber now while the wood still has value, and replant to speed the growth of new trees. As for loggers, they see the timber as primarily an economic resource. Ron Simon bids on Forest Service tracts for Longview Timber, which operates a mill near the sale.

RON SIMON, Longview Timber: Right now the salvage sales are very important to local economies. That wood was meant to provide jobs for manufacturing, for the folks that were actually going to do the logging, that type of thing. So, the problem with it is, is the economic benefit is not gained by leaving the wood out there.

JENNIFER SCHMIDT: Environmentalists say in some cases, though, the forest is more valuable preserved as a place for wildlife and recreation, and increasingly they're making their point by going to the marketplace instead of court. Over the past decade, environmental groups have bought federal grazing allotments, water rights and the permits companies need to discharge pollutants. Harvard environmental economist, Rob Staven [sp], says he thinks it would be a mistake for the Forest Service to reject bidders based on how they plan to use the land. He says that decision should be made in the marketplace.

ROB STAVEN, Harvard Environmental Economist: I think the important principle is that lands do go to their highest valued use, and that some lands within the national forests are going to be in their valued use for timber cutting. And some lands within those national forests are going to be in their highest valued use for recreational purposes. And the flip side of this is that if environmentalists want to be able to participate in these markets, that environmentalists should recognize, as I think they do, but they certainly should recognize that it also means that they're going to lose some of the bidding.

JENNIFER SCHMIDT: Staven says some government regulation of the land is needed, but he says federal timber is one resource where free market environmentalism can work. The Forest Service is expected to make a decision on the Thunder salvage sale in the next few weeks. The Northwest Ecosystem Alliance says if their bid is rejected, they'll appeal to the U.S. Department of Agriculture. For National Public Radio, I'm Jennifer Schmidt in Seattle.

===== END ATTACHMENT 2 =====

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Michael Waldman to Elena Kagan; RE: Congratulations (1 page)	01/24/1996	Personal Misfile

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[01/16/1996 - 02/01/1996]

2009-1006-F
ke714

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Jennifer M. O'Connor (OCONNOR_J) (WHO)

CREATION DATE/TIME:24-JAN-1996 13:18:20.60

SUBJECT: Griffin

TO: Elena Kagan (KAGAN_E) (WHO)

READ:24-JAN-1996 13:33:11.69

TEXT:

Pat G can do a 3pm meeting. Ok with you (or Jack?)

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:24-JAN-1996 20:02:06.99

SUBJECT: Timber meeting: labor and industry comes in . . .

TO: Martha Foley (FOLEY_M) (WHO)
READ:25-JAN-1996 10:57:05.70

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ:25-JAN-1996 12:50:44.76

TO: Barbara C. Chow (CHOW_B) (WHO)
READ:25-JAN-1996 09:41:03.32

TO: Elena Kagan (KAGAN_E) (WHO)
READ:25-JAN-1996 08:42:58.76

TO: Thomas C. Jensen (JENSEN_T) (CEQ)
READ:25-JAN-1996 09:29:32.72

TEXT:

Katie asked that I fill you in on this morning's meeting that had been requested by Mike Draper from the Carpenters Union. It turned out to be more of more potential significance than we had perhaps anticipated.

The group consisted of representatives from both labor and industry, including individuals directly associated with the old growth sales in litigation (for example, Jim Geisinger, Northwest Forestry Association, who is quoted in current articles on the recent Hogan murrelet ruling as saying that eventually all of the sales would be harvested.) Draper made an opening pitch, emphasizing their concerns that:

- o the Administration had made a conscious decision to swing strictly to the environmentalists' side of timber for political reasons;
- o that the Administration might be seeking full repeal of the rider;
- o that if, in fact, we were serious about solving the problem we were approaching the situation backwards by talking only to our friends on the hill and not talking to the affected parties (industry);
- o that the rapidly escalating situation in the Pacific NW was bad for us, bad for workers, bad for the country;
- o that they wanted this to end;
- o that they didn't think we were getting correct information about what was really happening on the ground;
- o they they were interested in talking about starting a dialogue.

Katie responded by identifying common sentiments we shared - wanting to end the polarization, start a dialogue, etc. She also explained that rather than the picture they painted of the Admin. lobbying "our friends" on the hill for a full repeal, we had been trying - without success - to have serious talks with key Members of the Pac. NW delegation about provisions focused on specific problems. She indicated that if we weren't able to achieve that goal, the initial strategy would have to be reconsidered. A number of other issues were touched on in the course of

conversation, including:

o why does the Forest Service say it doesn't have replacement timber when - at the same time - we keep repeating that we have all of this timber planned for sale in the Forest Plan?

