

We ought to be trying to take a look at expanding a new streamlined approach to processing student loans. What we have tried to do here, and the program is working, is to take the bank out of this equation and, with the institution and the family working together, thereby making it more affordable to deal with the loan, what we should not be doing is limiting the growth of such a direct loan program or totally eliminating it after 1 year.

There is just one other program that I want to mention, and that is the national service program, AmeriCorps. We often fault young people today when we say to them, you have got advantages, you do not give anything back, that you are taking only, that it is the me generation, you are focused, self-centered on yourself, give something back to your communities.

My God, the national service program is exactly what was tailor made to say to young people, you commit to doing things in your community, helping in your community, providing a real service, not make-work, not a no-show, but providing a real service and taking an interest in your community. We will provide you and your family with some assistance in order for you to have an education.

The Republicans want to totally eliminate AmeriCorps, national service, and the 4 million new service opportunities in the next 4 years alone.

I would like to bring into the conversation someone who has spent a long time warring about a number of these issues and trying to expand opportunity for young people. That is my colleague from New York, Mr. OWENS.

Mr. OWENS. Mr. Speaker, I thank the gentlewoman from Connecticut for this special order.

I associate myself with the remarks of my previous colleagues and will try not to be repetitive. I have served on the education committee for the whole 13 years that I have been in Congress. H.G. Wells said that civilization is a race between education and catastrophe. That may not be the exact quote but that is the gist of it. Catastrophe has stared us in the face as we go forward with these reckless cuts that have been proposed by the Republican majority in this House.

Speaker GINGRICH says his objective is to remake America. And in this process of remaking, this behavior has become very reckless. Education, which is the cement, the glue, the adhesive which helps to hold our society together, is being destroyed. We have proceeded step by step, starting with Ronald Reagan who offered the report or commissioned the report called "A Nation at Risk" and moving from that to George Bush, "America 2000," and moving from that to President Clinton's "Goals 2000," all of which had some continuity. We were moving in the right direction.

Suddenly the Republican majority proposes to wreck all of that. Instead of remaking America, we are going to

destroy America because we do not recognize the critical role of education. These cuts are very mean, they are very extreme. They are very dangerous.

The Republican majority in the House of course proposes to wipe out the Department of Education totally. Only the Senate prevailed and has slowed the process down, but they are still moving with legislation to wipe out the Department of Education; a modern society in this complex world of ours would not have some central direction from a Department of Education.

A Department of Education at the Federal level plays a small role compared to the role played by centralized departments of education in other industrialized societies, but that is a very key role. It is a critical catalytic role. Only about 7 percent of the total budget spent for education is Federal money. But it is key in terms of stimulating, in terms of pushing for reform, and it is all very well packaged in "Goals 2000," in title I and Head Start. It is all very well packaged, but they have taken a sledge hammer to it all, and they are destroying it all in the process. In the process they will destroy the country.

We cannot have a society able to compete in this very complex and competitive industrialized world of ours, a global economy, without having great emphasis on education. I applaud President Clinton's proposal to make education a priority. When he laid out his 10-year budget proposal, education receives increases in that budget of \$47 billion over the 10-year period. Similar to the Congressional Black Caucus before where we increased over a 7-year period the education budget by 25 percent. Education deserves the priority, it has to have a priority. Not only should we not have these cuts, we should be moving forward with increases.

The civilization of New York City once boasted of having free universities. The city universities were free without tuition when I moved there in 1958. We do not have that any longer. But we are instead going rapidly backwards where not only do we have free universities but even with all of the aid that is offered by the State and the city and the aid available from the Federal Government, with it being cut so drastically and forcing tuition costs up, large numbers of people in New York City who want to go to college will not be able to go to college in New York City.

These same city universities compete with Ivy League schools in terms of the number of Nobel Prize winners. Nobel Prize winners have come out of these city universities. The numbers of Ph.D.s that have come out of our city universities are as great as the Ivy League schools when you take a look at it and add it all up. So all of this is being wrecked when they say they are

going to remake America. What they are doing is destroying America.

Unfortunately, the powerful juggernaut approach that is being taken here will wreck education right across the country. It is most unfortunate. American voters, taxpayers should rally to stop the destruction of our civilization, and the first place that we should focus on is to stop the cuts in education.

Ms. DELAURO. I thank my colleague, Mr. Speaker. My colleague has spent a lifetime and his professional lifetime in this body focused in on this area of being part of the education committee.

It is truly hard to believe sometimes that we would wreck education, which is, as we know, the key to the future, to the success of this Nation, to the success of individuals. Each succeeding generation has wanted to pass on increased opportunities in this area. We are finding ourselves in the position, I think, parents are finding themselves in the position today where they are saying that their kids are not going to have the same kinds of opportunities that they had.

Chief among those opportunities are the opportunities to increase their ability through education, whether it is higher education or whether it is vocational education, but a route in which we allow people to aspire and to dream, if you will.

I am really proud to stand with my colleagues here tonight in staunch opposition to the Republican leadership's plan to shut the door on educational opportunity to America's working families. Speaker GINGRICH likes to portray the Republican budget as part of a revolution. There is nothing new here. This is, it is not the least bit revolutionary. It is nothing new, and it is not revolutionary. It is, quite honestly, the same old trickle down economics of old, which is that you provide a tax break for the wealthiest in our Nation, and that is paid for by limiting the opportunities of working middle-class families in this country.

□ 2115

I started this hour by telling my own story, which is about my folks and their beginnings. My dad is an immigrant; my mother working in the old sweatshops and her admonition to me which was: Take the opportunity for an education, so that you will not have to do this.

That is essentially what we are denying to parents today; their ability to help and provide their kids with a future. That is wrong. That is something all of us here tonight are going to oppose and we hope that the American public will join us in that opposition.

Mr. Speaker, let me thank my colleagues for participating in this conversation tonight.

ISSUES OF IMPORT TO AMERICA

The SPEAKER pro tempore. Under the Speaker's announced policy of May

12, 1995, the gentlewoman from Idaho [Mrs. CHENOWETH] is recognized for 60 minutes as the designee of the majority leader.

Mrs. CHENOWETH. Mr. Speaker, I have three items that I wish to speak with you on and address tonight.

The first item that I very briefly would like to address are comments on the Endangered Species Act reform. I do want to say that I did attend all 12 of the task force hearings on the Endangered Species Act Task Force, from one end of this country to another, and what I heard from the American people was very, very clear.

No. 1, I heard that the current Endangered Species Act is not working for people or for wildlife.

No. 2, I heard that we need reform that does not trample on States' rights.

No. 3, I heard from the American people, thousands of them, that we need reform that offers incentives to landowners, not punitive measures by a government that has grown too large and too prosperous at the expense of private property owners.

We heard that we need a bill that does not increase our regulation, but decreases it in the Endangered Species Act. We also heard that we need a bill that compensates landowners immediately for any taking under any authority designated by Congress under the Endangered Species Act.

Mr. Speaker, for the record, I will work toward these goals. I will work very hard toward these goals, as we debate the Endangered Species Act reform. It is critical that people are put in this equation of the endangered species, because truly, the American producer, if the trend continues, will be the endangered species.

