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Leshy - God Squad Exemption - BLM [Bureau of Land Management] Timber Sales March 16, 1993

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240



March 16, 1993

Memorandum

To: Katie McGinty [BY FAX]
From: John Leshy, Assistant to Secretary Babbitt
Re: "God Squad" Exemption - BLM Timber Sales

Problem: By Friday, March 19, we must respond to an order of the Ninth Circuit Federal Court of Appeals that we appoint an administrative law judge (ALJ) to begin promptly to hold hearings on allegations that the Bush White House improperly meddled in the deliberations of the God Squad as it was considering BLM's request to exempt 44 of its timber sales from the requirements of the Endangered Species Act (ESA). This court deadline requires a decision whether to withdraw the request for exemption (and thus moot the process) now, in advance of the April 2 forest conference.

Background: In May 1992 the God Squad decided, by a split vote, to exempt 13 of the 44 BLM timber sales from the ESA. It was the first exemption it ever granted. Environmental groups immediately sought review in the federal court of appeals (trial courts are bypassed under the Act in such cases). They alleged, among other things, that the God Squad proceeding was a formal "adjudication" under federal law, making illegal the pressure the White House allegedly brought to bear on individual committee members to support the exemption request. Newspapers at the time reported that at least 3 members of the Squad - EPA Administrator Reilly, NOAA Administrator Knauss and Secretary Lujan - had been summoned to the White House for meetings on the issue. (The other members are the Secretaries of Agriculture and the Army, the Chair of the Council of Economic Advisors, and a Presidential appointee from the affected state - here, Oregon.)

On February 10, 1993, the Court ruled for the plaintiffs, and ordered the God Squad to appoint an ALJ within seven days to conduct an "evidentiary hearing to determine the nature, content, extent, source, and effect of" any communication between the White House and any God Squad member on the exemption application. The ALJ was ordered to complete this task within 30-45 days of appointment.

At our request, the Justice Department sought and was given a 30-day extension on starting this process. That extension expires on Friday, March 19. The plaintiffs' attorneys, led by Vic Sher of the Sierra Club Legal Defense Fund in Seattle, acquiesced in this extension, but warned the court that they remain "highly concerned" that this process "not be extended unduly." They have told us privately that they are not particularly eager to go forward with what they see as a messy, distracting proceeding. Rather, they prefer we moot the matter by withdrawing the exemption request now.

Options:

1. Withdraw the exemption request by this Friday. This would signal that BLM will fall in line with the other agencies and make compliance with the ESA the benchmark for future management. This is a necessary precursor to a common management strategy that most seem to favor. It would also make the Forest Service's job easier, because it undercuts one ground on which the courts have enjoined timber sales by that agency - that it must manage its forests to take up the slack left by the BLM's failure to comply with the ESA. Governor Roberts and the Oregon representative on the God Squad both opposed the exemption; presumably they would not be opposed to withdrawing the request. Even though the amount of timber involved is quite small, there would be some opposition from Southern Oregon counties. Justification for taking this step in advance of the forest conference: (1) the court deadline forces our hand; (2) we need to break with the failed strategy of the past (even the architect of the exemption request, former BLM Director Cy Jamison, has now publicly conceded it was a mistake); and (3) no purpose would be served by wallowing - on the eve of or during the conference - in past efforts of White House manipulation.
2. Seek another extension of time from the court: We could file on Friday another request for an extension, citing the upcoming forest conference as the reason. The tight time schedule the Court ordered in February suggests it might not be favorably disposed to go along, especially if plaintiffs oppose us. The worst case would be for the court to deny our request in the next week or two, which would mean that the inquiry could start simultaneously with the forest conference.
3. Appoint the ALJ and get on with the inquiry: Once the ALJ is appointed, he/she takes charge - we lose all control of the process. Because the Court set few guidelines for how the ALJ is to proceed, it could turn into a circus. The ALJ could subpoena George Bush, Clayton Yeutter, Reilly, Lujan, etc. (as well as a number of career people in the agencies, some of whom may now be working on forest conference planning) to give public testimony. The picture that might emerge ranges from, on the one hand, depicting the Bush Administration as inept and venal in its handling the issue, to, on the other hand, showing it as valiantly fighting to save jobs in the face of overly rigid environmental laws.