We explained that while we have that timber, there were genuine concerns on our part that committing timber already planned for sale under the Plan would generate cries of "double-counting". Their response was that they doubted we would ever reach the amounts we had set out in the Plan and hadn't for the last two years, and if we could move some of the quantities designated for the past two FY years out as replacement timber, that might make sense.

o on the issue of "like kind" replacement timber, there seemed to be some tentative agreement that there was a problem, although, as Draper put it, given the level of trust between various parties, there was fear that without that, they'd be offered "a patch of dandelions" to harvest.

o there was recognition that the Forest Service was suffering from a resource problem. The Northwest Forest Assoc. rep. stated that forest supervisors are telling him that if they have to offer replacement timber, they won't be able to get sales out under the Plan for this year simply because of the workload.

o there was great interest in hearing us say that we found the salvage side of this to be helpful. No one did (as T.J. put it, "it would be hard to find anyone here to say this bill had been helpful!!). Mark Gaede from USDA explained that the Forest Service had already been ramping up salvage and the bill really hadn't helped that process. However, we acknowledged that we were more comfortable - while not thrilled - with the salvage side of the bill.

o The industry rep. also acknowledge that the Endangered Species Act was NOT the problem and that in fact the real, on-the-ground picture in terms of cooperation with the Fish and Willdife Service was at least as good "if not better" than Interior painted it. Instead, he targeted the real problem as resource and management problems in the Forest Service.

o Towards the end of the discussion, both Mark Gaede and Don Barry pointed out that all the talk in the world wouldn't help matters if DOI appros. and the budget wasn't resolved. Mark mentioned having to riff 2,600 Forest Service employees and Don mentioned shutting down the consultation process if there's a permanent CR. At least one of them jumped visibly at this.

o The conclusion was that everyone agreed we should begin to talk. There was discussion about various goals, topics and types of people that the talks might involve. There seemed to be general agreement that the timber rider had to be dealt with before we got to broader issues, although some industry reps. wanted to talk about the future of forestry and others wanted to talk about the "reality check - what's happening the ground" kind of issues. Katie left it in Mike Draper's hands to think about who should involved on their side in these talks, and to give her a call back at the end of the week or beginning of next week.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:24-JAN-1996 20:06:35.01

SUBJECT: timber language

TO: Elena Kagan (KAGAN_E) (WHO)

READ:25-JAN-1996 08:49:53.60

TEXT:

thanks for the e-mail.

I'll be working with your shop, OA Counsel, and OMB Counsel (in between timber and doi appros) over the rest of the week to see if there's anyway to keep the agency up and running after Friday (we are about to run out of \$, so we may swear in Katie as Chair Thursday and all leave on Friday!). If it looks we're truly all going to fall off the face of the earth, needless to say, I'll check in with you on the way out! Hopefully, miracles will happen so I'll send up a prayer for you if you'll put in a good thought for us!

Subtitle F—Timber Contract Replacement, Modification, Suspension, or Termination

Sec. 8501. AMENDMENTS TO THE RESCISSIONS ACT

(a) FINDING.—The Congress finds and declares that it is in the national interest to ensure that valuable natural resources in Oregon and Washington are protected to prevent environmental injury to forest resources, chinook salmon and other wildlife, and rivers and streams, and jeopardy to the livelihoods of those who depend on commercial and sport fisheries and other natural resources; and that the Secretaries of Agriculture and the Interior will use the authority provided in this section with discretion, and in conjunction with a continuation of agency efforts to reach mutually agreeable accommodations with timber purchasers to protect these resources.

(b) PURPOSES.—The purposes of these amendments are to—

(i) clarify the intent of Congress with regard to certain provisions of section 2001 of the Rescissions Act,

(ii) protect the Secretaries' authority to implement the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl, and

(iii) provide the Secretaries concerned with additional authority to replace, modify, suspend or terminate certain timber contracts.

Automated Records Management System
Hex-Dump Conversion

(c) DEFINITION.—As used in this section, "Rescissions Act" means the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery from the Tragedy that occurred at Oklahoma City, and Rescissions Act, 1995 (Pub. Law No. 104-19).

