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Forest Conference-#318 Sales

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U.S. Department of Justice

LJS:PDC:EMAthas
90-1-4-3806
(202) 272-8236

Washington, D.C. 20530

June 6, 1994

* ATTORNEY-CLIENT PRIVILEGED *

MEMORANDUM

To: Will Stelle
Office on Environmental Policy
The White House

Patty J. Beneke
Associate Solicitor
Division of Energy & Resources

From: Lois J. Schiffer
Acting Assistant Attorney General

Peter D. Coppelman
Deputy Assistant Attorney General

Re: Spotted Owls: BLM's Suspension of 70 MMBF

Will - Need more background on these. Anything I need to do?

This is yet another update on these sales. We will need a final decision on whether to lift the suspensions as soon as possible.

There are three new things to report. First, attorneys for the environmental groups did receive the Notices of Satisfaction of Judgment in the PAS v. Babbitt case. They arrived with copies of the ROD, SEIS, and attachments, and the attorneys mistakenly thought they were merely duplicate copies of the publications.

Second, Mark Rutzick, on behalf of the timber companies, has begun to make inquiries about the 70 MMBF. We learned Thursday that on June 1, Mark Rutzick called Roger Nesbitt, Regional Office of the Solicitor, to ask about the 70 MMBF. Rutzick stated that he represents some of the timber companies that possess contracts to harvest the previously enjoined timber sales. He asked when the contracts would be able to be started. Nesbitt advised that suspension orders would have to lifted by the BLM, and admitted to not knowing when that would occur. Nesbitt went on to say that BLM was aware of the 70 MMBF at high levels and had not forgotten about those contracts. Nesbitt said he was looking for this matter to be cleared up pretty quickly, but suggested that Rutzick contact the BLM directly.

Third, Judge Dwyer has still not ruled on lifting the injunction on the Forest Service. Apparently, ruling will not issue until next week. Based on the questions asked by the Court at the May 31 hearing, there is a good likelihood that the injunction will stay in place during the briefing on the merits of the new claims. Although that does not affect BLM lands, it would raise some questions as to whether or not we should be moving forward with BLM harvests.

Please advise on how you would like to proceed.

U.S. Department of Justice

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June 6, 1994

* ATTORNEY-CLIENT PRIVILEGED *

MEMORANDUM

To: Will Stelle
Office on Environmental Policy
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Patty J. Beneke
Associate Solicitor
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Please advise on how you would like to proceed.

LJS:PDC:EMAthas
90-1-4-3806
(202) 272-8236

May 19, 1994

308
5/24

* ATTORNEY-CLIENT PRIVILEGED *

MEMORANDUM

To: Will Stelle
Office on Environmental Policy
The White House

Patty J. Beneke
Associate Solicitor
Division of Energy & Resources

From: Lois J. Schiffer
Acting Assistant Attorney General

Peter D. Coppelman
Deputy Assistant Attorney General

Re: Spotted Owls: BLM Proposed Harvesting of Sold Sales

This memorandum sets forth the background to the enjoined, sold BLM sales, totalling 70 MMBF. It further outlines options for addressing these sales.

Background

The PAS Injunction. Auction and award of BLM sales were enjoined by Judge Frye in Portland Audubon Society v. Babbitt. The court enjoined all sales "not awarded prior to 1992", and the injunction remains in place "until the BLM submits to this court a Supplemental Environmental Impact Statement or its functional equivalent which examines new information on the effects of logging on the northern spotted owl subspecies as required by NEPA." (Judgment, Jan. 5, 1994). Included in that injunction are the BLM 70 MMBF of sold and awarded sales, which represent the only sold and awarded sales enjoined by any court. (These sales were awarded during a brief interlude when the issue of jurisdiction was before the Ninth Circuit, which ultimately held that the district court had jurisdiction over the matter.) These decision notices to go forward with these sales were based on the old SEIS, which the court found inadequate for failing to consider new information.

The ROD and FSEIS. The ROD specifically states that all "sales awarded prior to the effective date of this Record of Decision are not altered by this Record of Decision." (ROD, at 13). That is based on the assumption that, at the time of award, "these timber sales were consistent with the planning documents then in effect, complied with the Endangered Species Act and other laws, and the environmental effects of these sales were considered as part of the baseline for the biological opinion for the Final SEIS." (ROD, at 13). Sales in key watersheds were also subjected to a screening process. (ROD, at 13-14). These sales, however, were not specifically considered by the SEIS team. The aquatic group did assume, for purposes of their analyses, that all sold sales were to be considered as harvested stumps. The terrestrial group, however, made no assumptions on these sales.

Lifting the PAS Injunction. On May 20, 1994, the Record of Decision becomes effective. Tom Lee, the Assistant United States Attorney who has handled the Portland Audubon Society v. Babbitt matter for the BLM, intends to file the FSEIS and Notice of Satisfaction of Final Judgment on that date. That filing should satisfy the injunction in that case before Judge Frye and conclude the Portland case.

Current Status of 70 MMBF. The sales are located in matrix lands, key watersheds, adaptive management areas and late-successional reserves. These sales were formally suspended by BLM when the injunction was entered. The suspension remains in place today, but BLM feels it must lift the suspension shortly after the injunction is lifted in Portland Audubon. Under the filing schedule set forth by Tom Lee, the filing to lift the injunction would occur on May 20th.

Litigation Concerns. The difficulty arises because these sales went forward under the old EIS, found to be inadequate by Judge Frye. No new reconfiguration or new decision notice is required for sold sales under the current ROD. Yet, these sales, which may be the first of all currently enjoined sales under the new ROD to be contested, may represent the least defensible of any such sale. Thus, these 70 MMBF may engender much publicity. In addition, such a challenge might be used to try to draw the Court into litigating the merits of the ROD under an expedited preliminary injunction schedule.

The question of how we could defend these sales remains open. Unlike the section 318 sales, Congress has not found these sales to be in compliance with NEPA. Instead, if challenged under NEPA, we would have to argue that these sales, based on the old SEIS, are lawful, because the ROD permits these sales to go forward without reconfiguration. The administrative record, however provides little support for this position.

BLM Concerns. BLM remains concerned, however, that it must lift the suspension once the injunction is lifted. Without the injunction, the BLM does not feel legally justified in continuing the suspension. In addition, the BLM would like to proceed with some timber harvesting as soon as possible. Therefore, to withhold these sales could create political and monetary pressures.

Options

Option 1. Proceed as planned. AUSA Tom Lee files to lift the injunction, BLM does nothing further on these sales, and the suspension is immediately lifted.

Advantages: Easiest option that permits some timber harvest.

Disadvantages: High litigation risks, with potential risks on the entire defense of the ROD.

Option 2. Permit a one-week hiatus to assess litigation claims. AUSA Tom Lee files to lift the injunction, BLM does nothing further on these sales, and the suspension remains in place for at least one week to permit BLM and DOJ to evaluate the nature of the new claims. These claims may indicate whether or not plaintiffs will oppose these sales going forward.

Advantages: Provides a window of opportunity to review matter.