I want to thank you, Mr. Speaker, for this time, because I want to speak on my second issue. I want to speak about the nature of power and the threat posed to our freedoms when those in power act against the law.

Nearly 70 years ago Justice Louis Brandeis, in the U.S. Supreme Court in his opinion in a case involving *Olmstead*, observed that decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are the commands to the citizens. He said that if the government becomes a lawbreaker, it breeds contempt for the law.

Mr. Speaker, I am saddened tonight to say that I am convinced at this time that our Government finds itself in the dangerous position about which Justice Brandeis warned us back in 1928. Tonight in the two issues that I will be discussing, two very, very different issues, it will show a set of circumstances that brings the Justice's warning to mind.

Although the individual cases could not be more different, they both indicate a shared contempt at this time among some of our highest ranking public officials in our land for the very laws of our land.

Mr. Speaker, one of my highest priorities when I was elected to the U.S. Congress was to pass legislation to salvage the dead, dying, burned, diseased, infected, and windblown timber that is now rotting on our forest floors, in Idaho and throughout the Northwest. Yet I and my colleagues have been thwarted at nearly every turn by the Clinton administration as we have tried to enact tough legislation that will salvage the burned timber and put our loggers back to work, as we restore our forests to a healthy condition.

Let me share some history with you on why timber salvage legislation is so important for our Western States and how our efforts in the House to pass legislation has been turned on their head by President Clinton and his administration.

Last year, in the Northwest alone, we had 67,000 fires, which devastated millions of acres of Federal forested lands. The fires burned 8 billion board feet of timber and that is enough to construct 542,000 homes and provide 1½ million jobs.

Nearly 9 years of drought in the West, along with insect infestation, disease, and irresponsible Federal management of our western forests, culminated in catastrophic wildfires last summer in the Western States of Idaho, Oregon, Washington, Montana, and northern California.

Thirty-five human lives were lost in the fires. Countless animals were savagely burned and destroyed and more than 4 million acres of Federal forest land burned with over \$1 billion being spent to fight the fires.

When President Theodore Roosevelt established the National Forest System, he made it very clear in his writings that the uses for these lands would be very careful utilization, which was essential for our Nation.

The President stated that the forests are for the use of the people under proper restrictions; grazing privileges, timber cutting, haying, and other similar privileges. In addition, the mission of the Federal land management agencies, as directed by Congress, is to meet the diverse needs of the people, not the grizzly bear, not the wolf, not the marmot, but the people, by advocating a conservation ethic in promoting the health, productivity, diversity, and the beauty of the forests and associated lands, listening to people and responding to their diverse needs in making decisions and protecting and managing the National Forests and grasslands to best demonstrate the sustainability of the multiple use management concept. Theodore Roosevelt, the father of the concept of the Forest Service.

The wildfires in the Western States were sparked by nature, but the intensity of these fires could have been prevented with good stewardship in our forests, good fire suppression techniques by the Forest Service and the Bureau of Land Management, and good overall management by these agencies.

After the fires of last summer, Members of Congress from the Western States requested swift action of the administration to log the burned timber. Time was of the essence as burned timber loses its value rapidly and can cause environmental damage to riparian areas, watersheds, erosion control, streams and spawning habitats in our rivers and streams.

The administration shuffled its feet while we lost these valuable national resources, but there was no action from the administration. I came to Congress ready to pass legislation to move that timber into mills, put loggers back to work, and restore economic health along with my other colleagues from the West, to these devastated communities.

When I arrived in Washington, I was pleased to find that other like-minded colleagues who believe that immediate removal of this salvage timber, as required in the Multiple Use-Sustained Use Act, the Resource Planning Act, and the National Forest Management Planning Act, which is already required and we were not making new law, and the return to well-established forest health practices, was a priority.

The situation was so extreme that hearings on the emergency salvage situation were held within a month of the start of the new Congress, in spite of the heavy load that we had with the Contract With America.

Together, many of us in the House with heavily forested districts forged the basis for legislation which was included in the fiscal year 1995 Emergency Supplemental Appropriations and Rescissions bill.

This language set very clear goals for the administration to remove dead and dying timber. However, the administration snubbed our goals of renewing our forests and putting money back into our local economies and the Treasury, and the President vetoed our rescission bill, H.R. 1159 on June 7, 1995.

In his veto message the President expressed his opposition to the timber salvage proposition of the bill, and I quote the President's words that said that, "They would override existing environmental laws in an effort to increase timber salvage." He said, "I urge the Congress to delete this language and separately to work with my administration on an initiative to increase timber salvage and improve forest health."

When is this man going to learn what a real contradiction is? That is it.

I find it interesting that the President, Mr. Clinton, paid lip service to forest health, when his land management agencies have essentially abdicated their responsibilities toward managing our forests for multiple use. The fires could have been prevented if the agencies were managing the forests properly.

During the post-veto negotiations with the White House, several changes were made to accede to administration demands. These changes prompted a

June 29, 1995, letter from President Clinton to Speaker GINGRICH on reinforcing and reenacting the timber salvage provision. The President stated, in his own letter signed in his hand, that said to Speaker GINGRICH, "I want to make it clear that my administration will carry out the program of timber salvage with its full resources and a strong commitment to achieving the goals of the program."

I would like to enter this letter for the RECORD, and I will do that, Mr. Speaker, at the conclusion of my remarks.

The President's words remain a mystery to me, because, Mr. Speaker, they have not shown in any instance to be carrying out the very legislative goals that he agreed to.

After passage of the rescission bill, the President then issued, after he got everything or much of what he wanted from this Congress, then the President reversed himself. After signing this into law, he issued a memo to the land management agencies on August 1 in which he stated, "I do not support every provision of the rescission bill, and most particularly the provisions concerning timber salvage."

Mr. Speaker, I would like to enter this into the RECORD also.

I find this statement to be incredibly egregious, after the President held up our legislative process on timber salvage through his veto. Days, weeks, and months were lost trying to negotiate this bill with him and the value of the burned timber declined.

But this is only the beginning of the administration's outrageous actions on this issue. Shortly after the August 1 memo, the Secretaries of Agriculture, Interior, Commerce, and the Administrator of the EPA, under the President's direction, entered into a memorandum of agreement. I will enter this memorandum of agreement into the RECORD, Mr. Speaker.

This memorandum of agreement outlines a bureaucratic process that is nothing more than a smoke screen to prevent the agencies from harvesting timber. It is a heartbreaker for those of us who wanted to break through the administrative paralysis that has encompassed this country for the last number of years.

Mr. Speaker, let me make it very clear, the rescissions bill did not tell the administration to create a new bureaucracy. We did not tell the administration that they could take their time to get the timber out.

□ 2130

Let me tell you what this lawmaking body, the U.S. Congress, did say very clearly. We said expedite salvage timber immediately, that this was an emergency. The President of the United States is sworn to enforce the law. In fact, in article 2, section 3, as the President puts his hand on the Bible and swears an oath to his new duties and his new office, in article 2, section 3, he stated that he will faithfully take

care that all of the laws of the land are faithfully executed. That is what the President of the United States pledged to when he became President.

Our Constitution does not give the President the choice of determining which laws he wants to faithfully execute. In fact, I remind you, Mr. Speaker, that he signed this law into law with his own hand.

