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Collection/Record Group: Clinton Presidential Records
Subgroup/Office of Origin: Council on Environmental Quality
Series/Staff Member: Kathleen (Katie) McGinty
Subseries:

OA/ID Number: 4301
FolderID:

Folder Title:
Forest Conference-Decision Memos/Record of Decision (RoD)

Stack:	Row:	Section:	Shelf:	Position:
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JUN - 6 1994

AT SEATTLE
CLERK U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEATTLE AUDUBON SOCIETY, et al.,

Plaintiffs,

v.

JAMES LYONS, in his official
capacity as Assistant Secretary
of Agriculture, et al.,

Defendants.

and

WASHINGTON CONTRACT LOGGERS
ASSOCIATION, et al.,Defendant-
Intervenors.

NO. C92-479WD

SAVE THE WHIST,

Plaintiff,

v.

JAMES LYONS, et al.,

Defendants.

NO. C94-758WD

NATIVE FOREST COUNCIL,

Plaintiff,

v.

BRUCE BABBITT, et al.,

Defendants.

NO. C94-803WD

C to Court, WCO

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P. 25

1 THE SIERRA CLUB,

2 Plaintiff,

3 v.

4 MICHAEL ESPINOZA, et al.,

5 Defendants.

NO. C94-820WD

ORDER DISSOLVING
INJUNCTION AND SETTING
SCHEDULE FOR SUMMARY
JUDGMENT MOTIONS

6
7 Defendants James Lyons and United States Forest Service have
8 moved in Cause No. C92-479WD for an order dissolving the injunc-
9 tion entered in that case on July 2, 1992. The motion is
10 unopposed by Seattle Audubon Society and ten other plaintiffs. It
11 is also unopposed by defendant-intervenors Washington Contract
12 Loggers Association, et al. Opposition has been expressed by
13 plaintiffs Forest Conservation Council and Native Forest Council.
14 All materials filed, and the arguments of counsel heard in open
15 court on May 31, 1994, have been fully considered.

16 The motion is based upon the April 13, 1994, Record of
17 Decision for Amendments to Forest Service and Bureau of Land
18 Management Planning Documents Within the Range of the Northern
19 Spotted Owl ("ROD"), adopted by the Secretaries of Agriculture and
20 Interior on April 13, 1994. The ROD was preceded by a Final
21 Supplemental Environmental Impact Statement ("FSEIS") made avail-
22 able to the public in February 1994.

23 Within the past nineteen days, all plaintiffs in the above-
24 entitled cases, now consolidated, have filed new or supplemental
25 complaints in this court challenging the legality of the ROD and
26

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1 FSEIS under various federal statutes. The Secretaries of Agriculture
2 and Interior are among the defendants in these cases.

3 The existing injunction, and the summary judgment rulings
4 that led to it, are reported in Seattle Audubon Society v.
5 Moseley, 798 F. Supp. 1473, 1484, and 1494 (W.D. Wash. 1992),
6 aff'd sub nom., Seattle Audubon Society v. Esby, 998 F.2d 690 (9th
7 Cir. 1993). The court there found that an earlier Forest Service
8 decision, and a related environmental impact statement, were
9 deficient under the National Environmental Policy Act ("NEPA"), 42
10 U.S.C. § 4321 et seq., in three respects: failure to consider the
11 effect of the Endangered Species Committee's grant of an exemption
12 for thirteen Bureau of Land Management timber sales; failure to
13 provide a reasonable analysis of, and response to, the draft 1991
14 owl demographic analysis by Drs. Anderson and Burnham and related
15 criticisms; and, in regard to other species living in the old-
16 growth forests, failure to explain the magnitude of the risks and
17 to justify what appeared to be an abandonment of conservation
18 duties imposed by law. See 798 F. Supp. at 1479-83. The Forest
19 Service defendants were enjoined from auctioning or awarding any
20 additional timber sales that would log suitable habitat for the
21 northern spotted owl in Regions Five and Six until revised stan-
22 dards and guidelines in compliance with NEPA and the National
23 Forest Management Act, 16 U.S.C. § 1660 et seq. ("NFMA"), were
24 adopted and in effect. Id. at 1493-94. A later order specified:

25 The Forest Service is therefore enjoined to prepare a
26 supplemental EIS in compliance with NEPA, curing the
defects identified in the May 28, 1993, summary judgment
order . . .

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1 798 F. Supp. at 1499. In rejecting a request for a stay pending
2 appeal, the court stated: "The injunction simply requires a new
3 or amended EIS in compliance with NEPA, curing the three defects
4 specified in the May 28 order." *Id.* at 1497.

5 Since the required compliance with NEPA could lead to a
6 different management plan, the issue of whether the 1992 plan
7 violated NFMA was not reached or decided. The May 28 order
8 stated:

9 Pending further compliance by the Forest Service
10 with NEPA, and the changes that may follow, there is no
11 need to decide the cross-motions for summary judgment
12 under NFMA, which raise the issue whether the agency has
13 arbitrarily and capriciously adopted a plan which, based
14 on present knowledge, would be unlikely to maintain a
15 viable population of owls or other species. Those
16 motions are therefore stricken without prejudice.

17 *Id.* at 1484.

18 Whether the 1992 plan violated NFMA is now moot, since that
19 plan has been dropped.

20 The 1994 ROD and FSEIS are much different from those present-
21 ed earlier. Whether they comply with NEPA and NFMA remains to be
22 determined. The question is whether the 1992 injunction should
23 remain in force while that is being litigated.

24 On a motion to dissolve an injunction, the issue is whether
25 the defendants have properly performed their obligations under the
26 injunction. Sierra Club v. Cargill, 11 F.3d 1545, 1548 (10th Cir.
1993). [The defendants here have shown that the three NEPA viola-
tions identified in the 1992 order are either moot or have been
cured.] The legality of the new plan should be tested in pre-

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1 ceedings directed to it, without the presence of an injunction
2 whose purpose has been served. (To proceed otherwise would reverse
3 the burden of proof placed by law upon those who challenge the
4 legality of agency action.)

5 For these reasons, the injunction entered herein on July 2,
6 1992, is hereby dissolved. This order does not constitute a
7 ruling one way or the other on the legality of the 1994 plan. All
8 parties are free to challenge the legality of the new ROD and
9 FSEIS, and to seek preliminary and permanent relief with respect
10 to them.