Disadvantages: Puts off tough decision for another day. The claims may be so broad that we do not ascertain whether opposition will arise.

Option 3. Prepare some NEPA documentation on these sales. AUSA Tom Lee files to lift the injunction, BLM begins preparation of NEPA documentation, and suspension remains in place until such documentation is completed. This documentation can range from sale-by-sale environmental assessments to an all-inclusive memo to file on the entire sale batch.

Advantages: Provides some NEPA defense if sales are challenged.

Disadvantages: BLM is concerned that new decision documents will invite court challenges.

Option 4. Avoid going forward with these sales. AUSA Tom Lee files to lift the injunction, and BLM maintains suspension.

Advantages: This would insulate the ROD from immediate challenge on these sales and avoid litigation risk to the Plan.

Disadvantages: This would invite an industry challenge and the need to compensate purchasers for the lost volume.

Conclusion

We recommend adoption of Option 2, so that we can make this crucial decision with the benefit of additional information.

Headwaters

To protect and restore forest ecosystems

318
SALES

TO: KEY DECISION-MAKERS ON THE R.O.D.
FOR THE CLINTON FOREST PLAN
D.C. Jim Pipkin and David Cottingham
Jim Lyons and Jack Thomas
Will Stelle
Portland Tom Tuchmann

FROM: JULIE NORMAN, HEADWATERS

DATE: MONDAY, MAY 16, 1994

RE: UPDATE ON NIXING THE SUGARLOAF TIMBER SALE

(A) Thank you again for visiting with me during my trip to Washington D.C. last month. You should have recieved by now a followup letter (April 25th) and fax (May 6th), recommending that you initiate the delicate administrative process of dropping the (unawarded) Sugarloaf Timber Sale from the Siskiyou National Forest's timber sale program, since the entire sale area lies inside a very important "Late-Successional Reserve."

(B) Last week the Sugarloaf Sale was cleared by the USFWS in the marbled murrelet consultation process. This triggered media activity which in turn triggered loud citizen outcry (see clip).

(C) Following the media flurry, Siskiyou Forest Supervisor Mike Lunn called a member of the local conservation community to say that he was not wed to the sale being awarded but could not do anything independently, and that he would be conferring with his superiors. He estimated "three weeks" until the sale award to Boise Cascade.

(D) I hear that the Administration wants to stand behind procedural mandates in Section 318 and claim that Sec. 318 requires the award of the unawarded Sec. 318 sales.

If so, the Administration should also take into account that the Sugarloaf Sale was the only Siskiyou 318 Sale that did not receive approval from the Siskiyou's Sec. 318 Advisory Board in 1990, because the area was so controversial. In our opinion, if proper procedure had been followed by the Siskiyou NF, the Sugarloaf Sale never should have been offered as a Section 318 sale.

This is the perfect excuse to nix it!
PLEASE DO ! ! !

(E) It would be wonderful if our combined good faith efforts resulted in the Sugarloaf Sale being dropped before the R.O.D. goes "effective." Thanks again for your help.

Julie

Post Office Box 729 Ashland, Oregon 97520 Telephone (503) 482-4459 Fax (503) 482-7282

Sugarloaf sale gets final nod

BUT IT'S NOT AWARDED YET!

Environmental groups vow opposition will continue

By PAUL FATTIG
of the Mail Tribune

WILLIAMS — The U.S. Fish and Wildlife Service has given the nod to the Siskiyou National Forest to award the controversial Sugarloaf timber sale.

The 739-acre sale containing some 10.5 million board feet of timber on the western slopes of Grayback Mountain a half dozen miles south of Williams does not conflict with the survival of the threatened marbled murrelet, the agency concluded.

The decision announced Thursday opens the door for the Forest Service to award the contract to Boise Cascade Corp., the high bidder when the sale was offered three years ago.

Meanwhile, local environmental groups vow to continue their opposition to the sale situated in the Kangaroo Roadless Area, noting the unit is an old-growth forest reserve under the Clinton forest plan.

"But you won't see immediate activity or awarding of the contract," said forest spokeswoman Sue Olson. "We still have some more reviews to do, and some checking to do on the ground."

There is one spotted owl nesting site within the sale which will be protected by a 70-acre island within the unit, she said.

If awarded soon as expected, the firm would have until March 1998 to log the sale. The plan calls for the timber to be selectively cut and removed with helicopters. A half mile of logging road will be constructed.

The sale was one of 88 reviewed by the Fish and Wildlife Service for impact on the murrelet's habitat. It was among a dozen released this week, including the Briggs Secret sale in the Galice Ranger District. The Briggs Secret sale, including 4.8 million board feet of timber, has not been controversial.

But the trees in the Sugarloaf sale, which drew controversy when it was first considered a decade ago, have been defended by environmentalists, who have in the past promised to mount protests to defend it.

Spikes were found in some trees at the site in the fall of 1992, but local environmental groups stress they are opposed to spiking trees to discourage logging.

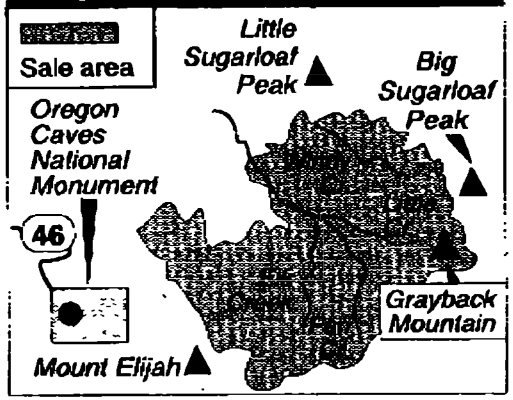
Although efforts to halt the sale through the courts have been exhausted, environmentalists will continue to lobby the administration in Washington, D.C. to preserve the area, said Julie Norman, president of the Ashland-based Headwaters group.

She noted that a memo released by the administration last December directed the Forest Service and the Bureau of Land Management not to release the sales.

"We have no legal recourse now," she said. "But I've been asking the administration to take a second look."

In addition to being a roadless area, the site is in a key watershed with old-growth timber, she said.

Sugarloaf timber sale



Mail Tribune

"We haven't given up yet," she said.

Nor have other environmentalists, said Steve Marsden, director of the Siskiyou Regional Education Project in Cave Junction.

"What we are dealing with here is a morally impaired, criminal organization," he said of the Forest Service. "They lied. They want to get the saws out and cut."

When that happens, there will likely be protests, he said.

"There is tremendous community concern about this timber sale," he said. "There will be an outraged community."

Although the agency hopes to avoid further controversy over the sale, it will be vigilant for potential problems, forest spokeswoman Olson said.

"We're concerned," she said. "We know there are still some very strong feelings about it."

MEDFORD MAIL TRIBUNE — FRI. MAY 13, '94

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION
GENERAL LITIGATION SECTION
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Fax Number (202) 272-6815, 5775
Confirmation Number (202) 272-8056

318
5724

TO: Will Stelle
Office on Environmental Policy
The White House

Patty J. Beneke
Associate Solicitor
Division of Energy and Resources

DATE: May 18, 1994

FAX NUMBER: 202 456-2710
202 219-1792

PHONE NUMBER: 202 456-6224
202 208-5757

NUMBER OF PAGES TO BE TRANSMITTED (including cover): 3

FROM: Lois Schiffer, Peter Coppelman

PHONE NUMBER: 202 514-2701

MESSAGE: Attached is a memo addressing certain BLM sales. Lois would appreciate a conference call on this matter soon.