(d) AWARD AND RELEASE OF TIMBER SALE CONTRACTS SUBJECT TO SECTION 318 OF PUBLIC LAW 101-121.—Subsection 2001(k) of the Rescissions Act is amended—

(1) in paragraph (1) by striking "offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318" and inserting ", suspended as of July 27, 1995, that were offered or awarded in fiscal year 1990 under the authority of, and in compliance with, section 318(b)";

(2) in paragraph (2) by striking "be nesting within the acreage that is the subject of the sale unit." and inserting "occupy for nesting or breeding purposes the sale unit or a stand overlapping the sale unit. The Secretary concerned shall make this determination of occupancy for nesting or breeding purposes in accordance with scientifically recognized principles, such as the Pacific Seabird Group protocol.";

(3) in paragraph (3)—

(A) by striking "If for any reason a sale cannot be released and completed under the terms of this subsection"

Automated Records Management System
Hex-Dump Conversion

and inserting "If a sale unit cannot be released and completed under paragraph (2) of this subsection"; and

(B) by inserting ", or shall provide the purchaser appropriate compensation in accordance with paragraph (4) of this subsection" after "quantities"; and

(4) by adding after paragraph (3) the following new paragraph:

"(4) REPLACEMENT, MODIFICATION, SUSPENSION, OR TERMINATION OF TIMBER SALE CONTRACTS.

"(A) Notwithstanding the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.), the Federal Land Management Policy Act (43 U.S.C. 1701 et seq.), the Oregon & California Lands Act (43 U.S.C. 1181a et seq.) or other law applicable to the award, release, completion, replacement, modification, suspension, or termination of timber sale contracts, the Secretary concerned may replace, modify, suspend, or terminate any timber sale contract affected by or released pursuant to this subsection, as initially enacted or as amended, when the Secretary concerned, in his discretion, finds that such replacement, modification, suspension, or termination is authorized pursuant to originally advertised terms of the contract or that release or completion of the contract may have an adverse effect on the environment

Automated Records Management System
Hex-Dump Conversion

or natural resources. Any replacement, modification, suspension, or termination shall be effective immediately upon issuance of the Secretary's finding.

"(B) The Secretary concerned may expend, without further appropriation action, from sums otherwise available in the Treasury, up to \$50 million in compensation to contract holders for changes made pursuant to the authority provided in subparagraph (A) of this paragraph.

"(C) All claims by a contractor against the government relating to a contract replaced, modified, suspended, or terminated pursuant to subparagraph (A) are subject to the Contract Disputes Act."

- (e) OPTION 9 TIMBER SALES.—Subsection 2001(d) is amended—
- (1) by amending the subsection heading to read as follows—
"OPTION 9 TIMBER SALES."; and
 - (2) in the first sentence by—
 - (A) striking "on Federal lands described" and inserting "allowed under and consistent with the standards and guidelines specified"; and
 - (B) inserting ", or as may be amended" after "1994".

- (f) EFFECT ON PLANS, POLICIES, AND ACTIVITIES.—Section 2001(1) is amended in the first sentence by—
- (1) striking "or permit"; and

Automated Records Management System
Hex-Dump Conversion

(2) striking ", except" and all that follows through
"program".

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Jeremy D. Benami (BENAMI_J) (WHO)

CREATION DATE/TIME:26-JAN-1996 16:30:31.27

SUBJECT: I will call you now

TO: Elena Kagan (KAGAN_E) (WHO)

READ:26-JAN-1996 16:40:03.45

TEXT:

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE:26-JAN-1996 14:59:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Jocelyn M. Jolley

ATT SUBJECT: Dole letter

ATT TO: Jeremy D. Benami (BENAMI_J)

TEXT:

RE: Partial Birth Abortion letter

Pat wants the letter responded to by the President after he vetoes
it. Will you please provide language?

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:26-JAN-1996 20:04:16.91

SUBJECT: Judge Hogan stays murrelet order

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ:26-JAN-1996 20:17:18.32

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ:28-JAN-1996 14:22:50.50

TO: Martha Foley (FOLEY_M) (WHO)
READ:26-JAN-1996 23:04:57.51

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ:27-JAN-1996 12:40:23.06

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-JAN-1996 08:44:09.09

TO: Barbara C. Chow (CHOW_B) (WHO)
READ:30-JAN-1996 10:08:21.80

TEXT:

Some, but not all of you heard this yesterday: Judge Hogan ruled in favor of the government's motion for a 60 day stay in the timber rider case dealing with the "known to be nesting" criteria for marbled murrelets.

The stay applies to his decision of last week, that found - in an opinion which many believe raises strong grounds for a successful appeal - that Congress could not have meant for the agencies to rely on the Pacific Seabird Protocol to determine where murrelets are nesting.

He also indicated that the agencies should go forward in determining which of the sales would be meet the criteria he set out in his opinion during the stay. We will also use that information for purposes of appeal, which will be filing shortly in the 9th Circuit.