11 At the May 31 hearing, government counsel proposed that the
12 Forest Service and Bureau of Land Management be required to
13 provide at least thirty days' advance notice in writing to all
14 parties and counsel in these cases before any new (not previously
15 awarded) timber sale is auctioned that would log suitable habitat
16 for the spotted owl. That proposal is hereby adopted, and the
17 federal defendants are directed to provide notice accordingly in
18 all such instances, pending further order of the court.

19 At the May 31 hearing all counsel who spoke on the subject
20 confirmed that the challenges to the new ROD and FSEIS can be
21 decided on cross-motions for summary judgment. That should be
22 accomplished as soon as possible. The following schedule is
23 hereby adopted: Counsel are directed to confer promptly about any
24 discovery that will be needed, to complete discovery as rapidly as
25 possible, and to file by June 30, 1994, a joint report either
26 advising the court that discovery has been completed or setting

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1 out a schedule for its completion in time to accomplish the
2 remaining steps on schedule. All motions for summary judgment,
3 will be due on August 4; responses on August 25; and replies on
4 September 7, 1994. } Oral argument will be held at 9:00 a.m. on
5 September 10, 1994. } Allocation of time at the hearing will be
6 decided later.

7 The clerk is directed to send copies of this order to all
8 counsel of record.

9 Dated: June 6, 1994.

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12 William L. Dyer
13 United States District Judge
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THE WHITE HOUSE
WASHINGTON

94 APR 15 P7:26

MEMORANDUM TO THE PRESIDENT

FR: Katie McGinty

RE: Forest Plan

DATE: 15 April 1994

This memorandum responds to your comment on my April 7th memorandum on the final forest plan.

You asked why the short-term sales are so low. The short answer is that, as explained below, it will take several years to gear up the sale program because laying out timber sales on the ground and doing the necessary engineering and assessments takes time.

The final plan estimates that the Forest Service and the Bureau of Land Management (BLM) will be able to produce an average annual sale program of 1.1 billion board feet -- down from 1.2 bbf in the draft plan and significantly lower than the boom harvest years of the mid-1980s -- where the unsustainable sale levels reached 4 bbf and gave rise to the litigation and injunctions which have halted the program since 1991.

Since 1991, the sale program has, for all practical purposes, been at zero for the owl forests of the region, and the "pipeline" for new timber sales is empty. This means that both agencies must now begin the process of laying out new sales on the ground, doing the necessary engineering, road building and environmental assessments and surveys that must accompany each sale. This process takes time -- normally two to three years -- and thus it will take time to build up the backlog of planned sales to reach the 1.1 bbf annual levels.

This is a very practical and largely unavoidable constraint, and the agencies are prepared to do everything possible to speed things up. We have searched high and low to avoid this problem -- and have concluded that it is basically unavoidable. Even if higher timber sales were legislated, they simply could not be prepared and sold quickly (unless the legislation radically altered the normal procedures).

I hope this explains the situation. I regret not having the opportunity to discuss this with you earlier, and please let me know if you have any further questions or would like more information.

THE WHITE HOUSE
WASHINGTON

DECISION MEMORANDUM FOR THE PRESIDENT

FR: KATIE McGINTY

DATE: April 7, 1994

RE: COMPLETION OF THE NORTHWEST FOREST PLAN

The memorandum is to describe for your review and approval the final adjustments made to the forest plan since the issuance of the final Environmental Impact Statement (FSEIS) in January of this year. These adjustments reflect the consensus recommendations of the Departments of Agriculture, Interior, Commerce, EPA and Justice. Secretaries Espy and Babbitt, who will sign the formal decision document, have reviewed and approved the final plan. Both the formal Record of Decision and its Appendix are attached.

Since the final EIS was issued, we have had very little opportunity to make anything but minor changes. To do otherwise would require us to reissue the EIS as a new draft for additional public comment. This would require us to ask the court to extend the schedule once again, and further delay implementation of the plan. We therefore do not have major issues to present for your decision apart from the fundamental question of proceeding, but I wanted to apprise you of the overall setting of the final plan.

PROCEDURAL SETTING

Secretaries Espy and Babbitt have approved the final plan. If you approve, they will file it with the court on April 14th, and ask the court to lift the injunctions and allow us to implement it immediately. Industry and environmentalists will challenge the plan immediately, and there is a very real question of whether the court will allow us to proceed with implementation while the litigation continues. If the court does not lift the injunction and allow us to proceed, we will probably not have a timber sale program this year and the pressure for an interim legislative "fix" will build significantly.

KEY CHANGES TO THE PLAN SINCE ITS PROPOSAL

Changes Made in the final EIS from the earlier draft EIS.

As indicated to you in an earlier memorandum, after receiving 110,000 comments on the draft, the Interagency Team made literally hundreds of minor boundary adjustments in the land categories which resulted in a net increase of 775,000 acres of additional land placed into reserves where only limited timber harvesting will occur. They decreased substantially the rotation periods for harvesting timber in California (from 180 year to 80 year rotations) to make

more timber available over the long-term. They increased the size of the buffer strips along the smallest streams to increase aquatic protections and to benefit other selected species. They also included a "survey and manage" commitment for those species and habitats for which little information is now known. The overall net effect of these changes was a reduction in the average annual timber sale quantity from 1.2 billion board feet to 1.1 bbf. In addition, the Team discovered a significant error in their previous calculation of job impacts in the earlier draft, causing them to double their estimated job losses from 5,000 to 10,000 (down from 126,000 to 116,000 jobs).

Changes from the FSEIS to the final plan.

Since the final SEIS, we have been engaged in fine-tuning the plan with three goals: to ensure that the courts will approve the plan; to simplify implementation of the plan; and as a corollary to the second, to adjust certain short-term requirements to ensure that the Forest Service and the Bureau of Land Management will be able to resume a limited timber sale program as soon as possible after the plan is approved. In particular, we will propose a phasing in of several of the monitoring and assessment requirements over a period of years to allow us to conduct a timber sale program while the assessment protocols are being developed and implemented. This phasing in will prove controversial because the environmental litigants will argue that it will increase risks of environmental damage to unacceptable levels.

KEY POINTS OF CONTROVERSY

1) JOBS.