Recommendation: There is no easy choice here. Each option could upset the delicate equilibrium of the forest conference. Informal conversations with career officials at Interior, Justice, and Agriculture show them unanimously in favor of mooting the proceeding now, by withdrawing the exemption request. We agree.

cc: Collier, Lyons, Frampton, Tuchman

MEMORANDUM

TO: Vice President Gore
FROM: Katie McGinty
Tom Tuchmann
SUBJ: Key Issues Going into the Forest Conference
DATE: March 17, 1993

THE FOREST CONFERENCE

The President promised to convene a "timber summit" during the campaign to help resolve the forestry crisis in the Pacific Northwest and northern California if congress was unable to do so.

On March 10th the President announced that he would convene a "Forest Conference" on Friday, April 2nd to meet his campaign pledge. Two working groups were organized to move forward on developing a comprehensive solution to the forest management crisis at the same time.

The Forest Management Working Group will bring Agriculture, Interior, EPA, and Commerce together to develop a comprehensive forest management plan that is in compliance with the nation's existing environmental laws. Doing so will require the agencies to follow the guidelines of the Scientific Assessment Team (SAT) report outlined in the following section.

The Worker and Community Assistance Working Group will bring the National Economic Council, Labor, Commerce, Agriculture, and Interior together to develop a comprehensive technical and financial assistance package to help people who are impacted by federal timber harvest reductions.

THE SCIENTIFIC ASSESSMENT TEAM REPORT:

Timber harvesting in the Pacific Northwest and northern California reached record levels in the mid- to late-1980s. As a result, many environmentalists and forestry professionals questioned whether the Forest Service and Bureau of Land Management's forestry practices were in compliance with the nation's environmental laws.

In 1987 a lawsuit was brought against the Department of Interior for failing to heed the advice of their scientists who recommended that the old-growth dependent Northern Spotted Owl as a threatened species under the Endangered Species Act. This suit started a long chain of legal, congressional, administrative actions which have lead to the formation of the Scientific Assessment Team (SAT).

There are two outstanding lawsuits that have a bearing on both pre- and post-Forest Conference decision making

(1) In 1991 Judge Dwyer placed an injunction on the sale of any national forest timber within spotted owl and associated old growth related species habitat until the Forest Service developed a plan that would protect such species.

(2) In 1992 Judge Frye placed an injunction on 13 timber sales that the Bush Administration "exempted" from the Endangered Species Act. In other words, this timber could be cut even though it was Spotted Owl habitat.

When the Forest Service came back in 1992 with an owl protection plan, the Judge found it to be insufficient and asked the Forest Service to answer three questions and present a revised plan by August 19, 1993. Monthly updates on progress are due to the Judge on the 19th of each month.

SCIENTIFIC ASSESSMENT TEAM REPORT:

Judge Dwyer asked the Forest Service to assess the: (1) effects of the BLM's exempted sales on its plan; (2) validity of new information that was presented at the hearings; and (3) risks to other old-growth associated species. To answer these questions the Forest Service asked Dr. Jack Ward Thomas to chair the team of 24 Forest Service scientists that made up the SAT. Dr. Thomas is a well known Forest Service scientist who has completed a number of highly acclaimed -- and controversial -- reports on spotted owl and old growth issues.

The SAT has finished its assessment and their report is ready to go to the printer. Their answers to the three questions mentioned above are:

(1) The exempted sales have minimal affects on the plan

(2) The new information presented at the hearing is not valid.

(3) There are -- in addition to the owl -- 387 old-growth related species which are at risk and mitigation measures to protect them will be needed to assure their long-term viability.

It is the answer to the 3rd question that will require the Forest Service and Bureau of Land Management to reduce harvest levels on federal lands by 75% to 85% from historical levels in order to follow the law. (This represents a total regional reduction of 25% to 30%.) Said another way, unless the environmental laws are modified, it is unlikely that the Administration will be able to negotiate harvest levels above those that result from implementing the SAT report.

The environmental community will applaud this report, while labor, industry, and rural communities will be deeply troubled by its message for the future of federal timber harvesting.