On the other hand, he denied our motion for stay on the issue of whether we have to reoffer sales when the high bidder is no longer in business or no longer qualifies for the bid.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Mail Link Monitor to Elena Kagan at 08:53:44.24. Subject: Confirmation [partial] (1 page)	01/29/1996	P6/b(6), b(7)(C), b(7)(E), b(7)(F)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[01/16/1996 - 02/01/1996]

2009-1006-F
ke714

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (WAVES RECEIPT)

CREATOR: Mail Link Monitor (MAILMGT) (SYS)

CREATION DATE/TIME:29-JAN-1996 08:53:44.24

SUBJECT: CONFIRMATION: APPT. REQUEST FOR KAGAN, ELENA

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-JAN-1996 08:53:55.77

TEXT:

FROM: WAVES OPERATIONS CENTER - ACO:

Date: 01-29-1996

Time: 08:51:07

P6/(b)(6), (b)(7)(c), (b)(7)(e), (b)(7)(f)

[001]

This message serves as confirmation of an appointment for the visitors listed below.

Appointment With: KAGAN, ELENA
Appointment Date: 1/30/96
Appointment Time: 1:00:00 PM
Appointment Room: 125
Appointment Building: OEOB
Appointment Requested by: KAGAN ELENA
Phone Number of Requestor: 67594

Comments:

WAVES APPOINTMENT NUMBER: U54230

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 1

TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 1

BERNSTEIN, RICHARD

P6/(b)(6)

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. email	Mail Link Monitor to Elena Kagan. Subject: Confirmation [partial] (1 page)	01/31/1996	P6/b(6), b(7)(C), b(7)(E), b(7)(F)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[01/16/1996 - 02/01/1996]

2009-1006-F
ke714

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (WAVES RECEIPT)

CREATOR: Mail Link Monitor (MAILMGT) (SYS)

CREATION DATE/TIME:29-JAN-1996 08:58:54.25

SUBJECT: CONFIRMATION: APPT. REQUEST FOR KAGAN, ELENA

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-JAN-1996 09:46:02.80

TEXT:

FROM: WAVES OPERATIONS CENTER - ACO:

P6/(b)(6), (b)(7)(c), (b)(7)(e), (b)(7)(f)

[002]

Date: 01-29-1996

Time: 08:54:52

This message serves as confirmation of an appointment for the visitors listed below.

Appointment With: KAGAN, ELENA

Appointment Date: 2/1/96

Appointment Time: 8:30:00 AM

Appointment Room: 125

Appointment Building: OEOB

Appointment Requested by: KAGAN ELENA

Phone Number of Requestor: 67594

Comments:

WAVES APPOINTMENT NUMBER: U54232

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 1

TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 1

ROSEBOROUGH, TERESA

P6/(b)(6)

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:29-JAN-1996 09:13:32.95

SUBJECT: High bidder sales

TO: Martha Foley (FOLEY_M) (WHO)
READ:29-JAN-1996 09:29:40.95

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ:29-JAN-1996 19:50:55.87

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ:29-JAN-1996 13:15:30.70

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-JAN-1996 09:46:37.21

TO: Alice E. Shuffield (SHUFFIELD_A) (OMB)
READ:29-JAN-1996 20:04:50.04

TO: Robert C. Vandermark (VANDERMARK_R) (CEQ)
READ:29-JAN-1996 09:20:23.94

TEXT:

There was some uncertainty at the end of last week as to whether Justice would move for a stay and appeal on the high bidder cases we lost (do we have to offer sales under 2001(k) if the higher bidder is out of business or no longer qualifies). Env. Division HAS recommended an appeal of the denial of the motion to stay and an appeal on the merits. The recommendation is the S.G.'s office, who is expected to approve the recommendation.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Charles S. Konigsberg (KONIGSBERG_C) (OMB)

CREATION DATE/TIME:29-JAN-1996 15:57:59.00

SUBJECT: Item veto language....