I would like to take just a few moments to highlight some of the language from the rescission bill and show just how the President is knowingly circumventing law. The rescissions bill states that upon completion of timber salvage sales, the preparation, advertisement, offering and award of such contracts shall be performed notwithstanding any other provisions of law, including a law under the authority of which any judicial order may be outstanding on or after the date of the enactment of this act. This is what the President signed into law.

The language of the memorandum of understanding states that the parties will agree to comply with previously existing environmental laws except where expressly prohibited by Public Law 104-19, notably in the area of administrative appeals and judicial review. This is a blatant disregard of the law. Clearly, the legislation says to undertake additional salvage notwithstanding any other provision of law. The administration has created arbitrary requirements that do not exist in an effort to slow this process down.

Second example: The law that we passed that was signed into law by the President states that there shall be expedited procedures for emergency salvage timber sales and lays out very clearly the sales documentation. Yet the language in the memorandum of understanding is contrary once again. It states that the parties agree, and now this is the Government agencies agreeing among themselves; this never came to the Congress, but the parties agree, the agencies of the Federal Government agree to adhere to the standards and guidelines of applicable forest plans and land use plans and their amendments and related conservation strategies, including but not limited to, the western forest health initiative and those standards and guidelines adopted as part of the President's forest plan for the Pacific Northwest, PACFISH, INFISH and the red-cockaded woodpecker, long-term strategy, as well as the goals, objectives and guidelines contained in the Marine Fisheries Service biological opinion on the Snake River Basin land resource management plans through the inter-agency team approach agreed to in the May 31, 1995, agreement on streamlining consultation procedures.

Mr. Speaker, that is not emergency salvage procedures. That is not streamlining procedures.

The President's forest practice, PACFISH, INFISH and the National Marine Fisheries Services' biological opinion are nothing more than staff

opinion. Yet the agencies have put these initiatives above the law passed by this Congress, signed by the President of the United States, and I tell you, Mr. Speaker, that is outrageous.

The memorandum of understanding or agreement expands the authority of the Environmental Protection Agency, the Fish and Wildlife Service and the National Marine Fisheries Service far beyond their congressionally mandated current authority. It is time we held the administration accountable for violations we have seen as it relates to timber salvage and the blatant abuse of a President who, without care, discharges the oath of office that he took. This President is doing everything in his power to tear down the rural economies that have been built in this great Nation and in the West.

Mr. Speaker, lest anyone cast any doubt, there is a war on the West. This in only one of the battles that we will fight, but we will fight. I can tell you, Mr. Speaker, the West was not settled by wimps and faint-hearted people, and we will not give it up easily.

This Representative from Idaho will not back down until I am secure in knowing that my President and my Government are upholding the Constitution of the United States.

Mr. Speaker, I now would like to turn to another example of how some agencies of the Federal Government have become law breakers. The consequences of this incident have been not merely economic but actually resulted in three deaths. There has been another casualty as well in the tragic incidents at Ruby Ridge: public confidence in several of our Federal agencies we depend on to enforce laws and administer justice. I am speaking, of course, Mr. Speaker, of the ongoing investigation into the Government's ill-fated siege directed against the Weaver family at Ruby Ridge, ID, in my district, which is the first district in Idaho, which I represent.

I am encouraged that the Senate and this Congress is finally beginning to review this matter. However, it is unfortunate that it has now taken 3 years for us to get to this point. I am saddened that we will never be able to restore a mother and her son who were unjustly ripped away from a family. Moreover, we will never be able to ignore the fact that the Weavers were unfairly and tragically targeted because of their religious beliefs, and we will never be able to end the grief and the lack of justice the Weavers have experienced in the 3 years since their tragic loss. But I believe that some good can result from this, and as out of the ashes, we will always have hope that the Phoenix will rise. We must be able to hope that this tragedy will yield a courage and a will from this Congress to take a hard stand by recommending that there be severe punishment for those who have wronged not only the Weaver family but this country and our confidence in our law enforcement agencies.

We as a Congress must have the courage and the will to set down a hard-line rule so that this never again happens to another family in the United States of America, the land of the free, the home of the brave, and it used to be the hope and the light of the world. We want to see America there again.

Since the beginning of the siege on the home of Randy and Vicki Weaver, I have closely followed the developments that have occurred in the 3 years after that. I have spent a considerable time studying the details of the events surrounding Ruby Ridge, including spending time at the trial and speaking with people who were there and who were directly involved. Some have said that what happened at Ruby Ridge was merely the result of minor oversights made by a few Federal officials in one incident involving an individual whose religious beliefs are generally misunderstood and spurned by society.

Some have even suggested that this was merely a case of using venom against venom and should not be receiving the attention it is getting and are questioning the wisdom of even holding the hearings. Nothing could be further from the truth.

I commend my senior Senator, Senator LARRY CRAIG, and Senator SPECTER for their participation, for their study and the time that they have given to this incident in the Senate hearings. I am very proud of the search for truth by the Senate and also by the Congress.

What I have observed, though, as I have kept track of the developments of Ruby Ridge and this incident, has deeply concerned me even to the point that what has been uncovered is, in part, what motivated me to run for Congress. In fact, the issues that have arisen because of Ruby Ridge involve basic principles that govern this Nation.

I believe that the result of the congressional investigations into Ruby Ridge will have significant ramifications on how our people view our Government and how Federal law enforcements will respond to the constitutional rights of citizens in the future, because this incident involved several law enforcement agencies ranging all the way from BATF, the U.S. marshals office, the Federal Bureau of Investigation, the Army, the National Guard, the U.S. district attorney's office, and on and on, and includes actions from the most basic field agents to heads of departments in the administration. It allows us to take a close look at the principles and rules our law enforcement agencies are governing themselves by.

In essence, Ruby Ridge is not only the seminal incident that created citizen distrust and citizen questioning of our law enforcement agencies, but it has become the litmus test on the Government, on how it will treat the most basic rights of individuals.

I do think that there are many, many wonderful and hardworking individuals in law enforcement who are doing a

fine job keeping the peace and of pursuing real criminals. However, I also believe that lately there are some rogues in law enforcement as well who are dictating policy.

I have attended the hearings that are ongoing in the Senate, the other body, and I believe that so far these hearings have revealed very interesting facts, and the Senators are doing an excellent job of getting to the heart of the matter.

Last week, I, along with a lot of the American public, viewed the Randy Weaver testimony and Mr. Weaver's description of how agents from the U.S. Federal Marshals Service for 16 months had executed an intensive reconnoitering surveillance, as they call it, of his home, that included hundreds of hours of filming the everyday proceedings of his family with the satellite-powered cameras, which included plans to kidnap his daughter Sarah, which included plans and the execution of setting up command centers in the homes of neighbors and sending many undercover agents posing as supporters to the Weavers' home, enjoying their openness, their friendliness and their hospitality.

The committee listened to Mr. Weaver as he explained how never once not once did a U.S. marshal come to his home and identify himself as a Federal agent desiring for Mr. Weaver to come down from the mountain and appear in court. Never once did any agent discuss complying with the simple terms that Mr. Weaver requested before surrendering: that his home and his family be protected and that certain officials that had offended him apologize. What a small thing to ask for to keep the peace.

