

Timber

- Jensen + Gauthier

- talking points

- FS - out of Portland

- TJ - wld use em as basis; legal thing = DoJ shld do j

Forest Service & BLM

joint stmt

- Basis ≠ just that it's being applied beyond what we thought; some = severe = some we have to look at b/c old

- Tom drafting it

- also talkers for briefers

Elected officials

Can we make calls before DoJ file's appeal
and to ask Lois

Who to call

Today ← - Governors - Or + WA (w/ support)
Patty Murray

Rs - tomorrow

Dickes

Govs Or
" WA

Murray
Dickes

Wetzel
Loury

→

Babbitt

George Frampton

Glickman ~~Murray~~ / Frampton
Lyons

Or - No D. Sens

Wyden

Defazio

} not active

→

~~Glickman~~ Lyons

→

Frampton

Glickman

Hatfield

other Rs

→

USDA

Call Ds ^{today} ~~our~~ ~~str~~

Drapler → Oregon carpenter

McGinty

4 or 5 orgs in Or, few in WA

commercial + sport fishing folks

Ask Lyons re pulp paper

4pm
conf call



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

115

*file
Timber*

May 9, 1996

MEMORANDUM FOR HAROLD ICKES

FROM: KATHLEEN A. McGINTY *KAM*

CC: RON KLAIN
MARTHA FOLEY
JENNIFER O'CONNOR
JOHN HILLEY

RE: CONGRESSWOMAN ELIZABETH FURSE'S CONCERNS
(THUNDERBOLT SALE)

By any account, the Thunderbolt sale in Idaho has been the most controversial of all sales under the salvage part of the timber rider. In fact, to date, it has been the subject of four lawsuits from environmental and sportsman organizations (all unsuccessful, since the rider waives environmental requirements). It was vigorously opposed by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency (EPA).

I spoke to Jack Ward Thomas (Chief of the Forest Service) several times about this, and he was adamant that the sale had been substantially modified to address legitimate biological concerns and that it should go forward. The sale had been reduced from 32 million board feet to about 14 million board feet, and modified so that most of the timber will be harvested by helicopter with only 50 feet of road needing to be built. The wildlife agencies and EPA remained adamant that the sale should not proceed, but their views simply have less weight under the timber rider. Once the Forest Service made the decision to proceed in the face of strong objections from the other agencies, some agency personnel continued publicly to voice their objections. I did - and do - feel strongly that criticism of an action should cease once an agency has made the final public decision.

The Forest Service has every right to proceed with this and other controversial sales, either under the rider or under the regular application of laws. The huge difference, of course, is the inability of citizens' groups effectively to enforce the environmental laws in court under the rider, thus giving the Forest Service a much stronger free hand to proceed in the face of controversy.

The letter from me to Senator Larry Craig that was referenced in the attached AP story came after the Forest Service decision. To justify an attempt further to strip EPA and the wildlife agencies of authority in these matters, Senator Craig was trying to build a case that the Administration was waffling on the Thunderbolt sale. My letter made clear that that was not the case. To the contrary, we were actively opposing litigation to stop the sale.

PETER A. DeFAZIO

5TH DISTRICT, OREGON

RESOURCES COMMITTEE

SUBCOMMITTEE:

WATER AND POWER RESOURCES

**TRANSPORTATION AND
INFRASTRUCTURE**

SUBCOMMITTEE:

AVIATION

SURFACE TRANSPORTATION



Congress of the United States

House of Representatives

February 1996

Jennifer O'Conner

*file
Timber*

PLEASE RESPOND TO:

- ☐ 2134 RAYBURN HOUSE OFC. BLDG.
WASHINGTON, DC 20515-3704
(202) 225-6415
- ☐ 151 WEST 7TH AVE. #400
EUGENE, OR 97401-2649
(541) 485-4722
1-800-944-9603
- ☐ P.O. Box 1557
COOS BAY, OR 97420-0033
(541) 269-2609
- ☐ P.O. Box 2480
ROSEBURG, OR 97470-0511
(541) 440-2523
- ☐ pde@a2lo@hr.house.gov

Dear Friend:

The salvage rider -- adopted by Congress last year as an amendment to an unrelated budget bill -- has proven to be every bit as damaging as I predicted. During floor debate on the measure, and subsequently in an article I published in *The Oregonian* and *The Roseburg News Review*, I warned that the salvage rider would open significant swaths of the region's last remaining old growth forests to logging, without any regard to environmental consequences. I was correct.

During floor debate in the House, I was so vocal in my opposition that I was nearly physically ejected from the chamber. After the House passed it over my objections, I publicly urged the President to veto the bill.

Unfortunately, the President backed away from his early opposition and signed it into law. That leaves us with very few realistic opportunities in the next year to limit the harm this rider will cause. The President does not have sufficient leverage to force this Congress to undo what it has already done with his earlier support. That leaves a negotiated solution as the only realistic alternative. And since the salvage rider expires at the end of this year, any legislative action must take place quickly or the issue will be moot.

Rep. Elizabeth Furse has introduced legislation to repeal the rider. I have so far refrained from cosponsoring her bill. Let me explain my position.

I have long been an advocate for environmental causes. The League of Conservation Voters gives me better than a 90 percent lifetime rating on conservation issues. Last year, when the GOP attack on the environment was in full swing, I had a 100 percent environmental voting record, according to the League. Those votes were cast defending our national fabric of environmental law against attacks brought under the guise of "regulatory reform" and "takings legislation."

In little-noticed committee actions, I worked -- unsuccessfully -- with other Members of Congress to stop the new majority's rewrites of the Clean Water Act and the Endangered Species Act, as well as its effort to open the Arctic National Wildlife Refuge to oil development.

As someone with a strong pro-environment record, I am convinced that environmental activists have taken a wrong turn in their approach to national and regional forest policy. A movement that began as a crusade to preserve the last wild places has failed to adapt to a new political challenge: finding management strategies that protect biological diversity in landscapes where significant human intervention is a fact of life.

What's more, too many environmental activists have spent too much of their time arguing with each other, and too little time building bridges into the community-at-large.

moderation and a willingness to compromise. The extreme and uncompromising tone that has characterized the debate over forest policy isn't going to help restore a pro-environment majority.

Timber industry supporters successfully argued in Congress that the West was experiencing a forest health crisis that merited a response. Furthermore, most Members of Congress and their constituents see little harm in salvaging dead and burned timber. That's how pro-timber legislators were able to sneak an old growth harvest strategy through Congress under the guise of "salvage." It's not good enough to insist on a repeal of the rider -- especially a repeal to which this Congress will never agree. Any effort to repeal the salvage rider should offer an environmentally sound forest health alternative in its place.

-OVER-

THIS STATIONERY PRINTED ON PAPER MADE WITH RECYCLED FIBERS



Many of our pro-environment colleagues argue that the much-publicized forest health problems in western forests are either (a) a fiction promoted by the timber interests, or (b) a naturally occurring phenomenon that nature itself will correct. That's not what I'm hearing from eminent scientists in the field. For instance, here's what a panel of reputable forestry scientists, fisheries biologists, and wildlife ecologists wrote in a June 1995 report on forest health in Oregon's Blue Mountains:

"Much of the forest in the National Forests of the Blue Mountains has recently experienced severe problems...sizable amounts of certain species, such as Douglas Fir, have died as a result of overcrowding on drier sites, drought and insects...large stand-replacing wild fires have recently occurred, due to build-up of fuels, in forests where that type of fire behavior was historically infrequent...a major portion of the live forest is under stress because stands are too dense..."

Human intervention in the form of a century of fire control, selective logging and other activities is largely to blame for these widespread forest health problems, according to the scientists.

The scientific team went on to say:

"Restoration treatments, including thinning and fuel reduction, could reduce the risk of loss from insects and fire on large areas of these forests...active management of forest stands can help recreate the historical mosaic of stands in different conditions that offers natural firebreaks and less concentrated food sources for insects."

The scientific team, as well as many responsible agency officials, have suggested ways to expedite forest health activities in an environmentally responsible manner that do not sacrifice public participation in the management planning process. We should support those efforts.

When the salvage rider came to the floor of the House, I wanted to offer a substitute that incorporated these principles, but House leaders would not allow it. It's worth noting that in the Senate, an environmentally benign substitute offered by Senator Patty Murray came within a few votes of passing.

H.R. 2475, is a well-intentioned effort. However, it is more a symbolic gesture than a serious contender for legislative success. H.R. 2475 also ignores the very real management needs in the arid forests of the West.

I'm working to get the administration and congressional leaders to agree to make meaningful changes in the salvage rider that will protect the areas now threatened with environmentally unsound logging. If that effort fails -- and it may -- I would favor a legislative approach that repeals the rider and substitutes an alternative forest health program in its place. I do not agree that a repeal with no alternative is the best policy in this case.

We share the same goal -- to make sure that land management decisions are made lawfully and with full public participation. We differ on the most effective means of accomplishing that goal.

Sincerely,

*full
timber*

E X E C U T I V E O F F I C E O F T H E P R E S I D E

18-Apr-1996 01:43pm

TO: Jennifer M. O'Connor
TO: Elena Kagan

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: Background for 4:30 meeting

TO: Jennifer O'Connor
CC: Elena Kagan
FROM: Dinah Bear
DATE: April 18, 1996
RE: Timber issues for 4:30 meeting today

Last Friday, Katie chaired a meeting to discuss the issue of how the Forest Service should go about identifying the sales under Section 2001(k)(1)1 of the timber rider for which we would offer substitute timber and where the Forest Service would get that substitute timber. The Forest Service had already identified about half a dozen sales that it believed would have particularly harmful consequences for the environment, including endangered species. They indicated that they would be completing that analysis shortly.

On the issues of substitute timber. the policy direction was to take timber out of this year's planned supply for the President's Forest Plan. These would be sales for which the Forest Service had already complied with the environmental laws, and that obviously met Plan standards and guidelines. That timber would no longer count as "Plan" timber.