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ:29-JAN-1996 16:00:59.43

TO: Charles E. Kieffer (KIEFFER_C) (OMB)
READ:29-JAN-1996 18:01:55.08

TO: Lisa Kountoupes (KOUNTOUPES_L) (OMB)
READ:30-JAN-1996 10:09:07.20

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:29-JAN-1996 16:35:40.36

TO: Joseph Minarik (MINARIK_J) (OMB)
READ:30-JAN-1996 09:04:37.70

TO: Barry B. Anderson (ANDERSON_B) (OMB)
READ:29-JAN-1996 16:12:38.03

TO: James J. Jukes (JUKES_J) (OMB)
READ:29-JAN-1996 16:08:19.88

TO: Jill M. Blickstein (BLICKSTEIN_J) (OMB)
READ:29-JAN-1996 16:13:20.56

TO: James C. Murr (MURR_J) (OMB)
READ:29-JAN-1996 16:05:29.16

TO: Jacob J. Lew (LEW_J) (OMB)
READ:NOT READ

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-JAN-1996 16:03:34.56

TO: Patrick J. Griffin (GRIFFIN_P) (WHO)
READ:NOT READ

TO: Barbara C. Chow (CHOW_B) (WHO)
READ:30-JAN-1996 10:13:48.59

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ:29-JAN-1996 16:20:50.88

TO: John C. Angell (ANGELL_J) (WHO)
READ:29-JAN-1996 17:36:15.49

TO: Martha Foley (FOLEY_M) (WHO)
READ:29-JAN-1996 19:13:31.52

TO: Robert E. Litan (LITAN_R) (OMB)
READ:NOT READ

TO: T J Glauthier (GLAUTHIER_T) (OMB)

READ:31-JAN-1996 10:21:28.00

TO: Gordon Adams (ADAMS_G) (OMB)
 READ:NOT READ

TO: Kenneth S. Apfel (APFEL_K) (OMB)
 READ:29-JAN-1996 17:18:51.04

TO: Nancy-Ann E. Min (MIN_N) (OMB)
 READ:29-JAN-1996 16:15:51.32

TO: Stacey L. Rubin (RUBIN_S) (WHO)
 READ:29-JAN-1996 16:00:06.78

TO: Laura D. Tyson (TYSON_L) Autoforward to: Thomas O'Donnel
 READ:NOT READ

TO: Dena B. Weinstein (WEINSTEIN_D) (WHO)
 READ:29-JAN-1996 17:56:40.27

TO: Betty I. Bradshaw (BRADSHAW_B) (OMB)
 READ:29-JAN-1996 16:48:06.62

TEXT:

===== ATTACHMENT 1 =====
 ATT CREATION TIME/DATE:29-JAN-1996 15:57:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Charles S. Konigsberg

TEXT:
 PRINTER FONT 10_POINT_COURIER
 TOP ODD
 DRAFT -- NOT FOR DISTRIBUTION

Subtitle ___ - Line

□

-item Veto Authority

SECTION 1. SHORT TITLE.

This subtitle may be cited as the "Line Item Veto Act of 1996".

SEC. 2. LINE ITEM VETO AUTHORITY.

(a) IN GENERAL.-

□

-Notwithstanding the provisions of part B of title X of The Congressional Budget and Impoundment Control Act of 1974, and subject to the provisions of this section, the President may rescind in whole or in part any discretionary budget authority provided in an appropriation act, cancel any new direct spending, or cancel any targeted tax benefit which is subject to the terms of this Act if the President--

(1) determines that--

(A) such rescission or cancellation would help reduce the Federal budget deficit;

(B) such rescission or cancellation will not impair any essential Government functions; and

(C) such rescission or cancellation will not harm the national interest; and

(2) notifies the Congress of such rescission or cancellation by a special message not later than twenty calendar days (not including Sundays) after the date of enactment of an appropriation or authorization Act providing such budget authority or a revenue or other Act containing a targeted tax benefit or new direct spending.

(b) DEFICIT REDUCTION.-

□

-In each special message, the President may also propose to reduce the appropriate discretionary spending limit set forth in section 601(a)(2) of the Congressional Budget Act of 1974 by an amount that does not exceed the total amount of discretionary budget authority rescinded by that message.

(c) SEPARATE MESSAGES.--(1) The President shall submit a separate special message for each appropriation Act, for each authorization Act, and for each revenue or other Act under this section.

(2) In the case of any such special message that message shall specify--

(A) the amount of budget authority which he proposes to be rescinded, the direct spending to be cancelled, or the targeted tax benefit to be cancelled;

(B) any account, department, or establishment of the Government to which such budget authority is available for obligation, or which has jurisdiction over the direct spending or targeted tax benefit affected, and the specific project or governmental functions involved;

TOP EVEN

DRAFT -- NOT FOR DISTRIBUTION

(C) the reasons why the budget authority should be rescinded, or the direct spending or targeted tax benefit should be cancelled;

(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed rescission or cancellation; and

(E) to the maximum extent practicable, all facts, circumstances, and considerations relating to or bearing upon the proposed rescission or cancellation and the decision to effect the proposed rescission or cancellation, and the estimated effect of the proposed rescission or cancellation upon the objects, purposes, and programs for which the budget authority, direct spending, or tax benefit is provided.