It is our responsibility as Federal elected officials and the responsibility of Federal agents to maintain the peace and tranquility of this country. This kind of action did not further the peace and tranquility of this country, Mr. Speaker.

In fact, the only terms the agents would allow him, offered in messages that were given through neighbors instead of directly by the agents, was that Mr. Weaver admit his guilt, without any trial or due process. Instead of negotiating, the U.S. Marshal's Service initiated military like reconnaissance missions to determine what would be the best way to invade the Weaver home. U.S. marshals on one of these missions excited the family dog by throwing rocks at it, drawing the attention of the family who thought that the dog might be responding to one of the many wild animals in the area.

The committee listened, riveted, to Mr. Weaver's agonizing depiction of how he made the most regrettable decision of his life when he sent his 14-year-old son Sammy down the road with a rifle to see what the dog was barking at, and how those agents shot a young boy's dog at his feet, and how a Federal marshal, dressed in a terrifying paramilitary uniform, jumped out

of the bushes and yelled to Sammy, halt, and how these events led to a gun battle that ended with the tragic death of the young boy, Sammy, barely 14 years old, barely weighing 80 pounds, shot first in the arm and then twice in the back. The last words his father heard him say were, "I am coming home, Dad."

Mr. Weaver and his wife, Vicki, no longer caring if they were fired at, went down the hill to retrieve the small body of their son.

We listened as Mr. Weaver narrated the events of the following day: of how, in the dead silence of late afternoon, and without any warning or even an announcement of the presence of the FBI, as he was attempting to enter the shed where the body of his slain son lay, he was shot in the back without warning by a trained sniper from the FBI hostage rescue team, a group that is trained by the military for crises that involve international terrorists.

□ 2145

Mr. Speaker, I hardly think that Randy Weaver was an international terrorist. We were mortified, as we listened, to hear how the FBI sniper fired again, this time into the Weavers' home, striking Vicki, the wife, in the head. This mother was holding nothing more dangerous than her 10-month-old baby. The bullet struck her face. The human shrapnel struck Sara in the face. The mother was killed instantly, and Sara was wounded, and the Pershing bullet entered into a family friend, Kevin Harris, severely wounding him.

Mr. Weaver recounted how he and what was left of his family—in their home and not some military compound—were surrounded for almost 2 weeks by an army of over 400, complete with tanks, and helicopters, personnel, armored personnel carriers, et cetera. They had to keep clear of the windows and stay low to the ground for fear of being shot. In the meantime, the Government made little or no attempt to negotiate with the Weavers. The agents did, however, torment the family by broadcasting morbid messages over loud speakers to Vicki Weaver, who lay dead under the family's kitchen table.

The Federal agents tunneled under Mr. Weaver's house and his home, and they sent a tank-like robot up to the house with a phone placed on one arm, and a shot gun mounted on the other with commands to Mr. Weaver to come out, pick up the phone, and negotiate with him. When Mr. Weaver saw the shotgun mounted on the robot, of course, as any American would or anyone in their right mind would do, he declined to pick up the phone.

Mr. Weaver found out later that the FBI was considering measures to inject CS gas into the home, or placing explosives to blow out the walls of the home.

These are all the documents that are now in the court documents.

This vast array of Government force was brought to bear against a small,

but loving, Idaho family, the Randy Weaver family, and, although the family owned several legal firearms, they were owned legally, as were the rounds that Randy Weaver had stored there. They were legal.

After the initial exchange of shots with U.S. Marshals, the Weavers never even aimed or fired their guns at anyone. Those initial shots were those shots that were fired at the Y when Sammy Weaver was shot in the back. Kevin Harris responded not knowing who was shooting the small boy who went down right in front of him. That was all the shots that were fired by anyone who lived in the Weaver home.

However, the U.S. Marshals' office and the U.S. Marshals called the Federal Bureau of Investigation stating that they were taking hundreds and hundreds of rounds of ammunition from the Weavers. I hardly think so. A grieving mother and father who went down to the Y, picked up the dead body of their 80-pound son was not firing hundreds of rounds at the marshals.

We grieve at the death of Vicki and Sammy Weaver, and we grieve at the death of Marshal Deacon, but, as I listened to these frightening details of the Government siege on the Weaver home which began well before the shootout, it became very clear to me that one of the elemental freedoms of this country that it is founded upon had been violated in the very worst way. It is a tenant basic to our democracy, characterized well by patriots in the 1760's that simply states "a man's house is his castle; and while he is quiet, he is well guarded as a prince in castle." This is an idea that has its roots as early as the Magna Carta of 1215. William Pitt eloquently expressed this concept in stating: "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail, its roof may shake, the wind may blow through it, the storm may enter, but the King of England cannot enter, all his force dares not cross the threshold of the ruined tenement."

Can anyone find a better metaphor to describe what happened at Ruby Ridge than that statement?

And also, at a Boston Town Hall meeting in 1772, it was stated that without the Bill of Rights "officers may under the colour of law and cloak of general warrant break through the sacred rights of the domicile, ransack men's houses, destroy their securities, carry off their property, and with little danger to themselves commit the most horrid murders."

This was 1772 that this quote came out of a Boston town meeting.

Ladies and gentlemen, our Founding Fathers understood that, unless we respect what is in the Bill of Rights and the protections afforded to us in the U.S. Constitution, that someday we will be living through what we are having to live through today.

In fact, revolutionaries such as Patrick Henry and others, used the Crown's regular practice of aggressive

search and seizures as a battle cry for the addition of our Bill of Rights. It was Patrick Henry who said that without those rights added to the Constitution "the officer of Congress may come upon you now, fortified with all the terrors of paramount federal authority. Excisemen may come in multitudes; for the limitations of their numbers no man knows."

Ladies and gentlemen, these words were spoken by Patrick Henry. Again I challenge anyone to come up with a more accurate description of the gross excessive force used on Ruby Ridge than that.

For several hours the committee listened to the testimony of Randy Weaver, and the blatant infringements on his and his family's rights, the tragic loss of life that occurred as a result, and the year and half of imprisonment—all because he had been inaccurately characterized as a terrible threat to society on a web of fabricated charges, some stemming out of the mere fact that he had a newly purchased pickup sitting in his front yard, that he had a TV dish, and that, surely because of all these things, maybe he could have been involved in some bank robberies when all Randy Weaver and his family wanted was to be left alone, and, for refusing to come down from his home because he was afraid, because he had been told by a Federal judge that he would lose everything he possessed, including his property and his children, over his children he chose to stay with his family.

But what I found amazing and even admirable about Randy Weaver, even though I do not agree with his political views, is that despite all the unjust actions directed toward his family, he sat before the Senate Committee and the country and admitted his mistakes.

"If I could do it over again," he stated, "I would never have sold those sawed-off shotguns, and I would have come down that mountain and gone to court." He even apologized for any actions or words that have harmed anyone. He said this despite the fact that a jury of his peers had found conclusive evidence that he was deemed to be innocent of selling those weapons because that jury of his peers determined that he had been entrapped by the Bureau of Alcohol, Tobacco and Firearms.