Once the list of sales for which we should offer substitute timber had been developed and we had the list of available timber

1. These are all of the sales other than those which are found to contain threatened or endangered birds that are "known to be nesting". As you know, the case that raises the interpretation of the "known to be nesting" standard is on appeal, but if we prevail, we are required by the rider to offer replacement timber. We have already taken the position in court that replacement timber for those sales will require compliance with the environmental laws.

sales we could offer instead, the thought was that Secretaries Glickman and Babbitt should go to the Pacific Northwest and make a very public presentation regarding their offer to mitigate - to the full extent of our administrative authorities - the adverse impacts of the worst of these sales by offering Plan timber that did not pose environmental risks.

Since that meeting, numerous issues have been raised by the Forest Service in regards to the availability of Plan timber. Katie asked that they make a presentation at this afternoon's meeting that would essentially be suitable for a press conference - essentially, a trial run. It is not clear at this point whether the briefing will include all of the needed information, or whether we are about to run into another set of problems. Much of the USDA/Forest Service staff is still on the hill at a hearing on the Tongass National Forest.

As you may already know, we also are not yet in possession of a satisfactory brief on the issue of cancelling the contract. Elena and I met with Justice earlier this week on that issue, and expect to see the next draft tomorrow.

Last week

2 pos, 2 neg decs

Pos

① he made clear that
only post 90 sales count

② phys imposed - you
have to do that

Neg

① Do we have to release
Sales engaged
(yes) (well back
to other
reasons)

② for calls where hgh
bidder went out of biz,
do we still need to release
he may dig up next
highest bidder

TJ → def appeal
those engaged

Q = those 0% highest
bidder (out of biz)

2d bidder → absurd -
hgh % differs in offered \$
→ it helps us show
law is absurd

Strengthens law pr to
appeal

Gorton

- need a meeting w/ him
- he's suggested 2d heard that he'd be willing to do something on DOI bill

- we need to decide if it's time to make public that we're working this

- ① go to opp with G
- ② if so, will announce it

? Communit

affect on Senate campaign
Bafuso + Wyden

- need to know today

Downsides to appealing
= we purchase sales

Western Issues

1/16/96

Dec. to be made by today
down appeal;

engined sales to
sales where owner ^{high bidder} =
out of business

judge Pap release em all

Ag wants to appeal
engined sales

But not where owner
= out of business

KM - Appeal everything
unless DoJ really thinks
no case

DoJ feels strong case re
engined sales

File
Timber

SALVAGE-LOGGING LAW: DOI CONDEMNS ID SALE, BUT BACKS OFF

The Interior Dept. condemned salvage logging on the controversial Thunderbolt sale in Idaho as a threat to endangered salmon, "but quietly withdrew the critique" after Sen. Larry Craig (R-ID) angrily objected, internal documents show.

In an 11/22/95 letter to forest supervisors, DOI Dir. of Environmental Policy and Compliance Willie Taylor said the US Forest Service had badly underestimated the potential ecological damage in its environmental impact statement. Logging the stand, which was opened up by the salvage-logging law, would "increase the risk of the extinction of chinook salmon," he said.

Despite those and similar concerns raised by the US EPA and the National Marine Fisheries Service (GREENWIRE 11/6/95), USFS sold the rights to the timber to the Boise Cascade Corp., which logged some in 2/96 and plans to resume operations in 5/96.

In 12/95, Craig wrote Taylor urging him to withdraw his comments. USFS had already opted to proceed with the sale, said Craig, and Taylor's comments were inappropriate given a pending court battle with enviros who had sued to block the cut. Craig warned that any attempt to influence opinion about the case is unethical: "I am suggesting in the strongest of terms that you retract your letter ... for obvious reasons."

In 2/96, Taylor withdrew his criticism, saying he had no intent to influence the court case and Craig's comments had not motivated the decision. When Taylor opposed the sale in 11/95, he was unaware that Katie McGinty, head of the White House Council on Environmental Quality, one day earlier had assured Sen. Dirk Kempthorne (R-ID) that the admin. "stands firmly behind the decision to move forward with Thunderbolt." McGinty, in an 11/21/95 memo: "Agencies should refrain from contradicting each other particularly after a decision has been reached."

Taylor on 4/15 said he would not have written the letter if he had been aware of McGinty's memo. But when asked if the cut's merits are no longer at issue, he said: "I am not in a position to say yes or no to that. I would simply refer you to the memo."

SIMPLY HARD-BALL POLITICS?

"Sierra Club Legal Defense Fund lawyer Kevin Kirchner faulted Craig for suggesting a government agency remain silent about environmental impacts of a logging project." Kirchner: "It paints a fascinating picture of hard-ball political pressure being used to force a federal agency to ... pretend that real, serious problems do not exist."

Craig said his only interest in writing Taylor "was to ensure that federal agencies not contradict each other after a decision was made." Craig: "The fact of the matter is Willie Taylor went out on a limb and tried to influence opinion" about a case currently under legal action (Scott Sonner, AP/mult., 4/17).

(c) The American Political Network, Inc.

*File
Timber*

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

18-Apr-1996 12:09pm

TO: Jennifer M. O'Connor

FROM: Shelley N. Fidler
 Council on Environmental Quality

SUBJECT: RE: Labor and Timber

their specific request came on behalf of Willie Strong representing the Puplp and Paper Workers Resource Council.

I asked Rick Ilgenfritz why we wouldn't use the occassion to include the AWPPW, the Woodworkers, the Carpenters and the United PPWI. He thought we should.

Remember that these guys heard a rumor that POTUS met with enviros attending this anarchic Amer Forestry Conf. last month - he did not. Katie met with them.

That's why they're asking for POTUS.

*file
timber*

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

19-Mar-1996 10:16pm

TO: Martha Foley
TO: T J Glauthier
TO: Jennifer M. O'Connor
TO: Barbara C. Chow

FROM: Dinah Bear
Council on Environmental Quality

SUBJECT: Timber rider decisions

Katie asked that I summarize the results of discussions that took place this afternoon and evening involving two difficult issues related to the timber rider.

1. "First" and "Last" sales: these are the 2 sales on the Umpqua National Forest that were withdrawn by the Forest Service in 1990 for failure to meet the requirements of the original Sc318. They are considered to be some of the most damaging sales outside of the murrelet sales - and would severely impact runs of Coho salmon and cutthroat trout (both of which are proposed for listing under the Endangered Species Act). Judge Hogan has issued an injunction ordering us to release the sales.

Jim Lyons has had several discussions over the past few days with representatives of Scott Timber who hold these sales and with the environmental plaintiffs to develop a package of replacement timber that would meet the purchasers' needs and avoid having to release these units. Despite some very preliminary progress, Scott timber moved cutting equipment on the sale unit today. Jim has now gotten Scott to agree to hold off on cutting for one more day, and Jack Ward Thomas was directed tonight to proceed to develop a replacement timber offer over the next 24 hours. That timber will be in the matrix area of the President's Forest Plan in an area near Scott's mill. Jack also raised the issue of replacing that timber out of the Plan with additional timber, but was directed not to deal with the issue at this time, as we may be able to make up the volume at a later point. These sales contain approximately 11 million board feet. Meanwhile, Justice and USDA lawyers are working on a rulemaking that would be necessary to give the Forest Service the authority to offer replacement timber directly to the purchaser without going through the normal bidding process.

It is certainly possible that at the end of the day (tomorrow), Scott timber will still decide to proceed with cutting. We will

develop a statement for possible White HOuse use that would explain that we have no other choice but to release the sales, what we tried to do avoid that and explain why the Hatfield/Gorton language that's being proposed is an unsatisfactory solution.

2. The murrelets sales: these are the sales tied up in the litigation over the question of how to determine whether marbled murrelets, a threatened seabird, are "known to be nesting". We argued our case in front of Judge Hogan and lost. Judge Hogan then granted a 60 day stay of his injunction to release these sales. We appealed his decision to the 9th Circuit, which has set oral argument in May. Unfortunately, Hogan's stay runs out on Monday and the timber companies are arguing that they want to harvest the sales immediately - prior to the 9th Circuit decision - because the statute expires on Sept. 30th and if they wait too long, they won't be able to get all of their timber.

Argument on this issue is set for Friday on front of Judge Hogan. Justice developed several options for consideration. Their recommendation - in the context of winning the stay motion on front of Judge Hogan - was to proactively offer replacement timber for all of the sales we claim under "known to be nesting". Their rationale was that this would offer Judge Hogan - or, alternatively, the 9th Circuit - some comfort that the needs of the purchaser, would be met, and thus the stay would be extended, increasing the probability of saving the murrelets nesting trees. However, there are a number of difficulties identified with related to making a commitment of this magnitude (240+ million board feet) which could in essence extend the life of the timber rider past this fiscal year.

Katie's direction on this point was to confine our argument on the motion to extend the stay to the considerable harm that would befall the birds should the trees fall before the 9th Circuit has a chance to issue their decision, to affirm that we would consider contract rights that were developed under the rider to last past Sept. 30th (but NOT the sufficiency language) and to state that we would (of course) honor those contract terms. (One implication of this could be that we buy-back sales under the contract terms after Sept. 30th). In short to fight hard for the stay motion based on the equities to the birds, but to avoid anything that would extend the life of the timber rider.

Sorry this is so lengthy; please call me at 5-5754 if anyone wants even more details.

timber

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

03-Apr-1996 03:44pm

TO: (See Below)

FROM: T J Glauthier
Office of Mgmt and Budget, NRES

SUBJECT: Timber Letter Sent Yesterday

Attached is a copy of the letter that Sec. Glickman sent yesterday to the owner of the "First" and "Last" timber sales in Oregon. The letter reaffirms our offer of replacement timber for these sales that would cut trees of up to 650 years old.

Negotiations are continuing between this contract holder and the Forest Service, with the hope of possible agreement on replacement timber this week.

Similar negotiations by the Forest Service should begin immediately with the holders of at least three other sales in such old growth areas. The BLM is also about to release agreements with several contract holders on replacement timber, and will begin negotiations on other potential contracts.

Distribution:

TO: Alice M. Rivlin
TO: Jacob J. Lew
TO: Martha Foley
TO: Elena Kagan
TO: Jennifer M. O'Connor
TO: Ron Klain

CC: Ron Cogswell



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

April 2, 1996

Mr. Allyn Ford
Roseburg Forest Products
Post Office Box 1088
Roseburg, Oregon 97470

Dear Mr. Ford:

As you know, the Clinton Administration is deeply concerned about the harvesting of old growth timber sales in extremely sensitive watersheds. The First and Last timber sales were awarded to Scott Lumber Company, a subsidiary of Roseburg Forest Products, on March 8, 1996, as required by the court's interpretation of the salvage rider of the 1995 Rescissions Act. These are primary examples of sales which should not be harvested. Operation of these sales poses a significant threat to coho salmon and cutthroat trout which are very important to the environment and the region's economy.