Industry will argue that the plan imposes unacceptable job losses, citing higher job losses than are currently projected. The idea that your plan is "costing" jobs is 180 degrees wrong. The purpose of this plan is to put the timber sale program back on track and save jobs that would otherwise be lost completely if the injunctions continue. That total employment will be less than employment during the boom period of the 1980s should surprise no one: those employment levels were sustained by a sale program that was illegal -- and that led to the injunctions that now blanket forest management in the region. Moreover, the unprecedented \$1.2 billion in community assistance and worker retraining is expected to create 13,000 employment and training opportunities and thousands of additional new job opportunities.

2) TIMBER SALE PROJECTIONS.

The interagency team calculated in the FSEIS that the average annual sale level based on the final plan will be about 1.1 billion board feet -- down from 1.2 bbf as projected in the draft plan. Arguments are now occurring over whether that 1.1 figure is accurate or too optimistic. At this juncture, we are maintaining that the estimate is the best possible given the information we now have.

3) NO MONEY FOR IMPLEMENTATION.

Industry will also attack the plan on the grounds that we have not provided enough money in the budgets to implement it. We have, in fact, funded the mandatory requirements in the 1994 budget, but there is a legitimate issue of whether the Forest Service may suffer some short-falls in its regional budget. We are working actively with OMB and the agencies to address the issue and ensure that adequate resources are made available.

4) **TOO FEW TIMBER SALES IN THE SHORT TERM.**

Industry will also attack the plan on the grounds that in the next few years we will not be able to produce the full 1.1 billion board feet of new sales per year. They are right, and we are acknowledging that, as a practical matter, it will take us several years to get up to the full sale program. We will work to gear up as quickly as possible, but there are very real and unavoidable constraints -- like the practical, on-the-ground requirements of planning individual timber sales according to the new rules given the limits of available money and people.

THE CONSTITUENCIES

Congress

Senator Murray and Reps. Dicks and Unsoeld have been very supportive of your efforts to end the gridlock. Rep. DeFazio is strongly opposed to the plan because it hits southwest Oregon particularly hard because of the bad condition of the forests in the region. Most of the remainder of the Democrats in the delegation have remained largely distant, hoping that it gets resolved administratively. The committees of jurisdiction are not anxious to jump into it legislatively.

Governors

The Governors are also keeping their distance and, by and large, holding their fire and hoping that the courts will lift the injunctions. Roberts nor Lowry have explicitly supported your efforts to develop a defensible plan, but they are not actively engaged.

Industry and Labor

Industry and Labor oppose the plan because it will result in significant reductions in the long-term timber program from the boom years of the 1980s. They will attack it, try to defeat it, and hope that the continuing stalemate will force Congress to enact something more to their liking. The most probable result of their strategy -- if successful -- is no new legislation over the short term, a continuation of the injunctions, no timber sale program, and major job losses as a result.

Environmentalists

The environmentalists will attack the plan because it allows the continued harvesting of a significant amount of old growth forest. They will argue that it does not provide enough protection for certain at-risk species, and that the flexibility that we have tried to allow for a short-term phase-in of the plan is illegal.

The general public

The region is tired of this issue and wants it solved. The success or failure of our efforts will be determined not by the details of the plan itself but by whether it settles the issue, ends the warfare and gridlock, and allows the region to move on.

CONCLUSION

The amount of time, effort and energy invested by the political and career staff of the agencies both here in Washington and within the region in developing this forest plan has been extraordinary. The plan itself will in my judgment constitute a genuine watershed event in the evolution of land management policies in this country, and I believe that when the dust settles it will serve as a positive and constructive force for change in the region.

This is not meant to underplay the level of controversy that is associated with this effort. The key constituencies remain very polarized, and that will not change over the short-term. Litigation is guaranteed, but we have done our best to minimize our risks.

My major concern is with the complexity of the plan itself and our ability to implement it promptly and thoroughly. We are intending to oversee the implementation of the plan closely, but it will not be easy.

Ultimately, the key to our success from a political and substantive standpoint is to proceed in a steady and predictable way with plan implementation, all the while continuing our significant efforts at assisting those communities who are very much in the throes of major transformations.

RECOMMENDED DECISION

The Secretaries of Interior and Agriculture and the Interagency Steering Committee recommend that you approve the submission of the attached Record of Decision to the federal district court for its approval.

Agree _____ Disagree _____ Discuss _____

I propose the following addition, after the first full paragraph on page 3:

"Our best estimates are that, in 1995, we will harvest less than half of the projected 1.1 billion board feet. In order to minimize unrealistic expectations, we will direct the agencies to develop their best projections of harvest levels for the next four years and make those figures public within 30 days. This will lower expectations and blunt subsequent political attacks that we have 'broken promises' or otherwise failed to fulfill your Forest Plan."

Let me know if I can be of assistance.

EXECUTIVE OFFICE OF THE PRESIDENT

13-Apr-1994 12:59pm

TO: Carol H. Rasco
TO: Michael T. Schmidt

FROM: Peter M. Yu
National Economic Council

SUBJECT: Quick Comments on Forest Memo

April 13, 1994

MEMORANDUM FOR ROBERT RUBIN

CC: Carol Rasco
FROM: Peter Yu
SUBJECT: Comments on Katie McGinty's Memorandum to the President

I just received for comment this afternoon a memorandum from Katie McGinty to the President on Completion of the Northwest Forest Plan. I have one serious concern, which you may wish to convey to John Podesta.

The memorandum estimates harvests of **1.1 billion board feet (bbf) per year**. This is an estimated ten-year average: Jack Ward Thomas, Chief of the Forest Service, predicts far lower levels over the short-term:

<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
0.27-0.33 bbf	0.40-0.47	0.54-0.62	0.81

This means that going into the election we will have harvests of less than half of the projected levels. While we will claim to have solved a long-standing problem, the opposition will charge that we have "broken promises and broken lives."

At this point (with Secretaries Espy and Babbitt ready to sign the ROD tomorrow), there is little we can do substantively. However, I believe (i) that the President should be informed of this problem and (ii) that the White House should direct the agencies to reveal to the public the short-term harvest levels. Last April, when the President and the Vice President announced the plan, Secretary Babbitt ad-libbed that he expected levels not at 1.2 bbf, but at 2.0 bbf--a comment that has been difficult to live down. In my view, we cannot afford to continue to overpromise and underdeliver.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

April 14, 1994

STATEMENT BY THE PRESIDENT

Today marks the beginning of a new era for the Pacific Northwest and for forestry management across our nation.