U.S. Department of Justice

LJS:PDC:EMAthas
90-1-4-3806
(202) 272-8236

Washington, D.C. 20530

May 18, 1994

* ATTORNEY-CLIENT PRIVILEGED *

<u>MEMORANDUM</u>

To: Will Stelle
Office on Environmental Policy
The White House

Patty J. Beneke
Associate Solicitor
Division of Energy & Resources

From: Lois J. Schiffer
Acting Assistant Attorney General

Peter D. Coppelman
Deputy Assistant Attorney General

Re: Spotted Owls: BLM Proposed Timber Sales

On May 20, 1994, the Record of Decision becomes effective. Tom Lee, the Assistant United States Attorney who has handled the <u>Portland Audubon Society v. Babbitt</u> matter for the BLM, intends to file the FSEIS and Notice of Satisfaction of Final Judgment on that date. That filing should satisfy the injunction in that case before Judge Frye and conclude the Portland case. It will also give BLM the opportunity to go forward with its sales. Of imminent concern are the 70 MMBF of sold, awarded sales under the injunction that BLM maintains can go forward immediately upon the court filing.

On April 28, 1994, Peter Coppelman, Wells Burgess and Ellen Athas spoke with representatives of the Solicitor's Office, BLM and OGC to discuss the BLM sales program. We discussed the need for a unified strategy between the Forest Service and BLM. Specifically, the Forest Service could commit to providing 30 days' notice to plaintiffs before the auction or award of any sale in suitable habitat for the northern spotted owl. The BLM agreed to review whether they could agree to that timetable. However, as to the 70 MMBF of sold and awarded sales, BLM would like to proceed with those sales as soon as possible. To date, we have not received a commitment on the 30 days' notice issue from BLM, but have received today more information on the 70 MMBF, as requested during our phone conference.

The 70 MMBF were sold and awarded prior to being enjoined by Judge Frye. They appear to represent the only enjoined sales in such a category, except for the section 318 sales mandated by Congress. The sales are located in matrix lands, key watersheds, adaptive management areas and late-successional reserves. These sales were formally suspended by BLM when the injunction was entered. The suspension remains in place today, but BLM feels it must lift the suspension as soon as the injunction is lifted in Portland Audubon. Under the filing schedule set forth by Tom Lee, that would occur on May 20th.

The difficulty arises because these sales went forward under the old EIS, found to be inadequate by Judge Frye. No new reconfiguration or new decision notice is required for sold sales under the current ROD. Yet, these sales, which may be the first of all currently enjoined sales under the new ROD to be contested, may represent the least defensible of any such sale. That is so, because, unlike all other new sales, BLM is not planning to prepare any new sale documents. In fact, certain fringe environmental groups may file a preliminary injunction to stop these initial sales. Thus, these 70 MMBF may engender much publicity. In addition, such a challenge might be used to try to draw the Court into litigating the merits of the ROD under an expedited preliminary injunction schedule.

The question of how we could defend these sales remains open. Unlike the section 318 sales, Congress has not found these sales to be in compliance with NEPA. Instead, if challenged under NEPA, we would have to argue that these sales, based on the old EIS, are lawful, because the ROD permits these sales to go forward without reconfiguration. The Record of Decision, based upon the new SEIS, did not require any changes to sold and awarded sales.

BLM remains concerned, however, that it must lift the suspension once the injunction is lifted. Without the injunction, the BLM does not feel legally justified in continuing the suspension. In addition, the BLM would like to proceed with some timber harvesting as soon as possible. Therefore, to withhold these sales could create political and monetary pressures.

This matter needs to be resolved prior to the filing on behalf of BLM on May 20. Please advise on how you would like to proceed.

United States Office of Forestry and Economic Development

333 S.W. First Avenue, P.O. Box 3623, Portland, Oregon 97208-3623

May 10, 1994

318 SALES

Memorandum

To: Will Stelle, George Frampton, Mollie Beattie, Jim Lyons, Jack Ward Thomas, Mark Gaede, Gray Reynolds, Jim Pipkin, Mike Spear, Don Knowles

From: Tom Tuchmann, Director

Subject: Marbled Murrelets

URGENT

Attached is an outreach plan and a press release on marbled murrelets and the 318 sales. We would like to get this under way at **1:00 pm EST Wednesday, May 11**. If you have concerns, please call or fax Lauri Hennessey of this office before that time. At that time, we will have the biological opinion delivered to the U.S.D.A. Forest Service and the attached public outreach will get underway.

Please note that we have not addressed the buyback issue. We expect that there will be questions on the buyback and we suggest that our answer be succinctly to the point and as follows: We need to contact the timber purchasers to notify them of the jeopardy on their timber sales. That will allow the purchaser to either request a buyback or possibly a petition to the Endangered Species Committee (the God Squad). We will begin these discussions immediately. Our estimate is that if all 43 sales were bought back given current lumber prices, the buyback could cost $50 - 70 million.

Telephone 503-326-6248 Facsimile 503-326-6254

TO: Distribution

FROM: R-6 Forest Service and US Fish and Wildlife Service

The jeopardy biological opinion on marbled murrelets for a group of Section 318 timber sales is due to be received by the Forest Service from the Fish and Wildlife Service on Wednesday, May 11. Following are plans for handling the biological opinion.

On Wednesday (Day 1) after the biological opinion is received, the Forest Service will get the opinion (by overnight mail) to the six national forests where the timber sales are located.

On Thursday (Day 2) the national forests will notify the purchasers of the timber sales. After the purchasers are notified, local congressional offices will be notified by the Forest Supervisors/Public Affairs Officers of the national forests involved.

After purchasers and congressional offices have been notified, a press release (draft press release attached) would be faxed. The press release would not be sent to everyone on the mailing list; it would only be sent to those areas where the six national forests are located.

Industry and environmental interest groups would then be notified by the Director and Deputy Director of the Forest Service Natural Resources Staff Group.

Key messages to be conveyed are as follows: the historical perspective is important; these timber sales are not part of the 1.1 billion board feet in the President's Forest Plan; issues are being resolved--we're moving forward; these sales are pre-President's Forest Plan.

If you have any concerns about these plans, please let us know by 8 a.m. Wednesday morning.

NEWS RELEASE

U.S. Fish & Wildlife Service - Region 1
911 N.E. 11th Avenue
Portland, Oregon 97232-4181

U.S. Forest Service - Region 6
P.O. Box 3623
Portland, Oregon 97208-3623

318
SAUL

94-

Refer: Susan Saul, Fish and Wildlife Service, Portland, Oregon, 503/231-6121
Sandy Berger, Forest Service, Portland, Oregon, 503/326-4084

DRAFT

May 12, 1994

BIOLOGICAL OPINION ON MURRELET FINDS JEOPARDY ON 76 OF 88 TIMBER SALES FROM 1990

The U.S. Fish and Wildlife Service today delivered a biological opinion to the U.S. Forest Service finding that 76 of 88 timber sales in six national forests in Oregon and Washington pose jeopardy to the marbled murrelet, a seabird that nests in coastal old growth forest and listed in 1992 as a threatened species.