On February 6, 1996, you wrote Secretary Babbitt and myself expressing your willingness to engage constructively with us in an effort to find more environmentally sound alternatives. We appreciated your initiative in that regard and the Forest Service began working with you.

In short order, the Forest Supervisor of the Umpqua National Forest offered you alternative volume in the Diamond Lake District to be available in June, to operate in lieu of First and Last. It is my understanding that you declined to accept this offer at that time and intend to continue the cutting of ancient trees, some as old as 650 years, instead of waiting 2 more months for this replacement timber. Your actions pose significant and potentially irreversible economic and environmental harm to the region.

Upon your refusal of its offer, the Forest Service redoubled its efforts once again to identify alternatives. I am hereby repeating our first offer to you to exchange First and Last timber for timber in the Diamond Lake District previously offered. In the alternative, we can offer replacement timber being prepared by the Umpqua Forest Supervisor in the Tiller District to be ready for harvest very soon. In response to these offers, I request that you cease cutting the First and Last timber sales and indicate your willingness to accept one of these offers of alternative volume.

Mr. Allyn Ford

2

I request that you affirmatively respond to this letter by April 5, 1996. Because of the gravity of the situation, the Government is prepared to pursue all legal remedies available regarding the First and Last timber sales.

I look forward to your reply.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Glickman", written in a cursive style.

DAN GLICKMAN
Secretary

*file
timber*

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

05-Apr-1996 09:22pm

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: One for the marbled murrelets!!!!!!!

In our first victory in any of the timber rider-related cases, the Court of Appeals for the Ninth Circuit just granted the government's motion to extend the stay for the marbled murrelet "known to be nesting" sales until they issue a decision on the merits (oral argument is May 7th). Apparently, the panel issued their ruling before the industry even filed their brief; they gave the industry 14 days to file their brief, but the read is that the stay will stay on, so to speak. (I don't know who was on the panel yet, but it is the same panel that will hear the merits).

Distribution:

TO: Kathleen A. McGinty
TO: Martha Foley
TO: T J Glauthier
TO: Jennifer M. O'Connor
TO: Elena Kagan
TO: Barbara C. Chow
TO: Thomas C. Jensen

*Bob
Humber*

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

09-Apr-1996 09:50am

TO: (See Below)

FROM: Thomas C. Jensen
 Council on Environmental Quality

SUBJECT: MEETING NOTICE

MEETING NOTICE -- PLEASE NOTE NEW MEETING LOCATION

The EOP/Agency timber working group will meet today at 2:00 p.m. in room 450 of the OEOP. We apologize for this late notice and the location change.

If you will need clearance into the OEOP, please call Carolyn Mosley at 395-5754 with your birthdate. You will need photo ID to be cleared into the building when you arrive.

The agenda for today's meeting will include:

1. Recent events update
2. Litigation updatee
3. Replacement timber issues
 - a. Modification of sales under 2000(k) (1)
 - b. Replacement sales under 2000(k) (3)
4. Status of murrelet surveys
5. Other business

Thanks for your cooperation.

Distribution:

TO: Alice E. Shuffield
TO: FAX (9-720-5437, Greg Frazier)
TO: FAX (9-720-4732, Jim Lyons)
TO: FAX (9-208-6956, Ann Shields)
TO: FAX (9-208-4684, George Frampton)
TO: FAX (9-208-3144, Bob Armstrong)
TO: FAX (9-514-0557, Lois Schiffer)

2

LP-

all 318

THE WHITE HOUSE
WASHINGTON

160 mbft = released → gone → ^{can't tell}
275 mbft = affected by munitions inj _{if what's been cut yet}
or are env. harmful

- ~~no~~ cancelling Ks = on remaining
25% of 160

275 = held up → due to mun
inj + (245) + currently
engaged stuff which
Hogan told us to release

stay runs out Weds,
May 7 = 9th air. hears it

Weds we face potential to
have to release munitions

so if we cancel Ks →
25% of 160
all of 275

THE WHITE HOUSE
WASHINGTON

4/1/96

Timber - VP, Klain, LP, Glickman,
Schmidt, Lyons, Frazier, Foley, TSGlantz,
Kathi Williams, Dinah Bear, McGinty

VP - disaster that both timber + enviro
think it's our fault; we shld have
been able to deflect more to
Rs but didn't. our materials
have treated cos. as dead
(press rels, etc.)

- so shld all sales be offered
even if cos reject most, isn't
when we are get

- we shld cancel Rs + make
publ case that we're willing to
go to wall + it's wrong +
make case to publie

- after publie discussion, we'll
be in better moral posn to
make hard choice at end

3

THE WHITE HOUSE
WASHINGTON

Katie - maybe we only do it
for 1st last to show
we're willing to use "the
club"

LP - # Ks? Lyons - 100 +

Dinah - 147 Ks

to 18 purchases
245 mbft

* get
TS's chart

↙
were they offered alt rules?

Lyons - NO. Only a few

VP - Why not.

Lyons - no auth. until rule
published last wk.

VP - shed have got rule
published wk ago (mod)

4

THE WHITE HOUSE
WASHINGTON

Weeds = prob. gap to May?
Schmidt thinks GR are won't
give relief of 1 mo.
this = better legal position
than other

VP-
What improvement to our
position when exp. auth runs
out Oct 1?

KM- must better - we'd be
liable for monetary damages
b/c enviro laws back
into play

LP- it's either that or subst.
timber

VP- then it's imp't to figure
out how to delay to Oct 1

5-

THE WHITE HOUSE
WASHINGTON

VP- Oct 17 affect vesting of
prop rights.

but he thinks it does
affect them abt to
cut the trees. b/c enviro
laws.

LP- we did in next few wks, we
did have 245-275 more
released. pol disaster

Schmidt - we can argue we can
term. Ks. Slim chance to
win - very slim. But we did
make the arg.

① did go to Hogan to ask
for clarific if salvage rider
≠ override K provision
of cancellation rights

(rider still means alot b/c knocks
enviros out of Ct; so rider = still possible)

6

THE WHITE HOUSE

WASHINGTON

you can argue rider didn't have
intent of stealing copyrights → that
purchasers' = harmful to ours ≠.

pragmatically, may 1st need to ask 9th circuit
reversed to dist. so we make arg. in
dist ct. we lose dist. then lost
9th cir. then, can try to get to SCT.
we can file a doc.

Schmidt - if you cancel w/o going to orig
ct, you have direct copyright b/c
you're under inv law ct right now.

motion = for clerk of ab. to cancel.
but tell judge we're asking for
hypothetical reasons.

KM - so long as we're not home a stay,
they'll be able to act anyway
→ we need loud public strategy

KM - why not use option 9 to
fill these → fill up 9 completely

(7)

to call the Hill.

VP - we did left the
enviro laws NEPA - for
this

VP - we should attempt to cancel
to publicly challenge us to
accept reas offer to
publicly challenge Hatfield
for not backing us up in
both.

-LP → 18 owners
how many did we offer alt
to? 1

MF → the 1st/last sales are in
the 160 mbft. ~~in the~~
already released

PHOTOCOPY
PRESERVATION

(8)

PHOTOCOPY
PRESERVATION

Oliver - willing to use Klein's
cancellation strategy
- also need clearer p.v.
strategy

VP - bring this right into
See's office

KM - wants to make it clear
we offered alt & it was
rejected. Then do
cancellations.

LP - you need to be able to
defend that they can get
the alt timber from bits
Ok stuff - needs to
look real - to public

(9)

KM - wants to offer WL
from pres FP

JK - you can also do what
we did w/ 1st last >
which is other good stuff

OK - we should send letter out
now & here's alts - give
us 2 mos for 1000 yr
old trees. Then value
it publicly. Go to
Hagen say we offered,
they said no, we're
going to exercise our
rights, etc & tagged.

(10)

LP - can't you find it in the
800 mbft + can you
be ready to go in
summer?

Legs - yes

LP →

① fs sends letter to K'or
inquiry sole, offers act,
provides it in fast track

② we make it public w/
threat we ⇒ it

TJ - 3 grps - 1st got offer
2nd in

2d - no offer yet

3rd - later on

**PHOTOCOPY
PRESERVATION**

Q11

JL - are we offering fp sales or other stuff?

KM - fp

JL - then 1st last will be cost

- we can go w/ other stuff

MF - lets do big public, there's a new rule, stop cutting, etc.

KM - we're willing to offer it outside fp, w/o sticky to fp tenets → working on w/ words,

But - we need to b/k we have 800 mbt leased up that does need those tenets

**PHOTOCOPY
PRESERVATION**

12

if use option 9, "Hathrell will
say we're thwarting the "will"
of raising it
VP → we'd pay over 10 yrs we'd
work it out

LP-

we'd send letter to all the
k'os who ≠ cut trees yet
we'll offer alts & it will be
expedited → if refuse →
it.

Klein - no, just bad guys →
48 hours, etc.

SD:

- letter out this afternoon
- DOJ will circulate motions

3/28 copy
to Jend'C

THE WHITE HOUSE

WASHINGTON

March 28, 1996

MEMORANDUM FOR LEON PANETTA

FROM: ELENA KAGAN *EK*

CC: HAROLD ICKES, RON KLAIN, KITTY HIGGINS,
KATIE MCGINTY, JACK QUINN, KATHY WALLMAN

SUBJECT: YESTERDAY'S TIMBER MEETING

I heard you asked at the 8:15 meeting what had happened at the meeting on timber that the counsel's office held yesterday. Kathy Wallman requested that I give you a summary.

The purpose of the meeting was to discuss whether we should seek to cancel two timber sale contracts recently released (and other contracts that soon may be released) under the timber rider. We would base this action on a clause in the contracts that allows cancellation if completion of the sale would cause environmental harm. The legal issue is whether the timber rider implicitly invalidated this clause, such that we can no longer rely on it.