(d) SPECIAL RULE FOR FISCAL YEAR 1996 APPROPRIATION MEASURES.-- Notwithstanding subsection (a)(2), in the case of any unobligated discretionary budget authority provided by any appropriation Act for fiscal year 1996, the President may rescind all or part of that discretionary budget authority under the terms of this Act if the President notifies the Congress of such rescission by a special message not later than twenty calendar days (not including Sundays) after the date of enactment of this Act.

(e) Amendments to the Budget Enforcement Act.--

(1) Section 251(a)(7) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting in the second sentence, following "within 5 calendar days after the enactment of any discretionary appropriations," the following: "or

following a special message rescinding any amount of discretionary spending pursuant to the Line Item Veto Act of 1996 or after a disapproval bill relating thereto is enacted,".

(2) Section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting in the second sentence, following "within 5 calendar days after the enactment of any direct spending or receipts legislation enacted after the date of enactment of this section," the following: "or following a special message cancelling any new direct spending or targeted tax benefit pursuant to the Line Item Veto Act of 1996 or after a disapproval bill relating thereto is enacted,".

SEC. 3. LINE ITEM VETO EFFECTIVE UNLESS DISAPPROVED.

(a) (1) Discretionary Budget Authority.-

□

-Any amount of discretionary budget authority rescinded under this Act as set forth in a special message by the President shall not be made available unless, during the period described in subsection (b), a disapproval bill making available all or part of the amount rescinded is enacted into law.

(2) New Direct Spending and Targeted Tax Benefits.--

(A) Any provision of law which provides new direct spending or provides a targeted tax benefit which has been cancelled under this Act, as set forth in a special message by the President, shall take effect only if a disapproval bill restoring that provision is enacted into law during the period described in subsection (b).

(B) In the case of a cancellation of a targeted tax benefit, the Internal Revenue Service is authorized and directed to take appropriate enforcement actions against individuals or entities seeking to use a targeted tax benefit that has been cancelled.

(b) The period referred to in subsection (a) is--

(1) a congressional review period of twenty calendar days of session, beginning on the first calendar day of session after the date of submission of the special message, during which Congress must complete action on the disapproval bill and present such bill to the President for approval or disapproval;

(2) after the period provided in paragraph (1), an additional ten days (not including Sundays) during which the President may exercise his authority to sign or veto the disapproval bill; and

(3) if the President vetoes the disapproval bill during the period provided in paragraph (2), an additional five calendar days of session after the date of the veto, provided for congressional review.

(c) If a special message is transmitted by the President under this Act and the last session of the Congress adjourns sine die before the expiration of the period described in subsection (b), the rescission or cancellation, as the case may be, shall not take effect. The message shall be deemed to have been retransmitted on the first calendar day of session in February of the succeeding Congress and the review period referred to in subsection (b) (with respect to such message) shall run beginning after such first day.

SEC. 4. DEFINITIONS.

As used in this Act:

(1) The term "direct spending" means--

(A) budget authority provided by law other than appropriation Acts;

(B) entitlement authority as defined in section 3(9) of the Congressional Budget and Impoundment Control Act of 1974; and

(C) the food stamp program.

(2) (A) Except as otherwise provided in this paragraph, the term "targeted tax benefit" means any revenue

□
-losing tax provision which is identified by the President as--

(i) a provision which provides a Federal tax deduction, credit, exclusion, or preference to a particular taxpayer or limited group of taxpayers, or

(ii) a transitional rule or other provision which provides

special treatment to a particular taxpayer or limited group of taxpayers, or any portion of a provision that has substantially the same effect.

(B) A provision shall be treated as not described in subparagraph (A) (i) if the President determines that--

(i) all persons engaged in the same type of activity receive the same treatment under the provision,

(ii) all persons owning the same type of property, or issuing the same type of investment, receive the same treatment under the provision, or

(iii) any difference in the treatment of persons is based solely on--

(I) in the case of entities, the size or type of the entities involved,

(II) in the case of individuals, their filing status,

(III) the amount involved, or

(IV) a generally

□
-available election made by taxpayers.

(C) A provision shall be treated as not described in subparagraph (A) (ii) if the President determines that it provides for the retention of prior law with respect to all binding contracts in existence on the date of first public notice that a change in law is actively being considered by a committee of either House of Congress, either House of Congress, or a conference committee.

(D) For purposes of subparagraph (A), a provision is "revenue-losing" when the Secretary of the Treasury determines that the provision, when compared to the rest of the bill if the provision were not included, reduces governmental receipts for any one of the four following periods--

(1) the first fiscal year for which the most recent budget has been submitted by the President;

(2) the fiscal year immediately preceding the first fiscal year for which the most recent budget has been submitted by the President;

(3) the period comprised of the first fiscal year for which the most recent budget has been submitted by the President and the four immediately succeeding fiscal years; or

(4) the period comprised of the five fiscal years

immediately succeeding the period described in paragraph (3).