The 88 sales are the last batch of unreviewed timber sales that predate the development of President Clinton's Forest Plan for management of Federal forests in the Pacific Northwest.

Of the 76 sales found to jeopardize the murrelet, 43 are currently occupied by the species and 33 are in suitable murrelet habitat and require additional surveys before alternatives under the biological opinion can be developed. An additional 12 sales have been reviewed and judged not to pose jeopardy to the murrelet, in the same biological opinion.

The timber sales are part of a larger group of 1,258 Forest Service sales and 21 Bureau of Land Management sales totalling 7.86 billion board feet that were released from court injunction and sold in 1990 under section 318 of that year's Interior Department appropriations legislation. These 88 sold and awarded sales, some of which had been previously reviewed for their effect on the northern spotted owl, required reconsultation when the murrelet was listed by the Federal Government.

Harvest of these areas would cause jeopardy to the species due to direct killing of murrelets, displacement of nesting birds, fragmentation of nesting habitat leading to increased predation, and an increased isolation of breeding groups of murrelets.

Twenty-eight of the sales also fall into late successional reserve areas that are integral units of the President's Forest Plan, where timber harvest is proposed to be reduced.

(over)

DRAFT

The 76 jeopardy sales contain an estimated 290 million board feet of timber; the 12 non-jeopardy sales contain an estimated 46 million board feet. The sales are located in the Siskiyou and Siuslaw national forests in Oregon and in the Olympic, Wenatchee, Gifford Pinchot, and Mt Baker-Snoqualmie national forests in Washington.

Copies of the final biological opinion are available from the U.S. Forest Service in Portland at 503/326-2971.

x x x

THE WHITE HOUSE

WASHINGTON

318

MEMORANDUM TO: K. McGinty
T.J. Glauthier
Ruth Saunders
George Frampton
Mollie Beattie
Jim Lyons
Mark Gaede
Jack Thomas

FR; Will Stelle

RE: Timber Sales Cancellations, Murrellets and Money

DATE: 3 May 1994

The purpose of this memorandum is to flag for your attention and final disposition the question of the position of the Administration on making funding available to buy back the sale cancellations required by a pending biological opinion on murrellets. Are we going to require a supplemental, and if so, are we prepared to ask for it?

The U.S. Fish and Wildlife Service is poised to issue a biological opinion on a number of 318 sales (I believe roughly 43) that will require cancellation and buy-backs totally between $80 million and $100 million.

I understand that the source of funding may be general FS appropriations and that, if the cancellations occur, a supplemental will be required.

The issue has hit the press in the northwest, and a timely action on the biological opinion is warranted. The questions of what is going on will increase in intensity quickly.

Please advise.

cc. T. Tuchmann
D. Knowles

Headwaters

To protect and restore forest ecosystems

Will Stelle, OEP
OEOB #360
Washington D.C. 20501

318

re: FOREST PLAN R.O.D. / UNAWARDED SALES

Monday, April 25, 1994

Dear Will,

Thank you again for meeting with me last week to discuss the fate of the unawarded timber sales that fall inside Late-Successional Reserves in the Clinton Forest Plan. I have since found out from Don Knowles that the unawarded sales are a very small part of the proposed sales inside Reserves.

Awarded sales in Reserves	24,364 ac.
Unawarded sales in Reserves	1,226 ac.

Naturally we would prefer if all these unawarded sales were dropped to protect the integrity of the Reserve system. In case this is not politically feasible, I hope you will consider the following information on the unawarded Sugarloaf Timber Sale (Siskiyou NF) to help you analyze them on a sale-by-sale basis.

1. Attached is a photo and sale specifications for the Sugarloaf Sale. It lies in (a) a high-elevation Roadless Area, (b) a Key Watershed (Upper Illinois), (c) Critical Habitat for the spotted owl, and (d) a crucial connecting corridor linking the Illinois and Klamath River basins.

2. The Siskiyou NF Supervisor, Mike Lunn, announced last Friday that he intends to award the Sugarloaf Sale to Boise Cascade (high bidder, but not dependent on federal timber) after marbled murrelet consultations are completed. Lunn was not responsive to the high likelihood of citizen outcry and even civil disobedience if the sale should go forward.

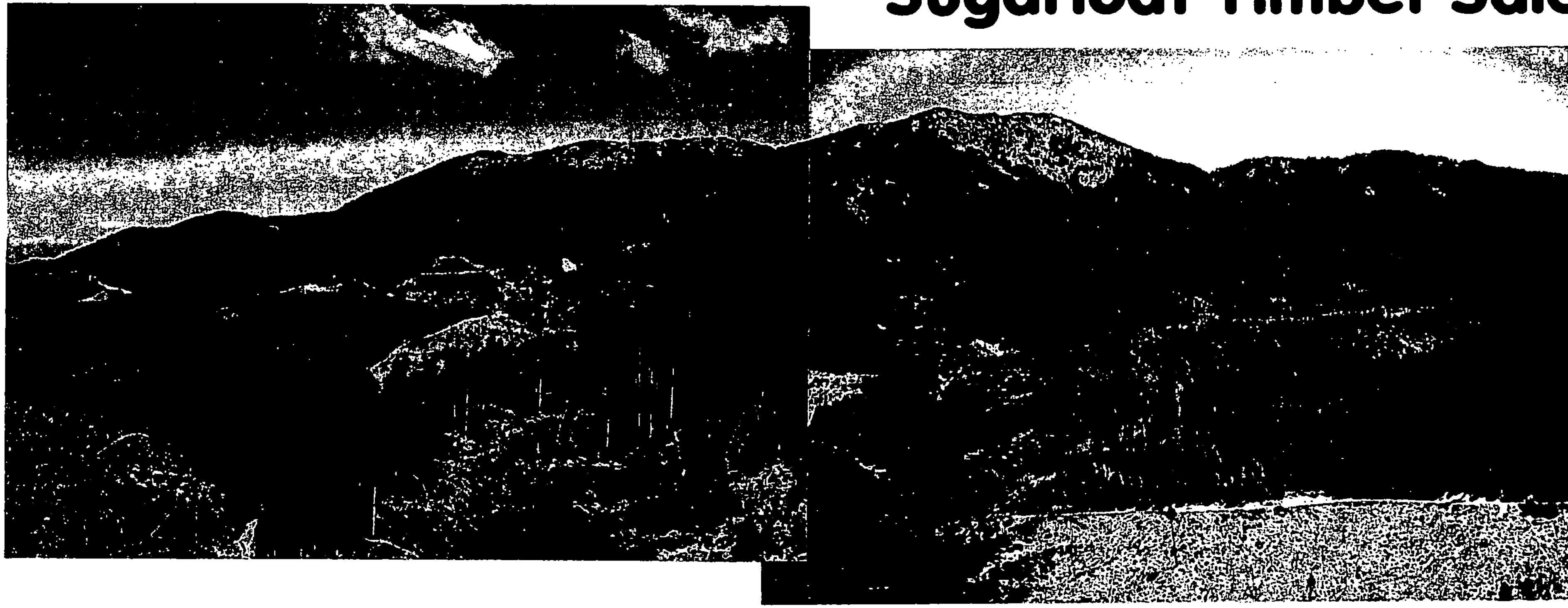
3. Contrary to my April 20th memo, the Sugarloaf Sale was modified minimally to increase stream buffers in late 1993.