Attending the meeting were three members of the counsel's office, three lawyers from the Justice Department, Harold Ickes, Ron Klain, and Jim Lyons of the Department of Agriculture.

Ron and Harold expressed the view that seeking to cancel these contracts would make sense from the standpoint of policy and politics. Jim Lyons took the opposite position, although he previously had urged cancellation. Ron has indicated that he will talk to Secretary Glickman about this issue.

The counsel's office urged that there is a defensible legal argument for canceling the contracts. The Department of Justice attorneys disagreed, claiming that the argument is so frivolous as to pose the risk of judicial sanctions. To allow further consideration of this issue, the DOJ attorneys agreed to write a draft brief setting forth the argument. We should receive that brief in the next day or two.

Assuming we do decide that it makes sense to cancel the contracts and that there is a legal basis for doing so, we will have to decide how best procedurally to accomplish this action. Because the USDA is currently under injunction to "complete" the two contracts we now would seek to cancel, the counsel's office recommends notifying the court in advance of our intent to take this action. An alternative approach urged by Harold at the meeting (but vehemently opposed by DOJ) would be simply to cancel the sales and contest the inevitable motion to hold Secretary Glickman in contempt of court for violating the injunction.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

Jennifer O'Connor



Kathleen A. McGinty
Chair

*File
Timber*

April 22, 1996

MEMORANDUM FOR HAROLD ICKES

CC: JENNIFER O'CONNOR

FROM: KATIE MCGINTY *KM*

RE: USDA TIMBER RIDER

I thought some background on recent events for your meeting with Secretary Glickman on the timber issue would be helpful. As you know, we have been struggling with the issue of how to stop the worst of the old growth sales from being harvested under the timber rider. One of the ways that we have been trying to achieve this is to offer substitute volume to purchasers. In an effort to go the extra mile, we even said the agencies could offer green timber from this year's volume under the Forest Plan.

Unfortunately, while BLM has been able to provide such timber (and even make it up in this year), the Forest Service has not been able to do so. While there are some objective reasons why BLM has an easier job to do under the rider than the Forest Service, it is also true that the Forest Service and USDA personnel have spent months finding problems with every suggestion that has been made and have ultimately failed to come to closure on any strategy. In fact, there are problems associated with all of the options, but every time I think we've made the hard choice and given direction, we learn of yet more problems. Also, it is clear that there is a lack of unity within the USDA family and the Forest Service that makes agreement on a solution much more difficult.

Meanwhile, while this internal debate takes place, the President gets criticized and trees continue to fall. This past weekend, 60 Minutes was filming protests in Oregon over these sales.

I would urge you to convey to Secretary Glickman the urgent necessity of taking much more personal responsibility for this issue. It makes no sense for us to continue to try to sort through the various views of USDA and other involved agencies if the decision falls apart when they leave my office. The Secretary needs to spend real time on this issue, both with his own troops here and out in the Pacific Northwest and also with Members of Congress.

File
timber
4/96

THE WHITE HOUSE

WASHINGTON
April 25, 1996

MEMORANDUM FOR KATIE MCGINTY
MARTHA FOLEY
JENNIFER O'CONNOR

FROM: ELENA KAGAN *EL*
CC: JACK QUINN, KATHY WALLMAN
SUBJECT: NINTH CIRCUIT DECISION

I am attaching the Ninth Circuit's decision, issued yesterday, on the area vs. sales question. As you will see, the Ninth Circuit panel unanimously upheld Judge Hogan's decision that 2001(k) applies not only to Section 318 sales proper, but also to all later sales within the same area. The opinion, which was written by one of the President's nominees, mostly relies on the statutory language; it also argues that the legislative history -- most notably, the Conference Report -- confirms the plain meaning of the statute.

We need to decide whether we will ask the Solicitor General to file a cert petition in the Supreme Court, asking for review of this decision. In considering this question, we all should understand that the Supreme Court will never take this case. It involves interpreting a specific statutory provision that will have expired by the time the Court hears argument. And it may not even affect many trees, given purchasers' current ability to harvest. Because the case does not meet any of the standards for Supreme Court review, the SG will be reluctant (to say the least) to file a petition. Let me know what you think about this matter.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NORTHWEST FOREST RESOURCE
COUNCIL, an Oregon corporation,
Plaintiff-Appellee,

v.

DANIEL GLICKMAN, in his capacity
as Secretary of Agriculture; BRUCE
BABBITT, in his capacity as
Secretary of the Interior,
Defendants,

and

OREGON NATURAL RESOURCES
COUNCIL; SIERRA CLUB, INC.;
PILCHUCK AUDUBON SOCIETY;
WESTERN ANCIENT FOREST
CAMPAIGN; PORTLAND AUDUBON
SOCIETY; BLACK HILLS AUDUBON
SOCIETY; and HEADWATERS,
Intervenors-Appellants.

No. 95-36038

D.C. No.
CV-95-06244-MRH
OPINION

NORTHWEST FOREST RESOURCE
COUNCIL, an Oregon corporation,
Plaintiff-Appellee,

v.

DANIEL GLICKMAN, in his capacity
as Secretary of Agriculture; BRUCE
BABBITT, in his capacity as
Secretary of the Interior,
Defendants-Appellants,

No. 95-36042

D.C. No.
CV-95-06244-MRH

and

OREGON NATURAL RESOURCES
COUNCIL, INC.; SIERRA CLUB, INC.;
PILCHUCK AUDUBON SOCIETY;
WESTERN ANCIENT FOREST
CAMPAIGN; PORTLAND AUDUBON
SOCIETY; BLACK HILLS AUDUBON
SOCIETY; and HEADWATERS,
Intervenors.

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, Chief District Judge, Presiding

Argued and Submitted
January 8, 1996--Portland, Oregon

Filed April 24, 1996

Before: John T. Noonan, Jr., Edward Leavy and
Michael Daly Hawkins, Circuit Judges.

Opinion by Judge Hawkins

SUMMARY

COUNSEL

Albert M. Ferlo, Jr., United States Department of Justice,
Washington, D.C., for the defendants-appellants.

Patti A. Goldman and Kristen L. Boyles, Sierra Club Legal
Defense Fund, Seattle, Washington, for the intervenors-
appellants.

Mark C. Rutzick and Alison Kean Campbell, Portland, Oregon, for the plaintiff-appellee.

OPINION

HAWKINS, Circuit Judge:

We consider what would appear to be a relatively straightforward question of statutory interpretation with fairly profound consequences. This appeal requires us to determine the relationship between two separate statutory provisions governing timber sales, Section 2001(k)(1) of the Fiscal Year 1995 Emergency Supplemental Appropriations for Disaster Relief and Rescissions Act, and Section 318 of the Department of the Interior and Related Agencies Appropriations Act. In particular, we must determine the meaning of the phrase "subject to [S]ection 318" as it appears in Section 2001(k)(1) of the 1995 Rescissions Act. It is not our role to determine the wisdom of Section 2001(k)(1), only its meaning.

This appeal consolidates two cases arising out of the same set of events but involving two distinct legal issues.¹ The first appeal requires us to define the categories of timber sales the Secretaries of Agriculture and Interior must release under Section 2001(k)(1) of the 1995 Rescissions Act. The Northwest Forest Resource Council ("NFRRC"), a timber industry trade association, contends Section 2001(k)(1) mandates that the Secretaries release several years of timber sales in federal lands that are defined by a separate statute, Section 318 of Public Law No. 101-121 (estimated at 656 million board feet). The Secretaries urge that Section 2001(k)(1) requires them to release only sales for fiscal years 1989 and 1990 (an estimated 410 million board feet). They appeal the district

¹ The two appeals were consolidated and expedited upon motion of several environmental organizations seeking to intervene in the litigation.

court's order adopting NFRC's interpretation of Section 2001(k)(1), and its permanent injunction directing the Secretaries to release timber sale contracts offered or awarded between October 1, 1990 and July 27, 1995. We have jurisdiction over the Secretaries' appeal pursuant to 28 U.S.C. S 1292(a)(1).

In the second appeal, Oregon Natural Resources Council and several other environmental organizations (collectively "ONRC") challenge the district court's refusal to allow ONRC to intervene in NFRC's lawsuit against the Secretaries. The denial of a motion to intervene is appealable as of right. *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370 (1987); *United States v. Oregon*, 913 F.2d 576, 587 (9th Cir. 1990), cert. denied by *Makah Indian Tribe v. United States*, 501 U.S. 1250 (1991).

For the reasons discussed below, we affirm the district court's order directing the Secretaries to release "all timber sale contracts offered or awarded between October 1, 1990 and July 27, 1995, in any national forest in Oregon and Washington or [Bureau of Land Management] district in western Oregon," and we affirm the district court's partial denial of ONRC's motion to intervene in NFRC's declaratory action against the Secretaries.

FACTUAL BACKGROUND

I. Northwest Forest Resource Council's Declaratory Action

A. The Enactment of the 1995 Rescissions Act

On July 27, 1995, the President signed into law the Fiscal Year 1995 Emergency Supplemental Appropriations for Disaster Relief and Rescissions Act, Pub. L. 104-19, 109 Stat. 240 (1995). Though principally an appropriations bill, the Act contained several provisions aimed at expediting the award of

timber harvesting contracts, including provisions authorizing the nationwide release of salvage timber sales (Section 2001(b)), expediting the award of timber sales covered in the President's Northwest Forest Plan (Section 2001(d)), and releasing previously authorized timber sales (Section 2001(k)(1)).

This appeal concerns the scope of Section 2001(k)(1) of the Act, which requires that within 45 days of the Act's enactment,² the Secretaries of Agriculture and Interior must release "all timber sale contracts offered or awarded before [the Act's enactment] in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318 of Public Law 101-121." Because Section 2001(k)(1) defines its mandatory timber releases by reference to Section 318 of the Department of the Interior and Related Agencies Appropriations Act, Fiscal Year 1990, Pub. L. 101-121, 103 Stat. 745 (1989), we must first examine the scope of timber sales under Section 318.

B. Timber Sales Authorized by Section 318

Enacted in October 1989, Section 318 mandated an "aggregate timber sale level" for timber harvests cut from National Forest Service and Bureau of Land Management lands in Oregon and Washington during fiscal years 1989 and 1990. S 318(a)(1).