I believe that anyone could understand why he would not want to come down from the mountain to face law enforcement officers when the first time he was arrested, he was bushwacked by several BATF agents posing as stranded motorists, and his wife, who was not even charged with anything, was thrown face first into the snow and hand-cuffed.

Moreover, the judge incorrectly threatened—the Federal judge, the Federal magistrate, incorrectly threatened Mr. Weaver that, if he lost his case, he would have to pay the court's cost, and that would mean losing everything that he owned.

What was even more astounding about Mr. Weaver's testimony, was that this man, who was deemed by the Government to have a "propensity for violence," and considered "dangerous to society," in his final words before the committee expressed his respect and affection to those Senators for allowing him to tell them his story. He even left with them his hope and trust that justice would occur for the wrongful deaths of his wife and son.

I ask you, Mr. Speaker, does this sound like a man who is an enemy to society? Mr. Weaver faced the court of public opinion. Some of the informants used by the BATF were shielded, and their voices were disguised. Mr. Weaver's 19-year-old daughter and Mr. Weaver himself faced the hard truth of having to recount what happened to them. They were not shielded; they were not protected. They stood before the Senate and the American people and told their story.

The truth of the matter is that whatever acts Randy Weaver has committed against society, he has paid for them. I say "acts," because in this country, we are judged by how we act, not how we think. Mr. Weaver has more than paid his debt to society—our attention must now be turned to the actions of Government officials.

I do want to say that many of us would have stood beside the rights that Mr. Weaver and all Americans have. I disagree politically. We even disagree in our religious foundations. Two people could not have disagreed more than Gerry Spence and this Congressman, and yet in spite of our political and religious differences, we both stand up, as did many people in this Nation, for the protection of everybody's rights of life, liberty, and the pursuit of happiness.

What I have seen so far of the response of Federal officials to their actions before, during, and since the Ruby Ridge incident has been in stark contrast to the humble admission by Randy Weaver. In fact, it has been disturbing.

The first duty of any public institution is to maintain the public trust. In a situation in which the public trust was betrayed, the leaders of these institutions responded by attempting to protect themselves and their colleagues rather than acting to protect the public trust.

Instead of conducting a thorough investigation of the abuses that were committed by agents, and immediately disciplining them for their subpar performance, the Justice Department went about finding ways to whitewash the situation.

The FBI is now on their third investigation.

Officials seemed more determined than ever to portray Mr. Weaver as a religious zealot who belonged in the company of real criminals that had committed repulsive crimes, and when a jury found no basis whatsoever for all of the charges against Randy Weaver

with the exception of failure to appear in court, the Justice Department decided to spin the story another way, by initiating another still un-released report admitting to a few sloppy "oversights," and even some violations of the Constitution, but resulted in the mere censuring of a few agents.

What was even more a "slap in the face" of justice was the promotion of Larry Potts to the second highest position in the FBI; this man who was in part responsible for issuing the unconstitutional "shoot on sight" rules of engagement. Those rules of engagement translated as death warrants for Vicki Weaver.

Only now, after 3 long years, and public outcry, is the Justice Department beginning to investigate possible criminal actions of Federal agents.

The Justice Department has even settled monetarily with the Weavers—emphasizing that by doing so, the Department was not admitting any injustice. As far as I know, the Government has not even publicly apologized to the Weaver family.

Last Thursday and Friday, as the Committee began to hear the BATF's version of the story, I was outraged again to see BATF officials in a complete show of arrogance.

They refuse to acknowledge any error or wrongdoing by any of their agents who carried out the original investigation and fabrication of charges against Randy Weaver.

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The Director of the BATF, John Magaw in his testimony stated that he was "convinced that the BATF's agents conduct was lawful and proper in every respect." He said this despite the fact that the Committee had before them numerous pieces of evidence that prove that the Weaver investigation was poorly conducted and unfairly maligned Mr. Weaver.

The purpose of the BATF's investigation of Mr. Weaver was not to stop a suspected law-breaker at all. The purpose of the investigation was to try to trick Mr. Weaver into breaking the law so that the agency could then force Mr. Weaver to become a spy for the agency.

This scenario is like some sort of paranoid movie script. Unfortunately, it really happened.

All of the information about supposed criminal intentions by Randy Weaver originated solely from an undercover informant whose real name we still do not know. This man pretended to be Mr. Weaver's friend for 3 years as he worked to set this elaborate trap on a law-abiding man.

This mysterious informant had testified at the trial that he assumed his pay would be based on whether or not there would be a conviction. In other words, he would be paid on how well he would be able to coerce someone into committing a crime. That is called "entrapment," and is against the law.

After the BATF succeeded in getting Mr. Weaver to illegally saw off two

shotguns, the agency needed to convince the U.S. Attorney to press charges.

In letters to the Federal prosecutor, BATF agent Byerly communicated several untruths, pure hearsay, and clear embellishments of real events about Mr. Weaver.

Without substantiating evidence, Agent Byerly portrayed a dangerous criminal, a kind of Nazi "Rambo" monster that made U.S. Marshals and the FBI believe that it was necessary to unleash a massive show of force on Ruby Ridge.

My question is, How can the Director of BATF "review" these details of the investigation, and determine that the actions of his agents were "lawful" and "proper in every respect?"

I am reminded of the war crimes cases that followed World War II, and which helped establish certain important legal principals.

One case involved Japanese Gen. Tomayuki Yamashita. He was tried and sentenced to death for failing to properly discharge his duty by permitting the members of his command to commit atrocities against Americans and Filipinos during the final year of the war.

Fifty years ago, Yamashita's direct command and control over the individual actions of his soldiers was far less than what leaders have now—in this age of satellite communications, fax machines and jet airplanes.

Writing of the incident in the Harvard Law Review, Leonard Boudin observed that "The serious question confronting all citizens, however, is whether the ultimate responsibility lies * * * with the highest civilian authorities. * * * While presumably horrified at the details of such individual atrocities * * * they certainly are aware of creating a general environment in which those atrocities become inevitable."

I am concerned that the leadership of these agencies may be responsible for creating a general environment in which an incident such as this became inevitable.

What I found equally troubling was Director Magaw rejecting the verdict of a Jury of Citizens who had found Mr. Weaver innocent of weapons charges because he was entrapped.

Mr. Magaw instead chose to disregard most of the arguments presented in a court of law, and create a new version of the details to suggest that the Jury was incorrect in its verdict.

It was Thomas Jefferson who said "I consider trial by jury as the only anchor ever yet imagined by man by which a government can be held to the principles of its Constitution."

With that statement in mind, what happens when the Government ignores the decision of jury?

This is the type of arrogant and unchecked behavior by Government agencies that concerns Americans, and contributes greatly to the sense of fear and distrust that many Americans have of their Government.

Moreover, it portrays a bad image for those who work in our Government whose service is exemplary and upstanding. I strongly believe words by Attorney Gerry Spence in his book about Ruby Ridge, "From Freedom to Slavery," in which he attests that "the ultimate enemy of any people is not the angry hate groups that fester within, but a government itself that has lost its respect for the individual."

Mr. Weaver has quoted his father, who said that the Government and society is like a garden—sometimes a garden grows some weeds, and those weeds need to be plucked, or they will choke the garden. With that in mind, I stand on the floor of this House of Representatives and strongly urge our government to put their courage in the sticking place and pluck some of those weeds.