(3) The term "disapproval bill" means a bill or joint resolution which only disapproves, in whole, a special message transmitted by the President under this Act, setting forth rescissions of discretionary budget authority or cancellations of new direct spending or targeted tax benefits, and--

(A) which does not have a preamble;

(B) (i) in the case of a special message regarding rescissions, the matter after the enacting clause of which is as follows: "That Congress disapproves each rescission of discretionary budget authority of the President as submitted by the President in a special message on _____", the blank space being filled in with the appropriate date and the

public law number to which the message relates; and

(ii) in the case of a special message regarding cancellations of new direct spending (and/or targeted tax benefits), the matter after the enacting clause of which is as follows: "That Congress disapproves each cancellation of new direct spending (and/or targeted tax benefits) as submitted by the President in a special message on _____", the blank space being filled in with the appropriate date and the public law number to which the message relates; and

(C) the title of which is as follows: "A bill disapproving the recommendations submitted by the President on _____", the blank space being filled in with the date of submission of the relevant special message and the public law number to which the message relates.

(4) The term "calendar days of session" shall mean only those days on which both Houses of Congress are in session.

(5) The term "appropriation Act" means any general or special appropriation Act, or any Act or joint resolution making supplemental, deficiency, or continuing appropriations.

(6) The term "cancel" means--

(A) with respect to "new direct spending," withholding the authority to obligate the United States pertaining thereto, and suspension of legal entitlement to claim any benefits or payments deriving therefrom; and

(B) with respect to "targeted tax benefits," the suspension of legal entitlement to claim any Federal tax deduction, credit, exclusion, preference or other tax benefit deriving therefrom.

SEC. 5. CONGRESSIONAL CONSIDERATION OF DISAPPROVAL BILLS.

[to be inserted by the Congress]

SEC. 6. REPORTS OF THE GENERAL ACCOUNTING OFFICE.

[to be inserted by the Congress]

SEC. 7. JUDICIAL REVIEW.

(a) EXPEDITED REVIEW.--

(1) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any provision of this Act violates the Constitution.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and

each House of Congress shall have the right to intervene in such action.

Nothing in this section or in any other law shall infringe upon the right of the House of Representatives to intervene in an action brought under paragraph (1) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT.-

□ -Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) EXPEDITED CONSIDERATION.-

□ -It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

(d) SEVERABILITY.-

□ -If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act shall not be affected thereby.

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Peter Jacoby (JACOBY_P) (WHO)

CREATION DATE/TIME:30-JAN-1996 15:08:57.65

SUBJECT: Campaign Finance Reform Meeting w/Cong. Marty Meehan

TO: Susan Brophy (BROPHY_S) Autoforward to: Stacey L. Rubi
READ:30-JAN-1996 15:14:37.57

TO: Elena Kagan (KAGAN_E) (WHO)
READ:30-JAN-1996 15:56:57.13

CC: Michael Waldman (WALDMAN_M) (OPD)
READ:30-JAN-1996 20:06:03.84

TEXT:

As you know, Congressman Marty Meehan has requested that a White House representative meet with him to discuss campaign finance reform legislation. That meeting is scheduled for Thursday 2/1 at 1 pm in 318 CHOB. I think the three of us should attend the meeting but we should meet prior to the meeting, perhaps at 12:15 pm in Susan's office, to discuss our message. Additionally, I have sent a packet of materials regarding the status of CFR legislation and the President's position to your attention.

Please let me know if this is good for both of you.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Ellen S. Seidman (SEIDMAN_E) (OPD)

CREATION DATE/TIME:30-JAN-1996 16:52:52.60

SUBJECT: Products

TO: Elena Kagan (KAGAN_E) (WHO)
READ:30-JAN-1996 18:29:40.06

TO: Kathleen M. Wallman (WALLMAN_KM) (WHO)
READ:31-JAN-1996 15:08:51.06

TO: Elgie Holstein (HOLSTEIN_E) (OPD)
READ:30-JAN-1996 17:52:12.94

TEXT:

Any interest in a constitutional law/federalism briefing from Cindy Lebow on products on Thursday between 11 and 1? She apparently did a fair piece of work on this over the holidays/furlough, and is convinced that there's at least an argument to be made if not a real possibility that much of the procedural structure in the Senate bill would be declared unconstitutional. Please e-mail back your interest. Kathy, do you think Bruce would be interested?
Ellen