Subsections 318(a)(1) and 318(a)(2) directed the Forest Service and the Bureau of Land Management to meet specified timber sales quotas from two geographical categories. Subsection 318(a)(1) provided that the bulk of timber sales must derive from "the thirteen national forests in Oregon and Washington known to contain northern spotted owls[.]" S 318(a)(1). Other subsections of the statute imposed various

² Section 2001(k)(1) provided that timber sales were to be released starting September 10, 1995.

environmental and procedural requirements on these sales. See Subsections 318(b)-(j). Subsection 318(a)(2) authorized additional sales in the Bureau of Land Management's "administrative districts in western Oregon." The statute explicitly exempted Subsection 318(a)(2) sales from the procedural and substantive protections of Subsections 318(b)-(j). See S 318(i).

Implementation of Section 318 sales was delayed, however, by several lawsuits alleging Section 318 violated various federal environmental statutes.³ Although Section 318 expired by its own terms on September 30, 1990, it provided for sales it had authorized, but which were not finalized until after it expired. Subsection 318(k) required that sales remaining to be released after the expiration date were to remain "subject to the terms and conditions of [Section 318] for the duration of those sale contracts." S 318(k). As of the enactment of Section 2001(k)(1) of the 1995 Rescissions Act, an estimated 410 million board feet of timber remained to be released under Section 318.

C. Northwest Forest Resource Council's Declaratory Action

On August 8, 1995, after the 1995 Rescissions Act was enacted but before the September 10 release date, NFRRC brought the declaratory action below (No. 95-36042). NFRRC sought the release, under Section 2001(k)(1), of "all timber sales offered prior to the date of enactment [of the 1995 Rescissions Act] in all national forests in Oregon and Washington and in Bureau of Land Management districts in west-

³ Litigation included a challenge to the constitutionality of Section 318, *Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429 (1992); litigation over compliance with the terms of Section 318, *Seattle Audubon Soc'y v. Robertson*, Civ. Nos. 89-160, 89-99, 1991 WL 180099 (W.D. Wa. March 7, 1991); and challenges to Section 318 sales based on concerns about their impact on species listed under the Endangered Species Act (including the northern spotted owl and the marbled murrelet).

ern Oregon."4 NFRC argued that Section 2001(k)(1)'s term "subject to Section 318" describes only Section 318's geographical boundaries, but does not incorporate Section 318's chronological limits (fiscal years 1989 and 1990). Under this interpretation, Section 2001(k)(1) requires the Secretaries to release sales occurring after fiscal years 1989 and 1990, but before enactment of the 1995 Rescissions Act. This interpretation would entail the release of 246 million board feet of timber over and above the 410 million board feet Section 318 authorized for release in fiscal years 1989 and 1990.

As part of its declaratory action, NFRC sought a permanent injunction compelling the Secretaries "to award, release, and permit to be completed in fiscal years 1995 and 1996 . . . all timber sales offered prior to July 27, 1995 in all national forests in Oregon and Washington and [Bureau of Land Management] districts in western Oregon, including the FY 1991-1995 sales." (emphasis added). It also sought a temporary restraining order requiring the Secretaries to "take all administrative actions" necessary to release the sales by September 10.

D. The District Court's Order and Permanent Injunction

The district court denied NFRC's motion for a temporary restraining order but granted summary judgment for NFRC, adopting its suggested interpretation of Section 2001(k)(1). The district court also granted NFRC's motion for a perma-

4 NFRC subsequently added other claims to its lawsuit. First, it added a claim under Section 2001(k)(2), which exempts from Section 2001(k)(1) those forests in which threatened or endangered bird species are "known to be nesting." This claim challenged the Secretaries' proposed interpretation of Section 2001(k)(2), and sought the release of sales withheld under Section 2001(k)(2), absent physical evidence of nesting. Second, NFRC challenged the Forest Service's refusal to release FY 1990 sales it conceded were within the scope of Section 2001(k)(1). These additional claims are not at issue in this appeal.

nent injunction, directing the Secretaries "to award, release, and permit to be completed in fiscal years 1995 and 1996 . . . all timber sale contracts offered or awarded between October 1, 1990 and July 27, 1995, in any national forest in Oregon and Washington or [Bureau of Land Management] district in western Oregon, except for sale units in which a threatened or endangered bird species is known to be nesting." (emphasis added).

The Secretaries appealed the district court's summary judgment order and permanent injunction. Their appeal was expedited and consolidated with ONRC's appeal from the district court's denial of its motion to intervene. The district court denied the Secretaries' motion to stay the injunction pending this appeal, and a motions panel of this Court denied the Secretaries' request for an emergency stay pending appeal.

II. Oregon Natural Resources Council's Motion to Intervene in Northwest Forest Resource Council's Declaratory Action

On August 14, 1995, six days after NFRC sued the Secretaries, ONRC moved to intervene in NFRC's declaratory action, seeking, alternatively, intervention as of right or permissive intervention.⁵ The district court denied ONRC's motion to intervene but did allow ONRC to participate as amicus curiae, both in the summary judgment hearing and in NFRC's subsequent attempts to enforce the order against the Secretaries.⁶ ONRC appeals the district court's partial denial of its motion to intervene.⁷

5 NFRC opposed ONRC's motion for three reasons: (1) ONRC's interests in the enforcement of environmental laws were irrelevant because

Section 2001(k)(1) nullified those laws; (2) ONRC's interests would not

be impaired by the lawsuit; and (3) the Secretaries, as defendants in the lawsuit, would adequately represent ONRC's interests. The Secretaries

took no position on ONRC's motion.

6 The district court also allowed ONRC to intervene with respect to

NFRC's subsequent S 2001(k)(2) claim, which is not at issue in this appeal.

7 ONRC moved successfully to expedite its appeal and to consolidate it

with the Secretaries' appeal. We granted ONRC's motion to file an amicus

brief in the Secretaries' appeal.

4951

DISCUSSION

I. The Scope of Section 2001(k)(1) of the 1995 Rescissions Act

We review de novo the district court's interpretation of Section 2001(k)(1). *Spain v. Aetna Life Ins. Co.*, 11 F.3d 129, 131 (9th Cir. 1993), cert. denied, 114 S. Ct. 1612 (1994).

The Secretaries' appeal requires us to determine what timber sales must be released under Section 2001(k)(1), which is purely a question of statutory interpretation. In interpreting a statute, we "look first to the plain language of the statute, construing the provisions of the entire law, including its object and policy, to ascertain the intent of Congress. Then, if the language of the statute is unclear, we look to its legislative history." *Alarcon v. Keller Industries, Inc.*, 27 F.3d 386, 389 (9th Cir. 1994) (citations omitted).

A. The Language of Section 2001(k)(1)

We begin with the language of the statute. *United States v. Van Den Berg*, 5 F.3d 439, 442 (9th Cir. 1993) (citing *Pennsylvania Public Welfare Dept. v. Davenport*, 495 U.S. 552, 557 (1990)).

Section 2001(k)(1) provides in pertinent part:

Notwithstanding any other provision of law, within 45 days after the date of the enactment of this Act, the Secretary concerned shall act to award, release, and permit to be completed in fiscal years 1995 and 1996, with no change in originally advertised terms, volumes, and bid prices, all timber sale contracts offered or awarded before that date in any unit of the National Forest System or district of the

Bureau of Land Management subject to section 318 of Public Law 101-121[.]

(emphasis added)

At the heart of this appeal is the meaning and effect of the phrase "subject to section 318," which defines the scope of timber sales under Section 2001(k)(1). The Secretaries and NFRC offer divergent interpretations of this phrase and therefore disagree strenuously as to the relationship between Section 2001(k)(1) and Section 318.

The Secretaries contend Congress used the phrase "subject to section 318" to require the release of only those timber sales originally offered or awarded pursuant to Section 318, but that were delayed due to the various legal challenges to that statute. In the Secretaries' view, the phrase "subject to section 318" modifies "timber sale contracts[.]" According to this interpretation, the reference to Section 318 identifies both the regions and fiscal years of the sales, and thus imposes both geographical and temporal limits on the scope of Section 2001(k)(1).⁸

NFRC insists, however, that the phrase "subject to section 318" modifies "any unit of the National Forest System or district of the Bureau of Land Management" and thus defines only the geographic parameters of the sales. Within that geographic area, which it construes as "the national forests of Oregon and Washington and six [Bureau of Land Management] districts in western Oregon[.]" NFRC contends the statute requires the award and release of "all timber sales offered

8 Shortly after NFRC filed its declaratory action, the Secretaries of Agriculture and Interior issued an Instruction Memorandum stating that Section 2001(k)(1) "applies only to the remaining section 318 timber sales[.]" and requires the release only of sales that were offered in fiscal years 1989 and 1990 and that met the environmental and procedural requirements of Section 318.

or awarded before the date of enactment of the [1995] Rescissions Act." Under NFRC's interpretation, the timber sales are not limited to fiscal years 1989 and 1990, the period covered by Section 318, but additionally encompass sales occurring since the enactment of Section 318. The district court agreed with NFRC's interpretation of Section 2001(k)(1), and accordingly tailored its permanent injunction to cover "all timber sale contracts offered or awarded between October 1, 1990 and July 27, 1995, in any national forest in Oregon and Washington or [Bureau of Land Management] district in western Oregon."

1. The Structure of Section 2001(k)(1)

The statute by its mandatory language ("shall act") requires the Secretaries to release the timber sales described therein. The timber sales that are the object of Section 2001(k)(1)'s mandate are:

all timber sale contracts offered or awarded before [the enactment of Section 2001(k)(1)] in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318[.]

The term "all" makes the mandate applicable to the entire category of "timber sale contracts" included by Section 2001(k)(1). Defining that category are two criteria: (1) the time frame, which is defined as "before [2001(k)(1)'s enactment], and (2) the geographical scope, which is defined as "in any unit [of national forests or BLM lands] subject to section 318." Both criteria bear equally on "timber sale contracts."