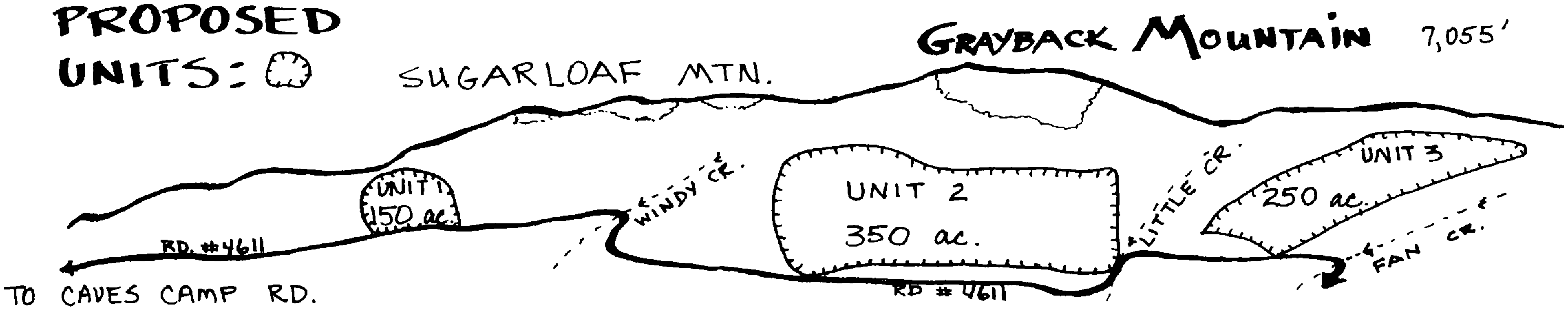
Dropping the Sugarloaf Timber Sale will really help Headwaters' members get off to a fresh start and work positively with the agencies in implementing the new Clinton Forest Plan. I appreciate your looking into this issue.

Best regards, Julie Norman   Julie Norman

Post Office Box 729   Ashland, Oregon 97520   Telephone (503) 482-4459   Fax (503) ~~488-0284~~ 482-7282

Protect Grayback Mountain: Stop the Sugarloaf Timber Sale





The mountainside above the road in this photo has been protected as a Late-Successional Reserve by President Clinton's Forest Plan ... **except** that an old timber sale that local residents have fought for ten years could go forward, according to the recently issued Record of Decision. If the Forest Service sells the Sugarloaf Timber Sale, 10.5 million board feet will be "selectively cut" and removed by helicopters from 749 acres of predominantly old-growth forest above 5,000 ft elevation. The fragmentation of this **Roadless Area** and **Key Watershed** should not be allowed to damage the Reserve system.

-- Headwaters. 4/25/94

Tom

To: Will Stelle, Jim Lyons, George Frampton, Mark Gaede, Jack Ward Thomas, Mollie Beattie

From: Tom Tuchmann

Subject: Biological Opinion on 318 Sales

Issue:

Policy decisions are needed on those timber sales authorized under Section 318 of the FY 1990 Interior and Related Agencies Appropriations Act (P.L. 101-121), which are currently in consultation with the F&WS.

Background:

The F&WS is prepared to issue a final opinion on the 318 sales that have been in consultation for marbled murrelet. There was no specific mention of the 318 sales in the Record of Decision, although they are covered within Section 3a & b. We chose to postpone the issuance of the B.O for these sales to keep the action separate from the ROD. The B.O. will stand on its own.

The Biological Opinion will contain the following:

all on the Siuslaw

- A jeopardy opinion for all sales where surveys have been completed and found occupied, with no reasonable and prudent alternative;
  There are 43 sales in this category (all FS).
  Total acres = 4,091 with 3,100 in LSR.
  Volume = 204.6 mmbf with 50 mmbf outside of LSRs and 151 mmbf within LSRs.
  Estimated buy-out cost = $50 million.

- A jeopardy opinion for sales with incomplete or no surveys, with the reasonable and prudent alternative of completing surveys--both awarded and unawarded sales will be released if no occupancy is found after surveys have been completed;
  There are 2 unawarded sales with MaMu issues.
  (869 acres in LSR, 15mmbf)
  There are 33 awarded sales with partial or no surveys.
  (1600 acres with about 875 in LSR)
  (83 mmbf with about 52 mmbf in LSR)

17 - one year remain
16 - no surveys.

The jeopardy sales are primarily in LSR, 22 are on the Siuslaw, along the Oregon coast, 2 are on the Siskiyou, 6 are on the Olympic and 2 are on the Mt. Baker-Snoqualmie.

- Non-jeopardy opinion for sales with surveys completed to protocol and no occupancy was found.
  There are 10 sales, 7 in LSR equalling 750 acres and 29.1

mmbf.

Policy Decisions:

1. Funding needed to complete surveys: Approximately $550,000 for FY 94 and $450,000 for FY 95. This includes remaining 318 sales and a few proposed sales for FY94 and 95. The required mix of funds between timber support NFTE ET113 and Timber Sale Administration for FY 94 is 60% Sale Admin and 40% ET113. For FY 95, it's reversed. It's anticipated that all funds need to be ET113.

2. Funding to buy back sales: Approximately $50 million will be needed to buy back the 43 sales with jeopardy opinion. The other option is for either party to go to the God Squad. How do we want to handle a request to the God Squad?

7. Pre-318 sales, sold, awarded, suspended for further surveys:

BLM-0
FS-4

President's Plan issue:

If the sales in categories 2 and 6a & b are found unoccupied, what will be the effect of cutting these on the biological opinion that was completed for the Plan? The F&WS is working on a preliminary analysis to answer this question.

Summary of Status of Section 318 Sales
3/30/94

Categories of Sales:

1. Sold, unawarded, consultation completed, within LSR:

FS-0
BLM- 13 sales. Of these, 1 sale has significant issues and was dropped from further consideration. This leaves 12 sales.

Commit to expedite conferencing

10 of these sales are in the near zone for murrelet, and have critical habitat, therefore, BLM policy requires conferencing on these sales. This does not have the 135-day time limit of regular consultation.

Acreage: 116 acres in the 2 sales outside MM zone.
551 acres in remaining 10 sales, all within LSR.

Comment: These sales are not regeneration harvest sales, but have been modified as a result of consultation to avoid jeopardy and adverse modification of critical habitat.

2. Sold, unawarded, consultation NOT completed, within LSR:

C.H. rule may assume No LSR harvest

BLM-0
FS- 12 sales. Of these, 3 sales have significant issues and were dropped from further consideration. 7 sales have only owl issues, no MM issues. 2 sales have MM habitat.