With this decision, we begin efforts to restore the forests that make the region beautiful, productive and utterly unique. We are taking the single most important step toward once again having a steady flow of timber to Pacific Northwest mills. At the same time, the plan provides for sustainable management of our nation's precious natural resources.

This plan fulfills the commitment I made one year ago. It is environmentally credible and backed by the best available science. It meets the high standards required by Federal court and expected by the American people. It is a document that should move management of Federal forests out of the courts and into the hands of professional resource managers. Today's decision moves us from gridlock to growth, from obstructionism to opportunity.

The Secretaries' decision today offers a hopeful break from the past. It is just one element of a strong and comprehensive plan for the Pacific Northwest. Working closely with the Congress, my Administration has forged powerful new partnerships with state and local governments in the region. We are creating new, well-paying jobs in timber-dependent communities, and are providing the certainty that investors and businesses in the region have so desperately needed. Our ties to the region, and our commitment of financial support for the next five years, will continue to provide the leadership for a full economic recovery.

THE PRESIDENT HAS SEEN

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THE WHITE HOUSE

WASHINGTON

April 13, 1994

MR. PRESIDENT:

Attached for your consideration is a decision memorandum recommending approval of the final adjustments to the forest plan. The plan has few changes from the final Environmental Impact Statement issued in January, but was forwarded by Katie to keep you informed of the plan's status. The recommendations reflect the views of the Departments of Agriculture, Interior, Commerce, EPA and Justice. With your approval, Secretaries Espy and Babbitt will sign the final plan (a copy of which is enclosed), file it with the court tomorrow morning, and seek lifting of the injunctions currently in place.

The interagency team calculated that the average annual sale level of timber will be approximately 1.1 billion board feet. In comments earlier this year, Secretary Babbitt mentioned that he expected timber harvest levels to be 2.0 billion board feet under this plan. However, the Chief of the Forest Service predicts much lower levels over the 5-year short term -- less than half of the projected levels. His estimates are:

1994	1995	1996	1997
0.27-0.33 bbf	0.40-0.47 bbf	0.54-0.62 bbf	0.81 bbf

To blunt the adverse consequences of overprediction, the memo recommends that agencies make regular projections on timber volumes, and make those estimates public.

The memo has been reviewed by OMB, NEC, Domestic Policy, OSTP, George, and other relevant members of the Senior Staff. There was consensus that while the overall plan is sound, we should do all that we can to minimize the fallout from possible heightened expectations, including public disclosure of projected timber harvests as soon as they become available.

Paul
R. Paul Richard

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 All the way from
 1.2 to 1.0
 even at
 the lower
 level.

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 The impact
 will be small
 for the summer
 but for the winter
 it will be a major
 problem. We need
 to be prepared for
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At best we can
 sit on the sidelines
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 want to do.

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THE WHITE HOUSE
WASHINGTON

DECISION MEMORANDUM FOR THE PRESIDENT

FR: KATIE MCGINTY / *108 400 Cur*
DATE: APRIL 7, 1994
RE: COMPLETION OF THE NORTHWEST FOREST PLAN

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to make more timber available over the long-term. They increased the size of the buffer strips along the smallest streams to increase aquatic protections and to benefit other selected species. They also included a "survey and manage" commitment for those species and habitats for which little information is now known. The overall net effect of these changes was a reduction in the average annual timber sale quantity from 1.2 billion board feet to 1.1 bbf. In addition, the Team discovered a significant error in their previous calculation of job impacts in the earlier draft, causing them to double their estimated job losses from 5,000 to 10,000 (down from 126,000 to 116,000 jobs).

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suffer some short-falls in its regional budget. We are working actively with OMB and the agencies to address the issue and ensure that adequate resources are made available.

4) **TOO FEW TIMBER SALES IN THE SHORT TERM.**

Why
Industry will also attack the plan on the grounds that in the next few years we will not be able to produce the full 1.1 billion board feet of new sales per year. They are right, and we are acknowledging that, as a practical matter, it will take us several years to get up to the full sale program. We will work to gear up as quickly as possible, but there are very real and unavoidable constraints -- like the practical, on-the-ground requirements of planning individual timber sales according to the new rules given the limits of available money and people.

Our best approach on this subject is a combination of full disclosure and not over-promising. Last spring when you released the draft plan, Secretary Babbitt stated that he thought we would deliver 2 billion board feet per year -- a statement that raised expectations and now subjects us to claims of broken promises.

Any guesses about how much timber we will deliver in any given year in the short-term are rough indeed. The estimates the Forest Service is now projecting will be that 1995 volumes will be less than half the projected 1.1 bbf, while the Bureau of Land Management is making no projections until they are able to redo their individual forest plans. To minimize false expectations, we will direct the agencies to develop from time to time their best projections on sale volumes, and make those projections public. This will lower expectations and blunt subsequent political attacks.

THE CONSTITUENCIES

Congress

Senator Murray and Reps. Dicks and Unsoeld have been very supportive of your efforts to end the gridlock. Rep. DeFazio is strongly opposed to the plan because it hits southwest Oregon particularly hard because of the bad condition of the forests in the region. Most of the remainder of the Democrats in the delegation have remained largely distant, hoping that it gets resolved administratively. The committees of jurisdiction are not anxious to jump into it legislatively.

Governors

The Governors are also keeping their distance and, by and large, holding their fire and hoping that the courts will lift the injunctions. Roberts nor Lowry have explicitly supported your efforts to develop a defensible plan, but they are not actively engaged.

Industry and Labor

Industry and Labor oppose the plan because it will result in significant reductions in the long-term timber program from the boom years of the 1980s. They will attack it, try to defeat it, and hope that the continuing stalemate will force Congress to enact something more to their liking. The most probable result of their strategy -- if successful -- is no new

Agree _____ Disagree _____ Discuss _____

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THE WHITE HOUSE

WASHINGTON

MEMORANDUM TO THE PRESIDENT

FR: Katie McGinty

RE: Forest Plan

DATE: 15 April 1994

This memorandum responds to your comment on the April 7th memorandum on the final forest plan which is attached.

You asked in your comment why the short-term sales are so low. The short answer is that, as explained below, it will take several years to gear up the sale program because laying out timber sales on the ground and doing the necessary engineering and assessments takes time.