[1] Structured in this fashion, Section 2001(k)(1) places the phrase "subject to section 318" squarely in the portion of the sentence that modifies the geographical areas covered by Section 2001(k)(1). Given this structure, it is clear that the phrase

modifies only the geographical scope of Section 2001(k)(1), but does not describe its temporal reach. The time frame of

Section 2001(k)(1) is defined instead by the explicit wording of the statute: "before [the] date [of enactment of the 1995 Rescissions Act]." Section 2001(k)(1) is therefore not limited to the fiscal years covered by Section 318, but instead authorizes timber sales "offered or awarded" up until the date of enactment.

This conclusion is bolstered by another feature of Section 2001(k)(1)'s structure. The statute does not set off the phrase "subject to section 318" from the preceding phrase "in any unit [of national forests or BLM lands][]" These two phrases are unseparated by a comma or conjunction such as "and." The absence of such a division suggests that the phrase "subject to section 318" does not modify the entire preceding portion of the sentence. Instead, the link between the phrases "in any unit [of national forests or BLM lands]" and "subject to section 318" indicates that they operate as one entity and serve one function: defining the geographic scope of Section 2001(k)(1).

The Secretaries urge that the phrase "subject to section 318" modifies "timber sale contracts" generally. They argue, first, that had Congress intended to define only the geographical scope of Section 2001(k)(1), it could have identified the national forests and Bureau of Land Management lands in the text, and need not have invoked Section 318 as "shorthand" for these areas. Although Congress certainly could have adopted that approach, the language it chose instead is a valid means to achieve the same result.

The Secretaries' next argument against reading "subject to section 318" to modify "unit[s] [of national forests or BLM lands]" is that Sections 2001(b) and 2001(d) of the 1995 Rescissions Act employ the term "described by" to identify the location of timber sales covered in those sections. This difference is immaterial. Whether Congress had used "subject to" or "described by," it would produce the same result: Owing to its location in Section 2001(k)(1), the phrase would

invariably modify "unit[s] [of national forests or BLM lands]." In the context of Section 318, units "subject to section 318" are identical to units "described by section 318": By the terms of Section 318, this category includes: (1) "the thirteen national forests in Oregon and Washington known to contain northern spotted owls[,]" S 318(a)(1), and (2) the Bureau of Land Management's "administrative districts in western Oregon." S 318(a)(2).

2. The Doctrine of Last Antecedent

Another guide in determining the role played by the phrase "subject to section 318" is the "doctrine of last antecedent," which teaches that where one phrase of a statute modifies another, the modifying phrase applies only to the phrase immediately preceding it. *Huffman v. Comm'r of Internal Revenue*, 978 F.2d 1139, 1145 (9th Cir. 1992) (citations omitted); *Wilshire Westwood Associates v. Atlantic Richfield Corp.*, 881 F.2d 801, 804 (9th Cir. 1989). We have long followed this interpretive principle. See *Wilshire Westwood Associates*, 881 F.2d at 804. See also Norman J. Singer, *Sutherland on Statutory Construction* S 47.33 (4th ed. 1985) ("[Q]ualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent.")

[2] Applied here, the doctrine of last antecedent indicates that the phrase "subject to section 318" modifies the phrase it immediately follows: "unit[s] of the National Forest System [and] district[s] of the Bureau of Land Management." The doctrine of last antecedent thus lends further support to the conclusion that Section 318 defines only the geographic scope of timber sales required by Section 2001(k)(1), and not other characteristics of the sales.

The Secretaries contend that the doctrine of last antecedent should not apply in this case because they argue it would produce an absurd result: It would require the release of timber

sales offered in forests that were never subject to Section 318's environmental and procedural protections.

Such a result is not absurd. On the contrary, it mirrors the original provisions of Section 318. By its very terms, Section 318 accords such protections to only a subset of the sales it authorized. Section 318 authorized two categories of timber sales: (1) "the thirteen national forests in Oregon and Washington known to contain northern spotted owls[,]" S 318(a)(1), and (2) the Bureau of Land Management's "administrative districts in western Oregon." S 318(a)(2). The latter category was never afforded the protections of Subsections 318(b)-(k). Indeed, Subsection 318(i) explicitly exempted Subsection 318(a)(2) sales from these protections, stating:

[T]he provisions of this section apply solely to the thirteen national forests in Oregon and Washington and Bureau of Land Management districts in western Oregon known to contain northern spotted owls. Nothing contained in this section shall be construed to require the Forest Service or Bureau of Land Management to develop similar policies on any other forest or district in Oregon or Washington.

(emphasis added)

It is true that we are not inflexible in our application of the doctrine of last antecedent, and have recognized that the principle must yield to the most logical meaning of a statute that emerges from its plain language and legislative history. *Hearn v. Western Conf. of Teamsters Pension Trust Fund*, 68 F.3d 301, 304 (9th Cir. 1995). See also Singer, Sutherland on Statutory Construction § 47.33 ("[w]here the sense of the entire act requires that a qualifying word or phrase apply to several preceding [or] succeeding sections, that word or phrase will not be restricted to its immediate antecedent."). Here, however, both the plain language of the statute and the doctrine

of last antecedent bolster the conclusion that "subject to section 318" modifies only the geographical scope of Section 2001(k) (1).

3. The Canon of Ordinary Meaning

Having determined that the phrase "subject to section 318" modifies the phrase "in any unit [of national forests or BLM lands][,]" we next examine what the phrase "subject to section 318" means.

[3] Where a statutory term is not defined in the statute, it is appropriate to accord the term its "ordinary meaning." Van Den Berg, 5 F.3d at 442. The meaning of "subject to" includes, among other things, "governed or affected by." Black's Law Dictionary, 1594 (4th ed. 1968). The phrase "subject to section 318" may therefore be interpreted as "governed or affected by section 318." In this case, the phrase identifies those geographic units that were affected by Section 318. The statute defined two distinct geographical areas: Subsection 318(a)(1) covered the thirteen national forests and Bureau of Land Management districts "known to contain northern spotted owls[,]" while Subsection 318(a)(2) authorized a smaller set of timber sales located in BLM lands in western Oregon. Although the statute imposed different substantive and procedural requirements on timber sales in these two areas, both geographical categories may nonetheless be said to be "subject to [S]ection 318."

The Secretaries urge a narrower interpretation of the phrase "subject to," and argue that it means not merely "described by" but "conditioned by." They contend that many of these land units cannot be said to have been "subject to [S]ection 318" because they were never subject to the environmental and procedural protections contained in Subsections 318(b)-(j). As discussed in the preceding section, however, that contention is clearly refuted by the explicit terms of Subsection 318(i), which limits the substantive protections contained in

Subsections 318(b)-(j) to sales under Subsection 318(a)(1), and exempts Subsection 318(a)(2) sales.

4. The Principle of Giving Effect to Every Statutory Subsection

Another principle in interpreting the phrase "subject to section 318" is that a statute must be interpreted to give significance to all of its parts. *Boise Cascade Corp. v. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991). We have long followed the principle that "[s]tatutes should not be construed to make surplusage of any provision." *Wilshire Westwood Associates*, 881 F.2d at 804 (citing *Pettis ex rel. United States v. Morrison-Knudsen Co.*, 577 F.2d 668, 673 (9th Cir. 1978)).

Applying that principle to this case, we find, first, that Section 2001(k)(1)'s phrase "offered or awarded before [the date of enactment of the 1995 Rescissions Act]" would be superfluous if, as the Secretaries argue, the statute was limited to timber sales in fiscal years 1989 and 1990. That phrase defines the temporal scope of timber sales under Section 2001(k)(1), and it makes clear that the statute authorizes timber sales well after fiscal years 1989 and 1990. Second, the phrase "in any unit of the National Forest System or district of the Bureau of Land Management" would be superfluous if, as the Secretaries contend, "subject to section 318" defined "timber sales" generally, since that definition would already include the geographical scope of Section 318.

The Secretaries argue that these two phrases are not superfluous because they potentially serve other functions. First, they contend the phrase "offered or awarded before [the date of enactment of the 1995 Rescissions Act]" might refer to sales that were authorized under Section 318 in fiscal years 1989 and 1990, but that were delayed by litigation. The language of this phrase does not suggest such a limited reading, however; the phrase employed is "offered or awarded," not "offered and awarded but delayed."

Second, the Secretaries point to the phrase "in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318" and suggest it be interpreted to include both Forest Service and Bureau of Land Management lands. That interpretation would not solve the problem of surplusage, however, since the phrase "subject to section 318," standing alone, would include both Forest Service and Bureau of Land Management lands.

The Secretaries invoke the principle against surplusage in support of a final argument: They contend this principle supports the conclusion that all of Section 318's provisions should be read into Section 2001(k)(1), rather than just its geographical definition. Reading "subject to section 318" to include only Section 318's geographical parameter, they argue, would ignore the environmental and procedural protections of Section 318. As discussed above, however, not all of the geographic areas subject to Section 318 were accorded its substantive protections.

5. Conclusion

[4] Based on the structure of Section 2001(k)(1), the plain and ordinary meaning of the words it contains, and several longstanding principles of statutory interpretation, we conclude that the language of Section 2001(k)(1) is clear: The phrase "subject to section 318" defines only the geographical reach of the statute, and clearly authorizes the release of timber sales "offered or awarded" up until the date of enactment. The Secretaries and amicus ONRC urge, however, that the legislative history of Section 2001(k)(1) provides persuasive evidence that Congress's intent in enacting this section of the 1995 Rescissions Act was to release only those timber sales that Section 318 authorized for fiscal years 1989 and 1990. We therefore turn next to the legislative history of Section 2001(k)(1).

B. The Legislative History of Section 2001(k) (1)

As noted above, our approach to statutory interpretation is to look to legislative history only where we conclude the statutory language does not resolve an interpretive issue. Where a statute is ambiguous, we may look to legislative history to ascertain its purpose. *United States v. Aguilar*, 21 F.3d 1475, 1480 (9th Cir. 1994) (en banc), aff'd in part, rev'd in part, and remanded, 115 S. Ct. 2357 (1995). Here, although we find that the language of the statute makes clear the meaning of the phrase, "subject to section 318," we turn now to the legislative history because the Secretaries and amici urge its importance. As we do, it is important to note that this Circuit also recognizes the principle that "[l]egislative history -- no matter how clear -- can't override statutory text. Where the statute's language 'can be construed in a consistent and workable fashion,' [this Court] must put aside contrary legislative history." *Hearn*, 68 F.3d at 304 (citations omitted).