I call for the firing of Agent Herb Byerly. His deceitful tactics created the ideal atmosphere for a deadly and unnecessary conflict. I call for the complete firing of Larry Potts, and any others who contributed to the development of death warrants for the Weaver family.

I think FBI Director Freeh should, himself seriously consider stepping down as director. His decision to promote Larry Potts to the 2nd highest position in the FBI calls his judgment into question.

What is even more deplorable was his willingness to protect and defend Mr. Potts and his indefensible actions, simply because Mr. Potts was his close friend.

I call for the firing and prosecution of HRT sniper Lon Horiuchi—for firing a weapon into a man's home knowing that children were in that home. Some may say that he was simply following orders.

Have we not learned from the past war crimes trials that unlawful orders from superiors do not act as a shield for unlawful actions by those following those orders?

I call for a thorough investigation into the actions of all the Government agents involved in Ruby Ridge—from top to bottom—to see what prosecutions need to occur. Many of these agents are still entrusted with the enforcement of our laws today.

Some will call these stern recommendations "overreacting," but I believe they are not. What happened at Ruby Ridge is far reaching in scope. It exposes some very ugly attitudes that are currently inherent in law enforcement. These elements must be quickly and forcefully expelled to prevent them from growing more abusive, and to also return the faith of a somewhat agitated people to its Government. In my opinion, the best way to prevent future Government abuses is to make those who have committed such abuses accountable for their actions.

In closing, I would invoke the words of Justice Brandeis in their entirety * * *

The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-

meaning but without understanding. Deceit, security and liberty alike demand that Government officials shall be subject to the same rules of conduct that are commands to the citizen.

In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution.

The Ruby Ridge tragedy is worth our attention. Our form of Government is the greatest on earth. I believe that, if we as a Congress act decisively in this matter, this will be a golden opportunity for the people of this country to witness once again that the system our founding father established works—and that no one, including a government official, can live and act above the law and expect to get away with it.

Mr. Speaker, I include for the RECORD the items referred to earlier.

DEPARTMENT OF AGRICULTURE, FOREST SERVICE, DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF COMMERCE, NATIONAL MARINE FISHERIES SERVICE, DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, ENVIRONMENTAL PROTECTION AGENCY.

Date: August 18, 1995.

Subject: Salvage Sale Provisions of P.L. 104-19

To: Regional Foresters, USDA Forest Service,

State Directors, USDI Bureau of Land Management,

Regional Directors, USDI Fish and Wildlife Service,

Regional Directors, USDC National Marine Fisheries Service,

Regional Administrators, Environmental Protection Agency.

On July 27, 1995 the President signed the Rescission Act (Public Law 104-19, Enclosure 1) which contains provisions for an emergency salvage timber sale program as well as for "Option 9" and "318" sales. The salvage provisions of the Act, which are the subject of this letter, are intended to expedite salvage timber sales in order to achieve, to the maximum extent feasible, a salvage sale volume above the programmed level to reduce the backlogged volume of salvage timber. The authorities provided by P.L. 104-19 are in effect until December 31, 1996.

President Clinton has directed the Secretaries of Agriculture, the Interior, and Commerce, the Administrator of the Environmental Protection Agency, and the heads of other appropriate agencies to move forward to implement the timber salvage provisions of P.L. 104-19 in an expeditious and environmentally-sound manner, in accordance with the President's Pacific Northwest Forest Plan, other existing forest and land management policies and plans, and existing environmental laws, except those procedural actions expressly prohibited by Public Law 104-19 (Enclosure 2). Consistent with the President's direction, an interagency Memorandum of Agreement (MOA) on timber salvage has been developed (Enclosure 3). The undersigned Agency heads attest that they

understand the direction in the MOA and will fully comply with that direction.

The purpose of the MOA is to reaffirm the commitment of the signatory parties to continue their compliance with the requirements of existing environmental law while carrying out the objectives of the timber salvage related activities authorized by P.L. 104-19. In fulfilling this commitment, the parties intend to build upon on-going efforts to streamline procedures for environmental analysis and interagency consultation and cooperation. Interagency collaboration is vital to achieving this purpose. Working together, we have an opportunity to show our professionalism and meet the challenge before us. We expect you to work cooperatively to give this high priority program your very best effort.

Enclosure 4 provides clarification and direction for those portions of the MOA that are not self-explanatory or that require follow-up actions. Additionally, Forest Service/Bureau of Land Management monitoring guidance, which includes involvement of other agencies, is provided for your use (Enclosure 5).

Separate guidance will be provided for other items not covered by the MOA and items needing additional detailed explanation. Separate direction also will be sent regarding the Option 9 and "318" sales provisions of P.L. 104-19.

(Signed) Jack Ward Thomas
for JACK WARD THOMAS,
Chief, Forest Service,
Department of Agriculture.

(Signed) John G. Rogers
for MOLLIE BEATTIE,
Director, Fish and Wildlife Service,
Department of the Interior.

(Signed) Richard E. Sanderson
for STEVEN A. HERMAN,
Assistant Administrator for Enforcement and Compliance Assurance,
Environmental Protection Agency.

(Signed) Nancy K. Hayes
for MIKE DOMBECK,
Director, Bureau of Land Management,
Department of the Interior.

(Signed) Gary Matlock
for ROLLAND SCHMITTEN,
Director, National Marine Fisheries Service,
Department of Commerce.

ENCLOSURE 1

EMERGENCY SALVAGE TIMBER SALE PROGRAM (Text of Section 2001 of Public Law 104-19)

SEC. 2001.

(a) DEFINITIONS.—For purposes of this section:

(1) The term "appropriate committees of Congress" means the Committee on Resources, the Committee on Agriculture, and the Committee on Appropriations of the House of Representatives and the Committee on Energy and Natural Resources, the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Appropriations of the Senate.

(2) The term "emergency period" means the period beginning on the date of the enactment of this section and ending on September 30, 1997.

(3) The term "salvage timber sale" means a timber sale for which an important reason

for entry includes the removal of disease—or insect-infested trees, dead, damaged, or down trees, or trees affected by fire or imminently susceptible to fire or insect attack. Such term also includes the removal of associated trees or trees lacking the characteristics of a healthy and viable ecosystem for the purpose of ecosystem improvement or rehabilitation, except that any such sale must include an identifiable salvage component of trees described in the first sentence.

(4) The term "Secretary concerned" means—

(A) the Secretary of Agriculture, with respect to lands within the National Forest System; and

(B) the Secretary of the Interior, with respect to Federal lands under the jurisdiction of the Bureau of Land Management.

(b) COMPLETION OF SALVAGE TIMBER SALES.—

(1) SALVAGE TIMBER SALES.—Using the expedited procedures provided in subsection (c), the Secretary concerned shall prepare, advertise, offer, and award contracts during the emergency period for salvage timber sales from Federal lands described in subsection (1)(4). During the emergency period, the Secretary concerned is to achieve, to the maximum extent feasible, a salvage timber sale volume level above the programmed level to reduce the backlogged volume of salvage timber. The preparation, advertisement, offering, and awarding of such contracts shall be performed utilizing subsection (c) and notwithstanding any other provision of law, including a law under the authority of which any judicial order may be outstanding on or after the date of the enactment of this Act.