The final plan estimates that the Forest Service and the Bureau of Land Management (BLM) will be able to produce an average annual sale program of 1.1 billion board feet -- down from 1.2 bbf in the draft plan and significantly lower than the boom harvest years of the mid-1980s -- where the unsustainable sale levels reached 4 bbf and gave rise to the litigation and injunctions which have blanketed the program since 1991.

Since 1991, the sale program has, for all practical purposes, been at zero for the owl forests of the region, and the "pipeline" for new timber sales is empty. This means that both agencies must now begin the process of laying out new sales on the ground, doing the necessary engineering, road building and environmental assessments and surveys that must accompany each sale. This process takes time -- normally two to three years -- and thus it will take time to build up the backlog of planned sales to reach the 1.1 bbf annual levels.

This is a very practical and largely unavoidable constraint, and the agencies are prepared to do everything possible to speed things up. We have searched high and low to avoid this problem -- and have concluded that it is basically unavoidable.

I hope this explains the situation. I regret not having the chance to discuss this with you earlier, and please let me know if you have any further questions or would like more information.

Press and Congressional Response

Attached are the press clips from the announcement. Senator Murray's floor statement is strongly supportive, and Reps. Dicks

and Unsoeld are also solidly backing the effort. Rep. DeFazio is highly critical -- as we expected because southwest Oregon is hardest hit.

THE WHITE HOUSE
WASHINGTON

DECISION MEMORANDUM FOR THE PRESIDENT

FR: KATIE MCGINTY *W&E for Cur*
DATE: APRIL 7, 1994
RE: COMPLETION OF THE NORTHWEST FOREST PLAN

The memorandum is to describe for your review and approval the final adjustments made to the forest plan since the issuance of the final Environmental Impact Statement (FSEIS) in January of this year. These adjustments reflect the consensus recommendations of the Departments of Agriculture, Interior, Commerce, EPA and Justice. Secretaries Espy and Babbitt, who will sign the formal decision document, have reviewed and approved the final plan. Both the formal Record of Decision and its Appendix are attached.

Since the final EIS was issued, we have had very little opportunity to make anything but minor changes. To do otherwise would require us to reissue the EIS as a new draft for additional public comment. This would require us to ask the court to extend the schedule once again, and further delay implementation of the plan. We therefore do not have major issues to present for your decision apart from the fundamental question of proceeding, but I wanted to apprise you of the overall setting of the final plan.

PROCEDURAL SETTING

Secretaries Espy and Babbitt have approved the final plan. If you approve, they will file it with the court on April 14th, and ask the court to lift the injunctions and allow us to implement it immediately. Industry and environmentalists will challenge the plan immediately, and there is a very real question of whether the court will allow us to proceed with implementation while the litigation continues. If the court does not lift the injunction and allow us to proceed, we will probably not have a timber sale program this year and the pressure for an interim legislative "fix" will build significantly.

KEY CHANGES TO THE PLAN SINCE ITS PROPOSAL

Changes Made in the final EIS from the earlier draft EIS.

As indicated to you in an earlier memorandum, after receiving 110,000 comments on the draft, the Interagency Team made literally hundreds of minor boundary adjustments in the land categories which resulted in a net increase of 775,000 acres of additional land placed into reserves where only limited timber harvesting will occur. They decreased substantially the rotation periods for harvesting timber in California (from 180 year to 80 year rotations)

to make more timber available over the long-term. They increased the size of the buffer strips along the smallest streams to increase aquatic protections and to benefit other selected species. They also included a "survey and manage" commitment for those species and habitats for which little information is now known. The overall net effect of these changes was a reduction in the average annual timber sale quantity from 1.2 billion board feet to 1.1 bbf. In addition, the Team discovered a significant error in their previous calculation of job impacts in the earlier draft, causing them to double their estimated job losses from 5,000 to 10,000 (down from 126,000 to 116,000 jobs).

Changes from the FSEIS to the final plan.

Since the final SEIS, we have been engaged in fine-tuning the plan with three goals: to ensure that the courts will approve the plan; to simplify implementation of the plan; and as a corollary to the second, to adjust certain short-term requirements to ensure that the Forest Service and the Bureau of Land Management will be able to resume a limited timber sale program as soon as possible after the plan is approved. In particular, we will propose a phasing in of several of the monitoring and assessment requirements over a period of years to allow us to conduct a timber sale program while the assessment protocols are being developed and implemented. This phasing in will prove controversial because the environmental litigants will argue that it will increase risks of environmental damage to unacceptable levels.

KEY POINTS OF CONTROVERSY

1) JOBS.

Industry will argue that the plan imposes unacceptable job losses, citing higher job losses than are currently projected. The idea that your plan is "costing" jobs is 180 degrees wrong. The purpose of this plan is to put the timber sale program back on track and save jobs that would otherwise be lost completely if the injunctions continue. That total employment will be less than employment during the boom period of the 1980s should surprise no one: those employment levels were sustained by a sale program that was illegal -- and that led to the injunctions that now blanket forest management in the region. Moreover, the unprecedented \$1.2 billion in community assistance and worker retraining is expected to create 13,000 employment and training opportunities and thousands of additional new job opportunities over the next five years.

2) TIMBER SALE PROJECTIONS.

The interagency team calculated in the FSEIS that the average annual sale level based on the final plan will be about 1.1 billion board feet -- down from 1.2 bbf as projected in the draft plan. Arguments are now occurring over whether that 1.1 figure is accurate or too optimistic. At this juncture, we are maintaining that the estimate is the best possible given the information we now have.

3) NO MONEY FOR IMPLEMENTATION.

Industry will also attack the plan on the grounds that we have not provided enough money in the budgets to implement it. We have, in fact, funded the mandatory requirements in the 1995 budget, but there is a recently raised issue of whether the Forest Service may

suffer some short-falls in its regional budget. We are working actively with OMB and the agencies to address the issue and ensure that adequate resources are made available.

4) **TOO FEW TIMBER SALES IN THE SHORT TERM.**

Industry will also attack the plan on the grounds that in the next few years we will not be able to produce the full 1.1 billion board feet of new sales per year. They are right, and we are acknowledging that, as a practical matter, it will take us several years to get up to the full sale program. We will work to gear up as quickly as possible, but there are very real and unavoidable constraints -- like the practical, on-the-ground requirements of planning individual timber sales according to the new rules given the limits of available money and people.