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Jennifer M. O'Connor (OCONNOR_J) (WHO)

CREATION DATE/TIME:31-JAN-1996 08:23:30.68

SUBJECT: Indian Gaming

TO: Elena Kagan (KAGAN_E) (WHO)

READ:31-JAN-1996 08:52:05.67

TEXT:

You wouldn't believe it...but I have another Indian Gaming issue.
Are you the official gaming counsel? If so...let's chat. I'm at
6-6350.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Jack M. Quinn (QUINN_J) (WHO)

CREATION DATE/TIME:31-JAN-1996 08:57:24.15

SUBJECT: RE: secret service unionization

TO: Elena Kagan (KAGAN_E) (WHO)

READ:31-JAN-1996 09:29:31.95

CC: Kathleen M. Wallman (WALLMAN_KM) (WHO)

READ:31-JAN-1996 15:17:33.00

TEXT:

thanks. We need to be sure we talk to people on the first floor about this issue.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:31-JAN-1996 10:43:35.96

SUBJECT: lunch w/Lois

TO: Elena Kagan

(KAGAN_E) (WHO)

READ:31-JAN-1996 11:39:26.63

TEXT:

could you do lunch w/lois and moi next Thursday or Friday (Feb.
8th or 9th

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Shelley N. Fidler (FIDLER_S) (CEQ)

CREATION DATE/TIME:31-JAN-1996 11:40:29.15

SUBJECT: Timber memo

TO: Martha Foley (FOLEY_M) (WHO)
READ: 1-FEB-1996 13:00:23.29

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ:31-JAN-1996 15:45:40.31

TO: Barbara C. Chow (CHOW_B) (WHO)
READ:31-JAN-1996 12:17:27.86

TO: Kathryn Higgins (HIGGINS_K) (WHO)
READ:31-JAN-1996 12:47:17.61

TO: Elena Kagan (KAGAN_E) (WHO)
READ:31-JAN-1996 11:41:35.06

TEXT:

Does you silence mean assent?

We should move this thing along to Harold and Leon.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Cheryl L Sweitzer (SWEITZER_C) (WHO)

CREATION DATE/TIME:31-JAN-1996 11:09:16.94

SUBJECT: Indian Gaming

TO: Elena Kagan (KAGAN_E) (WHO)

READ:31-JAN-1996 11:41:22.32

TEXT:

I have scheduled a meeting with Pat Griffin and Jack on Thursday, February 1, at 11:30 a.m. to discuss Indian Gaming. Is this convenient for you?

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. email	Mail Link Monitor to Elena Kagan at 08:58:54.25. Subject: Confirmation [partial] (1 page)	01/29/1996	P6/b(6), b(7)(C), b(7)(E), b(7)(F)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[01/16/1996 - 02/01/1996]

2009-1006-F
ke714

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (WAVES RECEIPT)
 CREATOR: Mail Link Monitor (MAILMGT) (SYS)
 CREATION DATE/TIME:31-JAN-1996 16:54:01.00
 SUBJECT: CONFIRMATION: APPT. REQUEST FOR KAGAN, ELENA
 TO: Elena Kagan (KAGAN_E) (WHO)
 READ:31-JAN-1996 16:58:21.23

TEXT:
 FROM: WAVES OPERATIONS CENTER - ACO:
 Date: 01-31-1996
 Time: 15:39:51

P6/(b)(6), (b)(7)(c), (b)(7)(e), (b)(7)(f)

[003]

This message serves as confirmation of an appointment for the visitors listed below.

Appointment With: KAGAN, ELENA
 Appointment Date: 2/7/96
 Appointment Time: 11:45:00 AM
 Appointment Room: 125
 Appointment Building: OEOB
 Appointment Requested by: KAGAN ELENA
 Phone Number of Requestor: 67594

Comments:
 WAVES APPOINTMENT NUMBER: U55593

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

 TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 1
 TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 1

BERNSTEIN, RICHARD

P6/(b)(6)

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Jeremy D. Benami (BENAMI_J) (WHO)

CREATION DATE/TIME: 1-FEB-1996 09:12:36.58

SUBJECT: PB letter

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 1-FEB-1996 10:02:01.66

TEXT:

HI!

I'm trying all the electronic modes to find you! Tried beeper and voice mail yesterday, so figured I'd try email today.

I understand there is a draft letter on HR1833 floating around. I would very much like to see a copy. My understanding from Kathy is that it is a response to Hatch? George and Pat had indicated they did not want to respond to the Dole letter. This isn't that, is it?

Call me when you get a moment, 65584. thanks.