(2) USE OF SALVAGE SALE FUNDS.—To conduct salvage timber sales under this subsection, the Secretary concerned may use salvage sale funds otherwise available to the Secretary concerned.

(3) SALES IN PREPARATION.—Any salvage timber sale in preparation on the date of the enactment of this Act shall be subject to the provisions of this section.

(c) EXPEDITED PROCEDURES FOR EMERGENCY SALVAGE TIMBER SALES.—

(1) SALE DOCUMENTATION.—

(A) PREPARATION.—For each salvage timber sale conducted under subsection (b), the Secretary concerned shall prepare a document that combines an environmental assessment under section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) (including regulations implementing such section) and a biological evaluation under section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2)) and other applicable Federal law and implementing regulations. A document embodying decisions relating to salvage timber sales proposed under authority of this section shall, at the sole discretion of the Secretary concerned and to the extent the Secretary concerned considers appropriate and feasible, consider the environmental effects of the salvage timber sale and the effect, if any, on threatened or endangered species, and to the extent the Secretary concerned, at his sole discretion, considers appropriate and feasible, be consistent with any standards and guidelines from the management plans applicable to the National Forest or Bureau of Land Management District on which the salvage timber sale occurs.

(B) USE OF EXISTING MATERIALS.—In lieu of preparing a new document under this paragraph, the Secretary concerned may use a document prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) before the date of the enactment of this Act, a biological evaluation written before such date, or information collected for such a document or evaluation if the document, evaluation, or information applies to

the Federal lands covered by the proposed sale.

(C) SCOPE AND CONTENT.—The scope and content of the documentation and information prepared, considered, and relied on under this paragraph is at the sole discretion of the Secretary concerned.

(2) REPORTING REQUIREMENTS.—Not later than August 30, 1995, the Secretary concerned shall submit a report to the appropriate committees of Congress on the implementation of this section. The report shall be updated and resubmitted to the appropriate committees of Congress every six months thereafter until the completion of all salvage timber sales conducted under subsection (b). Each report shall contain the following:

(A) The volume of salvage timber sales sold and harvested, as of the date of the report, for each National Forest and each district of the Bureau of Land Management.

(B) The available salvage volume contained in each National Forest and each district of the Bureau of Land Management.

(C) A plan and schedule for an enhanced salvage timber sale program for fiscal years 1995, 1996, and 1997 using the authority provided by this section for salvage timber sales.

(D) A description of any needed resources and personnel, including personnel reassignments, required to conduct an enhanced salvage timber sale program through fiscal year 1997.

(E) A statement of the intentions of the Secretary concerned with respect to the salvage timber sale volume levels specified in the joint explanatory statement of managers accompanying the conference report on H.R. 1158, House Report 104-124.

(3) ADVANCEMENT OF SALES AUTHORIZED.—The Secretary concerned may begin salvage timber sales under subsection (b) intended for a subsequent fiscal year before the start of such fiscal year if the Secretary concerned determines that performance of such salvage timber sales will not interfere with salvage timber sales intended for a preceding fiscal year.

(4) DECISIONS.—The Secretary concerned shall design and select the specific salvage timber sales to be offered under subsection (b) on the basis of the analysis contained in the document or documents prepared pursuant to paragraph (1) to achieve, to the maximum extent feasible, a salvage timber sale volume level above the program level.

(5) SALE PREPARATION.—

(A) USE OF AVAILABLE AUTHORITIES.—The Secretary concerned shall make use of all available authority, including the employment of private contractors and the use of expedited fire contracting procedures, to prepare and advertise salvage timber sales under subsection (b).

(B) EXEMPTIONS.—The preparation, solicitation, and award of salvage timber sales under subsection (b) shall be exempt from—

(i) the requirements of the Competition in Contracting Act (41 U.S.C. 253 et seq.) and the implementing regulations in the Federal Acquisition Regulation issued pursuant to section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)) and any departmental acquisition regulations; and

(ii) the notice and publication requirements in section 18 of such Act (41 U.S.C. 416) and 8(e) of the Small Business Act (15 U.S.C. 637(e)) and the implementing regulations in the Federal Acquisition Regulations and any departmental acquisition regulations.

(C) INCENTIVE PAYMENT RECIPIENTS; REPORT.—The provisions of section 3(d)(1) of the Federal Workforce Restructuring Act of 1994 (Public Law 103-226; 5 U.S.C. 5597 note) shall not apply to any former employee of the Secretary concerned who received a vol-

untary separation incentive payment authorized by such Act and accepts employment pursuant to this paragraph. The Director of the Office of Personnel Management and the Secretary concerned shall provide a summary report to the appropriate committee of Congress, the Committee on Government Reform and Oversight of the House of Representatives, and the Committee on Governmental Affairs of the Senate regarding the number of incentive payment recipients who were rehired, their terms of reemployment, their job classifications, and an explanation, in the judgment of the agencies involved of how such reemployment without repayment of the incentive payments received is consistent with the original waiver provisions of such Act. This report shall not be conducted in a manner that would delay the rehiring of any former employees under this paragraph, or affect the normal confidentiality of Federal employees.

(6) COST CONSIDERATIONS.—Salvage timber sales undertaken pursuant to this section shall not be precluded because the costs of such activities are likely to exceed the revenues derived from such activities.

(7) EFFECT OF SALVAGE SALES.—The Secretary concerned shall not substitute salvage timber sales conducted under subsection (b) for planned non-salvage timber sales.

(8) REFORESTATION OF SALVAGE TIMBER SALE PARCELS.—The Secretary concerned shall plan and implement reforestation of each parcel of land harvested under a salvage timber sale conducted under subsection (b) as expeditiously as possible after completion of the harvest on the parcel, but in no case later than any applicable restocking period required by law or regulation.

(9) EFFECT ON JUDICIAL DECISIONS.—The Secretary concerned may conduct salvage timber sales under subsection (b) notwithstanding any decision, restraining order, or injunction issued by a United States court before the date of the enactment of this section.

(d) DIRECTION TO COMPLETE TIMBER SALES ON LANDS COVERED BY OPTION 9.—Notwithstanding any other law (including a law under the authority of which any judicial order may be outstanding on or after the date of enactment of this Act), the Secretary concerned shall expeditiously prepare, offer, and award timber sale contracts on Federal lands described in the "Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl", signed by the Secretary of the Interior and the Secretary of Agriculture on April 13, 1994. The Secretary concerned may conduct timber sales under this subsection notwithstanding any decision, restraining order, or injunction issued by a United States court before the date of the enactment of this section. The issuance of any regulation pursuant to section 4(d) of the Endangered Species Act of 1973 (16 U.S.C. 1533(d)) to ease or reduce restrictions on non-Federal lands within the range of the northern spotted owl shall be deemed to satisfy the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), given the analysis included in the Final Supplemental Impact Statement on the Management of the Habitat for Late Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl, prepared by the Secretary of Agriculture and the Secretary of the Interior in 1994, which is, or may be, incorporated by reference in the administrative record of any such regulation. The issuance of any such regulation pursuant to section 4(d) of the Endangered Species Act of 1973 (16 U.S.C. 1533(d)) shall not require the preparation of an environmental impact

statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(e) ADMINISTRATIVE REVIEW.—Salvage timber sales conducted under subsection (b), timber sales conducted under subsection (d), and any decision of the Secretary concerned in connection with such sales, shall not be subject to administrative review.