Acreage: 2 sales with MM issues have 869 acres in LSR.
7 sales with owl issues have _______ in LSR. (Need to calculate)

3. Sold, unawarded, outside LSR, hung up in court:

N.A.

BLM-0
FS- 1 sale (Enola Hill)

4. Sold, unawarded, consultation complete, outside LSR:

NA

FS-0
BLM- 4 sales. They will be awarded within the next 2-3 weeks.

5. Sold, awarded, outside LSR, consultation complete:

BLM- lots
FS- lots

These sales are currently operating.

OPTIONAL FORM 99 (7-90)
FAX TRANSMITTAL
# of pages ▸
From ...ca Freedman

6. Sold, awarded, suspended and under consultation, some inside LSR:

BLM- 0
FS- 87

Of the 87 FS sales, the following categories exist:

How many of these in LSR?

a. 1 year of survey for MM with no occupancy found:
17 sales

b. No surveys started for MM:
16 sales

How many of these in LSR?

If outside LSR, try to get waiver on 2nd year survey - and 1 year survey for (b.)

Comment: For a. and b. there are a total of 33 sales (18 sales in LSR)

Acreage: 1600 acres total with about 875 in LSR.

It will cost $1.5mm to conduct surveys in the first year and $750,000 to complete surveys in the second year. Recommend contracting this work.

If we end up buying out of these sales, it will cost between $40-50mm.

c. Surveyed and found occupied:

43 sales (32 sales in LSR)
Acreage: 4,091 total, with 3,100 in LSR

Comment: These sales were awarded in 1990-1991 and were cleared under spotted owl consultation. The purchasers did not harvest them before the marbled murrelet was listed in September 1992. The listing triggered reinitiation of consultation and suspension of the sales under ESA,

Get jeopardy - Let the law operate the way it's intended to operate

The biological opinion is being prepared by the F&WS with a jeopardy opinion and the assumption that no reasonable or prudent alternatives exist. The alternatives which are not deemed reasonable and prudent under the ESA are as follows:

i. Buy back the sales. This is within the scope of the contract and would involve compensating the purchasers for their investment, costs of holding the contract, negotiated securities, work invested, and replacement costs for similar timber. Estimated cost is $ 50mm.

ii. Action agencies or Applicants petition to take the sales to the God Squad.

d. 2 year survey completed, NO occupancy found:

10 sales within MM range (7 in LSR--750 acres)
1 sale outside MM range or unsuitable habitat and not likely to adversely effect, but within LSR--35 acres.

NA

These numbers are completely consistent with the original numbers we mentioned back in July. They are also consistent with the original talking points that were generated by the White House in July. Please note, however, that these numbers have been updated from the original talking points -- about 400 mmbf of timber under contract has been harvested since July. These numbers will continue to change over time as timber available for harvest continues to be cut and enjoined and planned timber sales are modified to meet the final plan guidelines. I have asked the Forest Service and BLM to provide me with monthly reports which I will share with you in order to assure that we are all singing off the same songsheet.

SECTION 318 SALES:

The FY 1990 Interior Appropriations Bill mandated that 7.0 bbf of FY 1989 and 1990 timber sales be sold notwithstanding any provision of law except the Endangered Species Act. The Forest Service and BLM have basically met this goal.

However, the Forest Service has 8 sales containing approximately 60 mmbf located in proposed Late Successional Reserves (LSRs). These sales have not gone through ESA consultation which is expected to drop the volume down to about 40 mmbf.

The BLM has 21 Section 318 sales remaining. Twelve of which are in LSRs and 9 are not in LSRs.

Agriculture would like to defer any decision on 318 sales in proposed LSRs until after the Plan is finalized. Harvesting old growth in LSRs so near a final decision could undermine the confidence and trust in the agencies ability to manage LSRs.

Interior initially felt that we should move forward and award those sales to show our commitment to moving some timber, and complying with congress' intent.

Last week we had a conference call to clear up this matter. The BLM and Forest Service agreed that our position should be to defer 318 sales in proposed LSRs until the plan is finalized, and move forward with the 9 BLM sales which have cleared ESA review and are outside of LSRs.

BLM believes -- and I strongly agree -- that any decision to move forward in this way should be made by the White House so the BLM will not be perceived as heading off in a different direction.

DO YOU AGREE WITH DEFERRING THE 8 FOREST SERVICE AND 12 BLM "SECTION 318 SALES" IN PROPOSED LSRs UNTIL THE FOREST PLAN IS FINALIZED?
YES✓/NO__/DISCUSS__

DO YOU AGREE WITH MOVING IMMEDIATELY FORWARD WITH THE 9 BLM "SECTION 318 SALES" OUTSIDE OF THE PROPOSED LSRs THAT HAVE CLEARED ESA REVIEW? YES✓/NO__/DISCUSS__

MEMORANDUM

TO: Secretary Babbitt
Tom Collier
Kevin Sweeny
FROM: Tom Tuchmann Tom
SUBJ: Timber Sale Program
DATE: November 1, 1993

There are two issues that need your attention. The first is a clarification of some statements we made regarding the timber sale program and the second relates to whether " Section 318 sales" should move forward.

(1) "2.2 BILLION BOARD FEET THIS YEAR"

When the President released his forest plan we were widely quoted as stating that we could move 2.2 billion board feet this year. Many perceived this as a commitment to move 2.2 billion board feet (bbf) of **new timber**, timber that had not yet been awarded for sale.

In my travels throughout the region I have been getting a lot of follow up questions concerning our ability to actually meet these goals. In the spirit of your statements, I have attempted to clarify the administration's views in the following manner.

o **There are three different pots of timber which we hope to access through the end of FY 1994.** (September 1994)

o **We have about 1 bbf of timber available for harvest today. These sales are sold, awarded, and outside of any injunctions.**

o **We have about 1 bbf of timber that is currently enjoined. Once these sales are released from the injunctions they will be assessed for consistency with the President's Plan and will require consultation under the ESA.**

-- **We expect that this assessment will allow an additional 250 million board feet (mmbf) to be harvested next year. We already have an agreement with the plaintiffs to go to Judge Dwyer and release 83 mmbf before the full injunction is lifted.**

o **In addition, we believe we can prepare between 350 mmbf and 650 mmbf of new timber sales between now and the end of FY 1994.**

-- **We have already announced that 140 mmbf will move by the end of 1993 and we expect to move the remainder next year.**

o **Of course these numbers have and will continue to can change as timber is harvested and as we get a better feel for how the plan may be implemented.**

U.S. Department of Justice

LJS:PDC:EMAthas
90-1-4-3806
(202) 272-8236

Washington, D.C. 20530

June 1, 1994

3/6
5/25

* ATTORNEY-CLIENT PRIVILEGED *

MEMORANDUM

To: Will Stelle
Office on Environmental Policy
The White House

Patty J. Beneke
Associate Solicitor
Division of Energy & Resources

From: Lois J. Schiffer
Acting Assistant Attorney General

Peter D. Coppelman
Deputy Assistant Attorney General

Re: Spotted Owls: BLM Proposed Harvesting of Sold Sales

This is to update you on the 70 MMBF issue, to advise you of the representations made in Court on May 31, 1994, and to ascertain your final view on this matter.