Our best approach on this subject is a combination of full disclosure and not over-promising. Last spring when you released the draft plan, Secretary Babbitt stated that he thought we would deliver 2 billion board feet per year -- a statement that raised expectations and now subjects us to claims of broken promises.

Any guesses about how much timber we will deliver in any given year in the short-term are rough indeed. The estimates the Forest Service is now projecting will be that 1995 volumes will be less than half the projected 1.1 bbf, while the Bureau of Land Management is making no projections until they are able to redo their individual forest plans. To minimize false expectations, we will direct the agencies to develop from time to time their best projections on sale volumes, and make those projections public. This will lower expectations and blunt subsequent political attacks.

THE CONSTITUENCIES

Congress

Senator Murray and Reps. Dicks and Unsoeld have been very supportive of your efforts to end the gridlock. Rep. DeFazio is strongly opposed to the plan because it hits southwest Oregon particularly hard because of the bad condition of the forests in the region. Most of the remainder of the Democrats in the delegation have remained largely distant, hoping that it gets resolved administratively. The committees of jurisdiction are not anxious to jump into it legislatively.

Governors

The Governors are also keeping their distance and, by and large, holding their fire and hoping that the courts will lift the injunctions. Roberts nor Lowry have explicitly supported your efforts to develop a defensible plan, but they are not actively engaged.

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Industry and Labor oppose the plan because it will result in significant reductions in the long-term timber program from the boom years of the 1980s. They will attack it, try to defeat it, and hope that the continuing stalemate will force Congress to enact something more to their liking. The most probable result of their strategy -- if successful -- is no new

Agree _____ Disagree _____ Discuss _____

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THE WHITE HOUSE
WASHINGTON

DECISION MEMORANDUM FOR THE PRESIDENT

FR: KATIE MCGINTY / *W&E 400 Cur*
DATE: APRIL 7, 1994
RE: COMPLETION OF THE NORTHWEST FOREST PLAN

The memorandum is to describe for your review and approval the final adjustments made to the forest plan since the issuance of the final Environmental Impact Statement (FSEIS) in January of this year. These adjustments reflect the consensus recommendations of the Departments of Agriculture, Interior, Commerce, EPA and Justice. Secretaries Espy and Babbitt, who will sign the formal decision document, have reviewed and approved the final plan. Both the formal Record of Decision and its Appendix are attached.

Since the final EIS was issued, we have had very little opportunity to make anything but minor changes. To do otherwise would require us to reissue the EIS as a new draft for additional public comment. This would require us to ask the court to extend the schedule once again, and further delay implementation of the plan. We therefore do not have major issues to present for your decision apart from the fundamental question of proceeding, but I wanted to apprise you of the overall setting of the final plan.

PROCEDURAL SETTING

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Industry and Labor oppose the plan because it will result in significant reductions in the long-term timber program from the boom years of the 1980s. They will attack it, try to defeat it, and hope that the continuing stalemate will force Congress to enact something more to their liking. The most probable result of their strategy -- if successful -- is no new

legislation over the short term, a continuation of the injunctions, no timber sale program, and major job losses as a result.

Environmentalists

The environmentalists will attack the plan because it allows the continued harvesting of a significant amount of old growth forest. They will argue that it does not provide enough protection for certain at-risk species, and that the flexibility that we have tried to allow for a short-term phase-in of the plan is illegal.

The general public

The region is tired of this issue and wants it solved. The success or failure of our efforts will be determined not by the details of the plan itself but by whether it settles the issue, ends the warfare and gridlock, and allows the region to move on.

CONCLUSION

The amount of time, effort and energy invested by the political and career staff of the agencies both here in Washington and within the region in developing this forest plan has been extraordinary. The plan itself will in my judgment constitute a genuine watershed event in the evolution of land management policies in this country, and I believe that when the dust settles it will serve as a positive and constructive force for change in the region.

This is not meant to underplay the level of controversy that is associated with this effort. The key constituencies remain very polarized, and that will not change over the short-term. Litigation is guaranteed, but we have done our best to minimize our risks.

My major concern is with the complexity of the plan itself and our ability to implement it promptly and thoroughly. We are intending to oversee the implementation of the plan closely, but it will not be easy.

Ultimately, the key to our success from a political and substantive standpoint is to proceed in a steady and predictable way with plan implementation, all the while continuing our significant efforts at assisting those communities who are very much in the throes of major transformations.

RECOMMENDED DECISION

The Secretaries of Interior and Agriculture and the Interagency Steering Committee recommend that you approve the submission of the attached Record of Decision to the federal district court for its approval.

Agree _____

Disagree _____

Discuss _____

How many more acres of old growth forest will be harvested as a result of this plan? I find it amazing that I cannot find the answer. I am sure that the plan will be approved. I am sure that the plan will be approved. I am sure that the plan will be approved.

THE WHITE HOUSE
WASHINGTON

DECISION MEMORANDUM FOR THE PRESIDENT

FR: KATIE MCGINTY

DATE: April 6, 1994

RE: COMPLETION OF THE NORTHWEST FOREST PLAN

The purpose of this memorandum is to describe for your review and approval the final adjustments made to the forest plan since the issuance of the final Environmental Impact Statement (FSEIS) in January of this year. These adjustments have been made by the interagency team which has been preparing the plan, and reflect the consensus recommendations of the Departments of Agriculture, Interior, Commerce, EPA and Justice. Secretaries Espy and Babbitt, who will sign the formal decision document, have reviewed and approved the final plan. Both the formal Record of Decision and its Appendix, which together constitute the final forest plan, are attached for your information.

In summary, since the final EIS was issued, we have had very little opportunity to make anything but relatively minor changes. To do otherwise and make major changes would require us to reissue the EIS as a new draft for additional public comment, which we cannot do because of the court-imposed schedule. We therefore do not have major issues to present to you for your decision apart from the fundamental question of proceeding, but I also wanted to apprise you of the overall setting with the final plan itself.

The addendum to this memorandum summarizes the major changes to the plan in the final EIS that was issued for public comment in February and now in the formal Record of Decision which will be signed by Secretary Espy and Babbitt. Since the final SEIS, we have been engaged in fine-tuning the plan in the final decision documents to be signed by the Secretaries with three goals in mind:

- to ensure that the courts will approve the plan;
- to make the implementation of the plan easier; and
- as a corollary to the second, to adjust certain short-term requirements to ensure that the Forest Service and the Bureau of Land Management will be able to resume a limited timber sale program as soon as possible after the plan is approved.