1. The House Report Introducing the Bill

As originally introduced, Section 2001(k) (1) was described as a provision "to release a group of sales that have already been sold under the provisions of Section 318 of the fiscal year 1990 Interior and Related Agencies Appropriations Act." H. Rep. No. 104-71, 104th Cong., 1st Sess. 20-23 (Mar. 8, 1995) (emphasis added). Although the Secretaries urge that the words "have already been sold" refers to Section 318 sales undertaken in fiscal years 1989 and 1990 only, this language, standing alone, does not so limit the provision.

2. The Senate Modification of the Bill

Next, the Senate modified Section 2001 by adding Section 2001(k) (2) to exempt forests containing endangered birds. During Senate debates on the 1995 Rescissions Act, which focused chiefly on the Act's controversial salvage timber provisions, only passing references were made to Section 318.

Senator Gorton referred to "sales . . . pursuant to [Section 318]," while Senator Hatfield referred to "sales, originally authorized by [Section 318]." 141 Cong. Rec. S4875 & S4881 (emphasis added). The Secretaries once again urge us to interpret these phrases to limit the temporal scope of Section 2001(k)(1) as enacted. This we will not do. Neither of these passing references to Section 318 squarely addresses how Section 318 modifies Section 2001(k)(1).

3. The Conference Report

The Conference Report on the 1995 Rescissions Act, H.R. Conf. Rep. 104-124, 104th Cong., 1st Sess. (May 16, 1995), contains the following language:

The bill releases all timber sales which were offered for sale beginning in fiscal year 1990 to the date of enactment which are located in any unit of the National Forest System or District of the Bureau of Land Management within the geographic area encompassed by Section 318 of the Fiscal Year 1990 Interior and Related Agencies Appropriations Act.

Conf. Rep. at 137 (emphasis added).

The Conference Report provides an unequivocal statement of the temporal scope of Section 2001(k)(1): The statute expressly authorizes timber sales during the period from 1990 to the enactment of the 1995 Rescissions Act.

Although we are convinced that the language of Section 2001(k)(1), standing alone, establishes this same broad temporal scope, we note that this explicit discussion in the Conference Report bolsters our conclusion. Ironically, the Secretaries urge us not to rely on the Conference Report, arguing that it uses the phrase "encompassed by Section 318" rather than "subject to section 318" that appears in the statute. However, a congressional conference report is recognized as

the most reliable evidence of congressional intent because it "represents the final statement of the terms agreed to by both houses." Dept. of Health and Welfare v. Block, 784 F.2d 895, 901 (9th Cir. 1986) (citation omitted).

4. The Post-Enactment Letter from Six Lawmakers

The final piece of legislative history relevant to Section 2001(k)(1) is a letter from Committee on Energy and Natural Resources Chairman Frank Murkowski and other Senators to Secretary of Agriculture Glickman and Secretary of Interior Babbitt, dated July 27, 1995, the enactment date of the 1995 Rescissions Act. It reads in part:

We want to make it clear that subsection (k) of the [timber sales] legislation applies within the geographic area of National Forest units and [Bureau of Land Management] districts that were subject to Section 318 . . . and within that geographic area requires the release of all previously offered or awarded timber sales, including Section 318 sales as well as all sales offered or awarded in other years (such as Fiscal Years 1991-1995) that are not subject to Section 318. The reference to Section 318 in subsection (k)(1) defines the geographic area that is subject to subsection (k).

We accord little weight to these statements, consistent with the principle that post-enactment legislative history merits less weight than contemporaneous legislative history. *Cose v. Getty Oil Co.*, 4 F.3d 700, 708 (9th Cir. 1993). See also *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 118 (1980). We simply note that these statements are not inconsistent with our conclusion based on the language of the statute.

5. Conclusion

[5] The legislative history surrounding Section 2001(k)(1), far from refuting our interpretation of the statutory language, serves to confirm it. The Conference Report, in particular, suggests Section 2001(k)(1) authorizes timber sales between the expiration of Section 318 and the enactment of the 1995 Rescissions Act. Moreover, it suggests the term "subject to section 318" defines solely the geographic scope of Section 2001(k)(1). Although the Secretaries point to scattered legislative statements characterizing the timber sales variously as "already sold" or "previously sold," such characterizations do not exclude post-1990 sales from the scope of Section 2001(k)(1). Moreover, these statements do not refute the Conference Report's clear description of the chronological scope of Section 2001(k)(1). The legislative history of the 1995 Rescissions Act, particularly the Conference Report, offers strong evidence that the phrase "subject to section 318" defines only the geographic scope of Section 2001(k)(1).

II. Whether the District Court Erred in Denying ONRC's Motion to Intervene in NFRC's Declaratory Action

Intervention is governed by Fed. R. Civ. P. 24, which permits two types of intervention: intervention as of right and permissive intervention. ONRC pursued and was denied both forms below. We review de novo the district court's decision regarding intervention as a matter of right under Fed. R. Civ. P. 24(a)(2), *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995), although we review for abuse of discretion its decision as to the timeliness of the intervention motion. *Id.* at 1397 (citations omitted). We review for abuse of discretion the district court's decision concerning permissive intervention pursuant to Fed. R. Civ. P. 24(b)(2). *Beckman Industries, Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 472 (9th Cir.), cert. denied, 506 U.S. 868 (1992).

A. Intervention as of Right

Regarding intervention of right, Fed. R. Civ. P. 24(a)(2) provides:

Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

We have outlined four requirements for intervention of right under Fed. R. Civ. P. 24(a)(2): (1) the application for intervention must be timely; (2) the applicant must have a "significantly protectable" interest relating to the property or transaction that is the subject of the transaction; (3) the applicant must be so situated that disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the existing parties in the lawsuit. *Forest Conservation Council v. United States Forest Service*, 66 F.3d 1489, 1493 (9th Cir. 1995) (citation omitted).

1. Whether ONRC's Motion to Intervene Was Timely

We consider three criteria in determining whether a motion to intervene is timely: (1) the stage of the proceedings; (2) whether the parties would be prejudiced; and (3) the reason for any delay in moving to intervene. *United States v. Oregon*, 913 F.2d 576, 588 (9th Cir. 1990), cert. denied, 501 U.S. 1250 (1991)).

ONRC's motion to intervene was timely. ONRC moved to intervene less than one week after NFRC filed its Section

2001(k)(1) claim, before the Secretaries had filed an answer, and before any proceedings had taken place. Moreover, ONRC's motion to intervene does not appear to have prejudiced either party in the lawsuit, since the motion was filed before the district court had made any substantive rulings.

2. Whether ONRC has a Significantly Protectable Interest in NFRC's Declaratory Action

Whether an applicant for intervention as of right demonstrates sufficient interest in an action is a "practical, threshold inquiry," and "[n]o specific legal or equitable interest need be established." *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993), *aff'd*, 64 F.3d 1266 (9th Cir. 1995). The movant must, however, demonstrate a "significantly protectable interest" in the lawsuit to merit intervention. *Forest Conservation Council*, 66 F.3d at 1493 (internal quotation marks omitted). To demonstrate this interest, a prospective intervenor must establish that (1) "the interest [asserted] is protectable under some law," and (2) there is a "relationship between the legally protected interest and the claims at issue." *Id.* (citing *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)).

ONRC asserts several interests in NFRC's declaratory action, and insists these support its intervention of right. First, it asserts that ONRC and other prospective intervenors "are non-profit environmental organizations dedicated to the prudent stewardship of national forestlands and public lands in Oregon and Washington," and have a "longstanding interest in the proper management and environmental protection of the public forestlands at issue in this case." Second, it notes that this Circuit "has repeatedly recognized the standing of many of these [organizations seeking to intervene]." Third, ONRC urges that "the proposed intervenors have long advocated for strong environmental protections in logging on public lands in Washington and Oregon," and that they have been "catalysts for the environmental protections that are now in

place in both eastern and western Washington and Oregon[,] "protections ONRC insists would be violated by the timber sales NFRC seeks in this case. It reasons that because Section 2001(k)(1) orders the release of timber sales "[n]otwithstanding any other provisions of law," ONRC has a right to intervene to prevent "defiance of our environmental laws."

But Section 2001(k)(1) does not defy or violate existing environmental laws; rather, it explicitly preempts them with its phrase "[n]otwithstanding any other provision of law." S 2001(k)(1). While it is true that a prospective intervenor's interest need only be protected under some law, see *Sierra Club*, 995 F.2d at 1484, the interest must relate to the litigation in which it seeks to intervene. In this case, the statute under which the declaratory action arises explicitly preempts other laws. The environmental laws that ONRC and others claim they have supported therefore cannot protect ONRC's various interests with respect to NFRC's claims under Section 2001(k)(1).

Moreover, the cases in which we have allowed public interest groups to intervene generally share a common thread: Unlike ONRC, these groups were directly involved in the enactment of the law or in the administrative proceedings out of which the litigation arose. See, for example, *Idaho Farm Bureau Fed'n*, 58 F.3d at 1397 (conservation groups have interest in litigation challenging the listing of a snail under the Endangered Species Act, where they were active in getting the snail listed); *Yniguez v. Arizona*, 939 F.2d 727 (9th Cir. 1991), *aff'd in part, rev'd in part* by *Yniguez v. Arizonans for Official English*, 42 F.3d 1217 (9th Cir. 1995), *on reh'g en banc*, 69 F.3d 920 (9th Cir. 1995), *cert. granted*, _____ S. Ct.

1995 WL 761639 (Mar. 25, 1996) (sponsors of ballot initiative had sufficient interest to intervene as of right in case challenging the constitutionality of prospective intervenors' initiative); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir. 1983), *aff'd*, 790 F.2d 760 (9th Cir. 1986) (Audubon

Society's interest in the protection of birds and other animals and its active participation in the proceedings to establish a wildlife sanctuary entitled it to intervene as of right in a case challenging the validity of that sanctuary); Washington State Bldg. Construction Trades v. Spellman, 684 F.2d 627 (9th Cir. 1982), cert. denied by Don't Waste Washington Legal Defense Found. v. Washington, 461 U.S. 913 (1983); (allowing intervention of public interest group in lawsuit challenging measure group has supported); Idaho v. Freeman, 625 F.2d 886 (9th Cir. 1980) (National Organization for Women permitted to intervene in suit challenging validity of ratification procedures surrounding the Equal Rights Amendment, where the organization had actively supported the amendment).