At the hearing before Judge Dwyer on May 31, we advised the Court that the Government had filed a notice of satisfaction of the judgment in PAS v. Babbitt and that our position was that the injunction was lifted by its terms. We further advised that the Court in Lane County v. Babbitt had entered an order dissolving the injunction in that case. Unfortunately, attorneys Mike Axline and Todd True stated that they had not received copies of the notice of satisfaction in PAS v. Babbitt. We reviewed this with the U.S. Attorney's Office in Portland after the hearing, and they indicated that the packages were sent by regular mail on May 20. We have since faxed copies of the pleadings to the attorneys on June 1.

We advised the Court that the BLM and the Forest Service would provide counsel for the parties with 30 days' notice of the auction of any new sale that would log spotted owl habitat, in order to avoid preliminary injunction motions. We expressly stated that the notice would not cover sold and awarded sales. In response to the Court's later question regarding what was meant by new sales, we indicated again that sold and awarded sales were not included in our notice commitment, and reminded the Court that the <u>SAS v. Lyons</u> injunction did not cover sold and awarded sales.

Based on the failure to notify plaintiffs' attorneys sooner, we requested that the suspensions not be lifted until further notice. Judge Dwyer's decision on whether to lift the injunction is expected shortly. In the meanwhile, we await your final decision on proceeding with these harvests.

LISA: PLEASE FAX TO MARK GARDE +
TOM TUCKMAN + W/ A COVER NOTE
ASKING THEM WHAT ARE OUR OPTIONS
ON THIS?

MX 208' 4803

To: Will Stelle
From: Julie Norman
Date: June 2, 1994

Headwaters

To protect and restore forest ecosystems

Re: **Cancellation of awarding the contract for the Sugarloaf Timber Sale, located within a Late-Successional Reserve in the Siskiyou National Forest.**

The Sugarloaf Timber Sale could be awarded within the next week, as early as June 8, according to sources within the Forest Service.

This would be a tragedy, not only for the forests, but for future citizen involvement in federal forest management in southwest Oregon.

We are very concerned that many of our members will be so upset by this timber sale that they'll just give up on trying to work constructively with the Forest Service or the BLM. The consensus that we have built up over the years in support of thinning and limited salvage operations is delicate, and could be shattered by what many see as simply a political move to get more timber volume regardless of cost.

Over the last 8 months we have worked hard with the Rogue River National Forest to develop the **Partnership One Timber Sale** as an example of better forestry that conservationists could support. But how can we ask our members to trust the agencies to prepare more sales like Partnership One if timber sales like Sugarloaf are still being awarded? To make it worse, for almost a year, maps have shown the Sugarloaf area to be protected within a Late-Successional Reserve. Cutting it now would let people down hard.

Sugarloaf is not a 100% bonafide Section 318 timber sale. It is the only sale that the Siskiyou NF's Section 318 Advisory Board did not agree to sell. By offering Sugarloaf for sale in 1990 without Advisory Board approval, the Siskiyou managers violated the spirit, if not the letter, of Section 318. By signing the contract for Sugarloaf in 1994, the Forest Service would violate the spirit, if not the letter, of President Clinton's new Forest Plan.

Our hopes for ending a decade of confrontation and gridlock will be dashed if this sale is awarded.

Please act now, the time is so short! Julie Norman

cc: David Cottingham, John Lowe, Mike Lunn, Jim Lyons, Jim Pipkin, Tom Tuchmann

Post Office Box 729 Ashland, Oregon 97520 Telephone (503) 482-4459 Fax (503) 482-7282

FAVORABLE PRESS RELEASE ON PARTNERSHIP ONE TIMBER SALE

Headwaters

To protect and restore forest ecosystems

FOR IMMEDIATE RELEASE:
WEDNESDAY, MAY 11, 1994

CONTACT: JULIE NORMAN (503)482-4459

APPLEGATE TIMBER SALE PROJECT GETS KUDOS FOR PROTECTING BIG TREES

The Rogue River National Forest is to be congratulated for successfully working with the public to design the Partnership One Timber Sale, and the results show that the Forest Service has sincerely tried to protect local biodiversity and big live trees.

Julie Norman, President of Headwaters, stated: "The Applegate Ranger District staff has worked hard to design an innovative experimental project that uses less-damaging methods of salvage, and uses thinning in an attempt to improve forest health. The Forest Service has made a good effort to minimize possible negative impacts, and that's a positive sign as implementation of the Clinton Forest Plan begins."

The Partnership One Project includes timber cutting (thinning-from-below and dead-tree-only-salvage), prescribed burning near private residences (to reduce fire hazard), road rehabilitation (erosion-control), and upgrade of recreational facilities at McKee Bridge. The examples of innovation that

Post Office Box 729 Ashland, Oregon 97520 Telephone (503) 482-4459 Fax (503) 482-7282

Headwaters especially applauds are:

(1) not cutting large trees over 25" diameter in the thinning units,

(2) salvaging dead trees only (not trees that are merely predicted to soon die),

(3) protecting clusters of snags (habitat for birds that help control insects), and

(4) favoring Ponderosa pine, madrones, and oaks, to preserve species diversity.

Richard Hart, Chief Researcher: "The big trees are the most rare component on the public forests. They are also the most difficult to replace. So we're glad to see the agencies bring this fact into their decision-making."

Julie Norman continued: "Headwaters has been promoting thinning-from-below to the federal agencies for years. We see it as an alternative to clearcutting that has the additional possible benefit of reducing fire hazards. It is gratifying to see the Forest Service take a step back from clearcutting and try to actually improve the health of the forest."

U.S. Department of Justice

Environment and Natural Resources Division

Office of the Assistant Attorney General

Washington, D.C. 20530

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CONFIRMATION NUMBER	(202)	514-2701
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FROM: Lois J. Schiffer

NO. OF PAGES: (INCLUDING COVER PAGE) 5

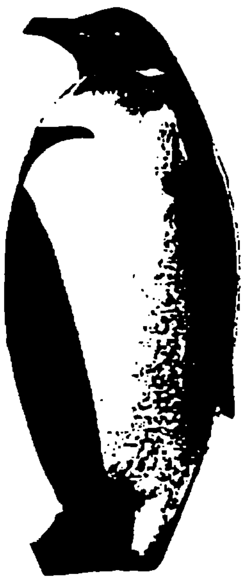
TO: Will Stelle and Patty Beneke

TELEPHONE NO:

FAX NO:

3185R23

MESSAGE: PLEASE DELIVER ASAP!