Our ultimate objective is to adhere to your earlier commitments to produce a plan that will end the gridlock, get forest management out of the courts and back to the agencies, and settle this acrimonious issue. This will, in the end, be our measure of success.

Overall - I think you need a brief summary of changes that have been made; a brief recap of changes that previously were made; move the decision right up front of other decisions as an attachment; additional discussion of stakeholders, etc. can't should be significantly collapsed.

additional flexibility into the requirement that states, in essence, that we will conduct these surveys as time, budgets and scientific know-how permit, and that we will avoid doing anything that we know will cause serious harm to at-risk habitats or species.

3. Short-term Timber Supplies. In the final plan, we have also made a decision to allow the numerous timber sales that are in varying stages of the process to proceed without further modification to conform to the requirements of the plan. This decision is potentially very controversial because it will allow for timber harvesting of these sales in the old growth reserves being established by your plan -- places where under the new rules only very limited salvage and thinning activities will be permitted.

We propose to allow these sales to proceed for timber supply and budgetary reasons. From a supply perspective, these sales contain approximately 500 million board feet of harvestable timber -- and they will provide needed timber for the mills whose stocks are rapidly diminishing. From a budgetary perspective, many of these sales are sold and awarded to private bidders, and to block them would require the government to buy them back at potentially significant costs to the Treasury.

These adjustments are designed to increase our ability to start up a timber program soon. They will prove controversial, but we believe they are necessary and defensible.

due to numerous site specific adjustments to individual reserves to pick up more key terrestrial and salmon habitat.

The net effect of these modest changes was to decrease estimates of annual sustainable timber yields from 1.2 billion board feet (BBF) per year to 1.1 BBF. The changes also increased our conservation ratings for murrellets and other species from unacceptably low in the draft plan to adequate.

C) Changes to the FSEIS.

Since the publication of the final SEIS in February, we have conducted a 30 day comment period on it and have made relatively minor adjustments to it, polishing the details of the final plan for submission to the court next week. The changes -- most of which are too minor and numerous to list here, have three objectives: to increase the legal defensibility of the plan; to make it easier to implement, and to increase the likelihood that we will be able to start up a timber sale program this year.

1. Increased Defensibility. We have made numerous changes in the description of the plan itself and the supporting rationales to minimize our litigation risks. Most of these changes are not to the concrete standards and guidelines that constitute the legally enforceable requirement of the plan, but more to the supporting documentation and rationales.

2. Implementation. A number of the requirements in the final plan will require several years to develop and implement fully. For instance, the final SEIS contemplates that the land managers will conduct watershed assessments in key watersheds before proceeding to implement timber sales or other land-disturbing activities in the watershed. The purpose of these assessments is to evaluate whether the interim riparian requirements in the plan are adequate to protect aquatic health for that particular watershed.

We have not yet identified exactly how these analyses are to be conducted. The development of the scientific protocols will take more time, and once developed, the actual conduct of the assessments will also take time and money. If we adopted a strict interpretation of the assessment requirement, then we would not be able to authorize timber sales or other activities in key watersheds for -- arguably -- several years.

That result is unacceptable. We have therefore modified the watershed assessment requirement to provide for a reasonable, practical phase-in period that balances the need to undertake these analyses with the need to begin to implement a sale program.

The survey and manage requirement also presents the same practical problem of short-term implementation. If we make a firm commitment to do nothing on the ground until these surveys are conducted, we could encounter major delays because in many circumstances we do not have the scientific protocols on how to conduct these surveys. We have therefore incorporated some

Attachment One

MODIFICATIONS TO THE PLAN

A) Plan Basics.

At the time of the original proposal of your draft plan in July of last year, you selected one of ten options prepared by the interagency Team that represented our best chance to achieve the two basic goals: to prepare a plan that is legally and biologically defensible, and to maximize timber yields and employment consistent with the first objective. These remain our two fundamental objectives.

B) Changes Made in the FSEIS.

During the three month public comment period on the proposal, we received over 110,000 comments. In February, we published a final EIS which contained adjustments to the earlier proposal based on those comments. The FSEIS contained four major changes based on the comments:

1. Rotations. We decreased the rotation periods for the forests of northern California from a minimum 180 year rotation to a set of variable rotation periods based on the forest -- generally down to 80 year rotations. The change enabled us to increase timber yields from those forests without compromising the conservation objectives because, simply put, trees grow faster in California than in the colder climates of Oregon and Washington.

2. Riparian Protections. Because of low survival ratings for a number of species, including at risk fish stocks, and the significant conservation efficiencies of protecting stream side habitat over other approaches, we doubled the width of the initial buffer strips along small, intermittent streams. This change bought us higher conservation ratings for marbled murrellets -- a small coastal bird now listed as endangered -- and other riparian dependent species. It also decreased projected timber yields by an estimated 100 million board feet -- although the reliability of this estimate is now in question as too low.

3. Survey and Manage. We adopted a "survey and manage" commitment for those species that we know little or nothing about at this time. The survey and manage standard commits us to identify those species that may be in trouble based on the limited information available to us and to survey the landscape and protect their habitat before we proceed with timber sales or other activities. This flexible approach enabled the scientists to argue that the plan would protect potentially at risk species -- but without any firm estimates on precisely what the commitment would cost us in time, money or timber harvests.

4. Additional Acres Protected. The final EIS included an additional 775,000 acres into the reserves established by the plan

Note my major concern, however, should be long this with all really take
extraordinary. The plan itself will in my judgment constitute a genuine watershed event in the evolution of land management policies in this country, and I believe that when the dust settles it will serve as a positive and constructive force for change in the region. *to get settled out of our hair*

This is not to underplay the level of controversy that is associated with this effort. ~~The extremes within~~ the key constituencies remain very polarized, and that will not change over the short-term. Litigation is guaranteed, but we have done our best to minimize our risks. Ultimately, the key to our success from a political and substantive standpoint is to proceed in a steady and predictable way with plan implementation, all the while continuing our significant efforts at assisting those communities who are very much in the throes of major transformations.

Recommended Decision

The Secretaries of Interior and Agriculture and the Interagency Steering Committee recommend that you approve the submission of the attached Record of Decision to the federal district court for its approval.

Agree _____ Disagree _____ Discuss _____

A) Congress.