[6] Although we do not here rule out the possibility that a public interest organization might adduce sufficient interest to intervene even where it had not participated in or supported the legislation, we conclude that ONRC has not shown a sufficient interest to warrant intervention in this action.

3. Whether ONRC's Interests Would Be Impaired
or Impeded by the Disposition of the Case

The third factor presupposes that the prospective intervenor has a protectable interest. Because ONRC lacks such an interest in NFRC's declaratory action, we need not elaborate on this factor. Although the disposition of the case may infringe on ONRC's generalized environmental interests, those interests do not rise to the level of "significantly protectable interests."

4. Whether the Secretaries' Representation is
Inadequate to Protect ONRC's Putative Interests

In determining whether an applicant's interest is adequately represented by the parties, we consider (1) whether the interest of a present party is such that it will undoubtedly make all

the intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether the would-be intervenor would offer any necessary elements to the proceedings that other parties would neglect. *California v. Tahoe Regional Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986). The prospective intervenor bears the burden of demonstrating that existing parties do not adequately represent its interests. *Sagebrush*, 713 F.2d at 528. However, we follow *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972), in holding that the requirement of inadequate representation is satisfied if the applicant shows that representation "may be" inadequate. *Sagebrush*, 713 F.2d at 528.

ONRC argues that the federal defendants in the case, the Secretaries of Agriculture and Interior, do not adequately represent ONRC's interests.

ONRC insists, first, that the Secretaries cannot adequately represent its interests because it took a "differen[t] . . . position[]" than the Secretaries did with respect to the district court's decision to enter a permanent injunction. Whereas the Secretaries favored such an order because it would be appealable, ONRC disagreed. This disagreement is minor, however, and it is not central to NFRC's declaratory action. Moreover, it reflects only a difference in strategy.

ONRC's next argument is that the Secretaries cannot represent it adequately because ONRC and other would-be intervenors have sued the government numerous times to compel compliance with various environmental statutes. In this case, however, the Secretaries and ONRC are seeking the same limited interpretation of Section 2001(k)(1). Where an applicant for intervention and an existing party "have the same ultimate objective, a presumption of adequacy of representation arises." *Oregon Envtl. Council v. Oregon Dept. of Envtl. Quality*, 775 F. Supp. 353, 359 (D. Ore. 1991) (citing *American Nat'l Bank and Trust Co. of Chicago v. City of Chicago*, 865 F.2d 144, 148 n. 3 (7th Cir. 1989)).

[7] Because ONRC alleges only minor differences in opinion with the Secretaries, it fails to demonstrate inadequacy of representation in this case.

B. Permissive Intervention

Regarding permissive intervention, Fed. R. Civ. P. 24(b)(2) provides:

Upon timely application anyone shall be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

We have held that a court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common. *Greene*, 996 F.2d at 978.

[8] In this case, ONRC fails to satisfy the first prong of the permissive intervention standard, since it asserts no independent basis for jurisdiction. Because Section 02001(k)(1) contains a mandate to the Secretaries to release certain timber sales, and admits of no limitations posed by other laws, it appears that ONRC cannot allege grounds for jurisdiction in this case.

CONCLUSION

We AFFIRM the district court's summary judgment order of September 13, 1995, and we AFFIRM its October 17, 1995 permanent injunction.

We AFFIRM the district court's decision to deny Oregon
Natural Resource Council's motion to intervene in Northwest
Forest Resources Council's declaratory action.

4971

the end

timber

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

27-Mar-1996 09:28pm

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: letter to hatfield

I am faxing to all of you this evening another draft of the proposed letter to Hatfield. I've got calls into some of you to clarify some points. However, Barbara recommends moving it asap, given that conference resumes at 10:30 am and that Hatfield is already making the point that he hasn't heard back from us.

Two other points:

1. She recommends that we attach the Murray language on replacement and buy-back. Any concerns?
2. The signatory - Barbara recommends L.P.

I'll be here tonight as long as any progress can be made to move this along.

Distribution:

TO: Kathleen A. McGinty
TO: Ron Klain
TO: T J Glauthier
TO: Martha Foley
TO: Barbara C. Chow
TO: Jennifer M. O'Connor
TO: Elena Kagan

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

28-Mar-1996 08:26am

TO: (See Below)

FROM: T J Glauthier
 Office of Mgmt and Budget, NRES

SUBJECT: RE: letter to hatfield

I agree that it would be advisable to get the letter up as soon as possible. I have also heard reports that Hatfield is saying in the conference that he has not heard back from us yet.

I was not at the meeting, but would suggest that the letter be signed by someone who was at the meeting, rather than be Leon. Katie or Ron could certainly sign it.

Wouldn't referencing Murray's bill be sufficient, rather than actually attaching it?

On substance, my main concern is that we get some authority right away to stop the worst sales and begin the replacement negotiations in earnest. If this is deferred for another 3 weeks as a result of failed CR negotiations, at this time of year, there will be more trees cut.

As the day goes on and the course of the CR negotiations becomes clear, I suggest we caucus on what our immediate strategy should be. Whatever new legal authorities we'll have during this next 3 weeks, if any, will probably have to be well underway by tonight.

Distribution:

TO: Dinah Bear

CC: Kathleen A. McGinty
CC: Ron Klain
CC: Martha Foley
CC: Barbara C. Chow
CC: Jennifer M. O'Connor
CC: Elena Kagan

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

28-Mar-1996 08:47am

TO: (See Below)

FROM: Kathleen A. McGinty
 Council on Environmental Quality

SUBJECT: RE: letter to hatfield

fine on getting immediate authority that we need. but, in reaching to do that we cannot buy ourselves at least 3 more years of this and at least another 120 sales like first and last. currently, that's hatfield's price. i'm prepared to be overruled. but, i want it on the record on this go around with this mess as on the first go around on it, i disagree.

Distribution:

TO: T J Glauthier

CC: Dinah Bear
CC: Ron Klain
CC: Martha Foley
CC: Barbara C. Chow
CC: Jennifer M. O'Connor
CC: Elena Kagan

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

28-Mar-1996 08:48am

TO: (See Below)

FROM: CN=Ron Klain/O=OVP

SUBJECT: RE: letter to hatfield

Message Creation Date was at 28-MAR-1996 08:50:00

I generally agree with TJ's views. I am waiting to see a final draft of the letter; it did not come through last night on my fax.

As for signatory, my first vote is for Leon, as he carries most weight. If Martha thinks that inappropriate, then Katie should sign it, as the President's principal advisor on this issue.

Distribution:

TO: GLAUTHIER_T

CC: bear_d

CC: mcginty_k

CC: foley_m

CC: chow_b

CC: oconnor_j

CC: kagan_e

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

28-Mar-1996 09:00am

TO: (See Below)
FROM: CN=Ron Klain/O=OVP

SUBJECT: RE: letter to hatfield

Message Creation Date was at 28-MAR-1996 09:02:00

I obviously agree with katie that we cannot accept three more years of this as the price of any fix. And I still believe that pursuing contract cancellation -- if DoJ will do so -- is our best option. My prior agreement with TJ was on his process observation that we need to get everyone together, ASAP, to look at what the next few weeks will be like in the Northwest, what the relevant political players (i.e., Murray, Hatfield, Wyden, DeFazio, Kitzhaber) are likely to do, and what our options are in terms of communciations, politics, policy, etc. I would suggest that you, Katie, convene such a meeting, and invite relevant staffs in all of these areas (CEQ, OMB, OVP, Leg Aff, Pol Aff, Ingovtl, WH CoS, Counsel) and the relevant agencies (DoJ, Ag, Int). Right now, our problems are as much with our Communciations Strategy as they are with our legislative situation.

Distribution:

TO: MCGINTY_K
CC: glauthier_t
CC: bear_d
CC: foley_m
CC: chow_b
CC: oconnor_j
CC: kagan_e

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

28-Mar-1996 09:07am

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: RE: letter to hatfield

On the point of authority - there is, of course, nothing in the current hatfield language that gives us the authority to get the purchasers to stop cutting trees until replacement timber is offered and accepted.

One piece of the authority USDA believes it needs - to avoid the need to put replacement timber through the auction process - is the subject of an emergency rule under the Secretary of Ag's authority. The rule is on the Secretary's desk and at OMB and is expected to be signed off by both parties today.

Distribution:

TO: Kathleen A. McGinty

CC: T J Glauthier
CC: Ron Klain
CC: Martha Foley
CC: Barbara C. Chow
CC: Jennifer M. O'Connor
CC: Elena Kagan

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

28-Mar-1996 10:20am

TO: (See Below)

FROM: Dinah Bear
 Council on Environmental Quality

SUBJECT: RE: letter to hatfield

Where the Hatfield letter stands now:

- o i have changes from Ron and TJ incorporated into the letter except for one. Ron, you suggested adding the phrase "after the expiration of Section 2001(k) to the sentence, "We are fully prepared to honor contract terms, but to do so within the framework of environmental law." I don't know if you're aware that Justice filed a brief in these cases last week carrying the position that environmental law currently applies to the replacement timber sales. This is an issue that has not yet been decided by any court because it's not ripe yet, but last week's brief was the first articulation of that position in public.
- o there are two other issues where I'm waiting for a little additional input from OMB and USDA, but hope to get both soon.
- o we need a decision on who will sign the letter; TJ is working on getting that decision made.

Distribution:

TO: CN=Ron Klain/O=OVP

CC: MCGINTY_K
CC: glauthier_t
CC: foley_m
CC: chow_b
CC: oconnor_j
CC: kagan_e

Timber

Gluckman Frazier 41 LP Kate McO Ren Klau

what is politics on the ground?

Gluckman - on prob = we have indecisive

Principles:

- 1) id worst sales
- 2) use all arts
- 3) if we will come
- 4) val of fp

165 sale - title transferred is
 $\frac{1}{2}$ = bad

18 buyers on 318 sales

we know bad sales
we know all timber

we have stuff to go lay out the
sales

when someone say "no" we go to
at w/ cancellation position

draft end of week

- bad sales
- all volume

* resource needs $\rightarrow$ will come over for
in memo