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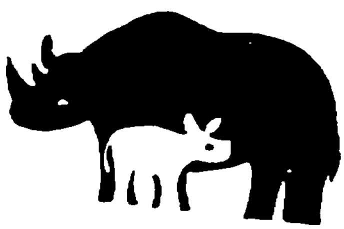

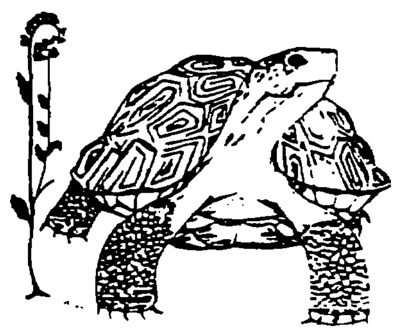

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Environment and Natural Resources Division

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90-1-4-3806
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Office of the Assistant Attorney General

Washington, D.C. 20530

May 26, 1994

* ATTORNEY-CLIENT PRIVILEGED *

MEMORANDUM

To: Will Stelle
Office on Environmental Policy
The White House

Patty J. Beneke
Associate Solicitor
Division of Energy & Resources

From: Lois J. Schiffer
Acting Assistant Attorney General

Peter D. Coppelman
Deputy Assistant Attorney General

Re: Spotted Owls: BLM Proposed Harvesting of Sold Sales

This memorandum sets forth the background to the enjoined, sold BLM sales, totalling 70 MMBF. It further outlines options for addressing these sales at this stage of the litigation.

Background

The PAS Injunction. Auction and award of BLM sales were enjoined by Judge Frye in Portland Audubon Society v. Babbitt. The court enjoined all sales "not awarded prior to 1992", and the injunction remains in place "until the BLM submits to this court a Supplemental Environmental Impact Statement or its functional equivalent which examines new information on the effects of logging on the northern spotted owl subspecies as required by NEPA." (Judgment, Jan. 5, 1994). Included in that injunction are the BLM 70 MMBF of sold and awarded sales, which represent the only sold and awarded sales enjoined by any court. (These sales were awarded during a brief interlude when the issue of jurisdiction was before the Ninth Circuit, which ultimately held that the district court had jurisdiction over the matter.) These decision notices to go forward with these sales were based on the old SEIS, which the court found inadequate for failing to consider new information.

The ROD and FSEIS. The ROD specifically states that all "sales awarded prior to the effective date of this Record of Decision are not altered by this Record of Decision." (ROD, at 13). That is based on the assumption that, at the time of award, "these timber sales were consistent with the planning documents then in effect, complied with the Endangered Species Act and other laws, and the environmental effects of these sales were considered as part of the baseline for the biological opinion for the Final SEIS." (ROD, at 13). Sales in key watersheds were also subjected to a screening process. (ROD, at 13-14). These sales, however, were not specifically considered by the SEIS team. The aquatic group did assume, for purposes of their analyses, that all sold sales were to be considered as harvested stumps. The terrestrial group, however, made no assumptions on these sales. NOT TRUE

Lifting the PAS Injunction. On May 20, 1994, the Record of Decision became effective. On that same day, Tom Lee, the Assistant United States Attorney who has handled the Portland Audubon Society v. Babbitt matter for the BLM, filed the FSEIS and Notice of Satisfaction of Final Judgment. A copy of that filing is attached. According to Tom Lee, that filing satisfies the injunction in Judge Frye's case and concludes the Portland litigation. Nothing further is needed or expected.

Current Status of 70 MMBF. The sales are located in matrix lands, key watersheds, adaptive management areas and late-successional reserves. These sales were formally suspended by BLM when the injunction was entered. The suspension remains in place today, but BLM feels it must lift the suspension shortly after the injunction is lifted in Portland Audubon. The BLM agreed to wait seven days following the filing in Portland Audubon before lifting the suspension to review whether any new claims addressed these sales. None do. That decision to suspend sales seven days beyond the filing expires Friday, May 27.

Litigation Concerns. The difficulty arises because these sales went forward under ~~the old EIS, found to be inadequate by Judge Frye.~~ No new reconfiguration or new decision notice is required for sold sales under the current ROD. Yet, these sales, which may be the first of all currently enjoined sales under the new ROD to be contested, may represent the least defensible of any such sale. Thus, these 70 MMBF may engender much publicity. In addition, such a challenge might be used to try to draw the Court into litigating the merits of the ROD under an expedited preliminary injunction schedule.

The question of how we could defend these sales remains open. Unlike the section 318 sales, Congress has not found these sales to be in compliance with NEPA. Instead, if challenged under NEPA, we would have to argue that these sales, based on the old SEIS, are lawful, because the ROD permits these sales to go

THE VULNERABILITY IS UNDER 70 FOR SALES, NOT THE LIFTING forward without reconfiguration. The administrative record, however provides little support for this position.

Notification to Plaintiff Groups. An important issue arises whether or not we should contact the plaintiff environmental groups to advise them that we are going forward with these sales. This is not technically required by any legal tenet. By not notifying plaintiffs of these sales, however, they may react angrily when they learn of them and create negative press stories. Tom Lee maintains, on the other hand, that if we bring these sales to plaintiffs' attention, they will have no choice but to oppose them. This is particularly true for Oregon Natural Resources Council, which has vowed to fight every sale of old growth timber.

BLM Concerns. BLM remains concerned, however, that it must lift the suspension shortly after the injunction is lifted. Without the injunction, the BLM does not feel legally justified in continuing the suspension. In addition, the BLM would like to proceed with some timber harvesting as soon as possible. Therefore, to withhold these sales could create political and monetary pressures. Finally, BLM would prefer not notifying the plaintiff groups about the sales. Their view is that notification would serve as a red flag and invite challenges that might otherwise not arise.

WSA/ TAKINGS

Options

Option 1. Immediately lift suspensions on Friday, May 27th, without notifying plaintiff groups.

Advantages: Most expeditious option that permits some immediate timber harvest.

Disadvantages: Could create serious public relations problems and damage our image before the courts if our action is perceived as "sneaking" some sales through.

Option 2. Do not lift the suspension until after the status conference and hearing before Judge Dwyer on Tuesday, May 31. At Judge Dwyer's status conference, we can represent that (1) the injunction in Portland Audubon has been formally lifted; and (2) the BLM and Forest Service agree to a 30-day notice to plaintiff groups prior to any auction or award of timber sales in spotted owl habitat. If plaintiffs have an issue with sold sales going forward, that could be their opportunity to come forward. If plaintiffs say nothing about sold sales, we then lift the suspension, without specific notification to plaintiff groups.

NOT APPLICABLE

Advantages: This permits us to make formal representations in court on the issue, which, if unchallenged, could justify our moving forward. Also, timber harvests could go forward.

Disadvantages: Could also create serious public relations problems and damage our image before the courts if our action is perceived as "sneaking" some sales through.

Option 3. Call plaintiff groups immediately and advise that BLM intends to lift the suspensions on the 70 MMBF and ask if plaintiffs intend to challenge these sales.

Advantages: Our actions will not become the source of bad press.

Disadvantages: The mere asking of the question could flag the issue, and serious opposition may result. BLM would then be in the difficult position of having to decide whether to buy back the sales, undergo a new NEPA analysis for the sales or take on a serious litigation risk. Finally, BLM agreed to the seven-day delay on lifting the suspensions with the hope that if no new claims were asserted the sales would go forward, and changing position now may become an issue.