By and large, Congress doesn't want to deal with this issue. The Northwest delegation is avoiding taking positions on the details of the plan. Their primary objective is to avoid having to step in and legislate on the subject because it will be too difficult to develop a plan that can get the votes. The subject is too divisive. The only practical option for ending the gridlock soon is for your efforts to succeed. Legislating will be extremely controversial.

Senator Murray and Reps. Dicks and Unsoeld have been very supportive of your efforts to end the gridlock. Rep. DeFazio is strongly opposed to the plan because it hits southwest Oregon particularly hard because of the bad condition of the forests in the region. Most of the remainder of the democrats in the delegation have remained largely distant, hoping that it gets resolved administratively. The committees of jurisdiction are not anxious to jump into it legislatively.

B) Governors.

The Governors are also keeping their distance and, by and large, holding their fire and hoping that the courts will lift the injunctions. *not true. both have explicitly endorsed -* Neither Roberts nor Lowry have explicitly supported *Robertson has several reasons for* or opposed. *Lowry did at Watershed forum.*

C) Industry and Labor.

additional from previous discussion Industry and Labor oppose the plan because it will result in significant reductions in the long-term timber program from the boom years of the 1980s. They will attack it, try to defeat it, and hope that the continuing stalemate will force Congress to enact something more to their liking. The most probable result of their strategy -- if successful -- is no new legislation over the short term, a continuation of the injunctions, no timber sale program, and major job losses as a result.

D) Environmentalists.

The environmentalists will attack the plan because it allows the continued harvesting of a significant amount of old growth forest. They will argue that it doesn't provide enough protection for certain at-risk species, and that the flexibility that we have tried to allow for a short-term phase-in of the plan is illegal.

E) The general public.

The region is tired of this issue and wants it solved. ~~For them,~~ the success or failure of our efforts will be determined not by the details of the plan itself but by whether it settles the issue, ends the warfare and gridlock, and allows the region to move on.

Conclusion

The amount of time, effort and energy invested by the political and career staff of the agencies both here in Washington and within the region in developing this forest plan has been

Note that the problem here is simply personnel -- Forest Service personnel -- to get the plan moving. The plan will be about 1.1 billion board feet -- down from 1.2 bbf as projected in the draft plan. Arguments are now occurring over whether that 1.1 figure is accurate or too optimistic. At this juncture, we are maintaining that the estimate is our best estimate given the information we now have.

KEY ISSUES

We anticipate that four points of criticism will be lodged against the final plan.

A) It's too tough.

was found to have
Industry will challenge the plan on the basis that it is too protective and costs too many jobs. They will also argue that because the government violated the Federal Advisory Committee Act in formulating the original proposal, the government should be prohibited from proceeding with a final plan that is based on the tainted proposal. In response, we have literally made every effort to minimize the requirements in the plan based on the scientific and technical information provided to us, and frankly we have pushed the scientific team about as far as we can go. Industry will argue that we are too protective, but they have not provided us a proposal that has less impacts but still meets the legal requirements. They settle for a vague call for Congress to step in, which is very unlikely.

B) It's not ^{tough} enough.

The environmental community will challenge the plan on the grounds that it is not protective enough, and that the adjustments we've made to it to increase our ability to implement it in the next several years are not supported by the scientific record.

C) No Money for Implementation.

Industry will also attack the plan on the grounds that we have not provided enough money in the budgets to implement it. We have, in fact, funded the mandatory requirements in the 1994 budget, but there is a legitimate issue on whether the Forest Service may suffer some short-falls in its regional budget. We are working actively with OMB and the agencies to address the issue and ensure that adequate resources are made available.

D) Too few Timber sales.

Industry will also attack the plan on the grounds that in the next few years we will not be able to produce the full 1.1 billion board feet of new sales per year. They are right, and we are acknowledging that as a practical matter it will take us several years to get up to the full sale program. We will work as hard as possible to gear up as fast as possible, but there are very real and unavoidable constraints -- like the practical, on-the-ground requirements of planning individual timber sales according to the new rules.

THE CONSTITUENCIES

THE PROCEDURAL SETTING

We are
Pursuant to a court order, ~~the government is~~ required to submit a final plan to the Ninth Circuit by April 14th ~~for its review~~. The actual submission to the court will be a final forest plan for the management of the National Forests and BLM districts within the range of the northern spotted owl in Washington, Oregon and northern California, together with a final EIS accompanying the plan. The plan will apply to approximately 24 million acres of Federal lands, and has as its objectives the conservation of the spotted owl and over 1400 other species in the area.

We fully expect all sides to challenge the plan immediately and for that litigation to extend over the summer months and into fall. We hope that the court will allow the government to proceed with implementing the plan pending the outcome of the litigation -- but there are absolutely no guarantees. If the court does not allow us to proceed, then we will most likely not have a timber program this year, and we will face increased pressure from some ~~elements in Congress~~ for an "interim" legislative solution.

Stakeholders

KEY POINTS

1. SATISFYING THE LEGAL REQUIREMENTS. We believe that the final plan will satisfy the requirements of the National Forest Management Act, the endangered Species Act and the National Environmental Policy Act -- the three principal federal statutes that several district courts have used to enjoin the agencies since 1991.

2. JOBS. Since the draft plan was issued in July, 1993, the cumulative effects of the changes have had a ~~marginal~~ effect on projected employment losses in the region. *??? This needs to be clarified. That 50% is due to these changes.* As I noted to you in an earlier memorandum, the actual projections have increased by approximately 50% -- from 5,000 to 10,000 jobs lost due to timber sale reductions (from 126,000 to 116,000). This change in the economic projections resulted from an error in the earlier calculations, and was disclosed in the final EIS.

One point about job losses. The idea that your plan is "costing" jobs is 180 degrees wrong. The purpose of this plan is to put the timber sale program back on track and save jobs that would otherwise be lost completely if the injunctions are continued. *in 1980s* The fact that total employment due to the timber sale program ~~should~~ be less than employment during the boom period of the 1980s ~~should~~ surprise no one: those employment levels were sustained by a sale program that was illegal and unsustainable -- and which led to the injunctions that now blanket forest management in the region. Moreover, the unprecedented \$1.2 billion in community assistance and worker retraining is expected to add thousands of additional new job opportunities.

how many have we estimated
3. TIMBER SALE PROJECTIONS. The interagency team calculated in the FSEIS that the average annual sale level based on the final