(f) JUDICIAL REVIEW.—

(1) PLACE AND TIME OF FILING.—A salvage timber sale to be conducted under subsection (b), and a timber sale to be conducted under subsection (d), shall be subject to judicial review only in the United States district court for the district in which the affected Federal lands are located. Any challenge to such sale must be filed in such district court within 15 days after the date of initial advertisement of the challenged sale. The Secretary concerned may not agree to, and a court may not grant, a waiver of the requirements of this paragraph.

(2) EFFECT OF FILING ON AGENCY ACTION.—For 45 days after the date of the filing of a challenge to a salvage timber sale to be conducted under subsection (b) or a timber sale to be conducted under subsection (d), the Secretary concerned shall take no action to award the challenged sale.

(3) PROHIBITION ON RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS, AND RELIEF PENDING REVIEW.—No restraining order, preliminary injunction, or injunction pending appeal shall be issued by any court of the United States with respect to any decision to prepare, advertise, offer, award, or operate a salvage timber sale pursuant to subsection (b) or any decision to prepare, advertise, offer, award, or operate a timber sale pursuant to subsection (d). Section 705 of title 5, United States Code, shall not apply to any challenge to such a sale.

(4) STANDARD OF REVIEW.—The courts shall have authority to enjoin permanently, order modification of, or void an individual salvage timber sale if it is determined by a review of the record that the decision to prepare, advertise, offer, award, or operate such sale was arbitrary and capricious or otherwise not in accordance with applicable law (other than those laws specified in subsection (i)).

(5) TIME FOR DECISION.—Civil actions filed under this subsection shall be assigned for hearing at the earliest possible date. The court shall render its final decision relative to any challenge within 45 days from the date such challenge is brought, unless the court determines that a longer period of time is required to satisfy the requirement of the United States Constitution. In order to reach a decision within 45 days, the district court may assign all or part of any such case or cases to one or more Special Masters, for prompt review and recommendations to the court.

(6) PROCEDURES.—Notwithstanding any other provision of law, the court may set rules governing the procedures of any proceeding brought under this subsection which set page limits on briefs and time limits on filing briefs and motions and other actions which are shorter than the limits specified in the Federal rules of civil or appellate procedure.

(7) APPEAL.—Any appeal from the final decision of a district court in an action brought pursuant to this subsection shall be filed not later than 30 days after the date of decision.

(g) EXCLUSION OF CERTAIN FEDERAL LANDS.—

(1) EXCLUSION.—The Secretary concerned may not select, authorize, or undertake any salvage timber sale under subsection (b) with respect to lands described in paragraph (2).

(2) DESCRIPTION OF EXCLUDED LANDS.—The lands referred to in paragraph (1) are as follows:

(A) Any area on Federal lands included in the National Wilderness Preservation System.

(B) Any roadless area on Federal lands designated by Congress for wilderness study in Colorado or Montana.

(C) Any roadless area on Federal lands recommended by the Forest Service or Bureau of Land Management for wilderness designation in its most recent land management plan in effect as of the date of the enactment of this Act.

(D) Any area on Federal lands on which timber harvesting for any purpose is prohibited by statute.

(h) RULEMAKING.—The Secretary concerned is not required to issue formal rules under section 553 of title 5, United States Code, to implement this section or carry out the authorities provided by this section.

(i) EFFECT ON OTHER LAWS.—The documents and procedures required by this section for the preparation, advertisement, offering, awarding, and operation of any salvage timber sale subject to subsection (b) and any timber sale under subsection (d) shall be deemed to satisfy the requirements of the following applicable Federal laws (and regulations implementing such laws):

(1) The Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.).

(2) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(3) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(5) The National Forest Management Act of 1976 (16 U.S.C. 472a et seq.).

(6) The Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.).

(7) Any compact, executive agreement, convention, treaty, and international agreement, and implementing legislation related thereto.

(8) All other applicable Federal environmental and natural resource laws.

(j) EXPIRATION DATE.—The authority provided by subsections (b) and (d) shall expire on December 31, 1996. The terms and conditions of this section shall continue in effect with respect to salvage timber sale contracts offered under subsection (b) and timber sale contracts offered under subsection (d) until the completion of performance of the contracts.

(k) AWARD AND RELEASE OF PREVIOUSLY OFFERED AND UNAWARDED TIMBER SALE CONTRACTS.—

(1) AWARD AND RELEASE REQUIRED.—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 (103 Stat. 745). The return of the bid bond of the high bidder shall not alter the responsibility of the Secretary concerned to comply with this paragraph.

(2) THREATENED OR ENDANGERED BIRD SPECIES.—No sale unit shall be released or completed under this subsection if any threatened or endangered bird species is known to be nesting within the acreage that is the subject of the sale unit.

(3) ALTERNATIVE OFFER IN CASE OF DELAY.—If for any reason a sale cannot be released and completed under the terms of this sub-

section within 45 days after the date of the enactment of this Act, the Secretary concerned shall provide the purchaser an equal volume of timber, of like kind and value, which shall be subject to the terms of the original contract and shall not count against current allowable sale quantities.

(l) EFFECT ON PLANS, POLICIES, AND ACTIVITIES.—Compliance with this section shall not require or permit any administrative action, including revisions, amendment, consultation, supplementation, or other action, in or for any land management plan, standard, guideline, policy, regional guide, or multiforest plan because of implementation or impacts, site-specific or cumulative, or activities authorized or required by this section, except that any such administrative action with respect to salvage timber sales is permitted to the extent necessary, at the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b)(1) of this section or to reflect the effects of the salvage program. The Secretary concerned shall not rely on salvage timber sales as the basis for administrative action limiting other multiple use activities nor be required to offer a particular salvage timber sale. No project decision shall be required to be halted or delayed by such documents or guidance, implementation, or impacts.

Now, therefore, the parties agree to:

1. Comply with previously existing environmental laws except where expressly prohibited by Public Law 104-19, notably in the areas of administrative appeals and judicial review. In particular, the parties agree to implement salvage sales under Public Law 104-19 with the same substantive environmental protection as provided by otherwise applicable environmental laws and in accordance with the provisions of this MOA.

2. Achieve to the maximum extent feasible a salvage timber sale volume level above the programmed level in accordance with Public Law 104-19 within a framework of maintaining forest health and ecosystem management. Adhere to the standards and guidelines in applicable Forest Plans and Land Use Plans and their amendments and related conservation strategies including, but not limited to, the Western Forest Health Initiative and those standards and guidelines adopted as part of the President's Forest Plan for the Pacific Northeast, PACFISH, INFISH, Red Cockaded Woodpecker Long-Term Strategy, as well as the goals, objectives, and guidelines contained in the NMFS biological opinion on Snake River Basin Land Resource Management Plans (LRMPs), through the interagency team approach agreed to in the May 31, 1995 agreement on streamlining consultation procedures. The agencies will direct their level one and two teams to apply to goals, objectives, and guidelines contained in the NMFS biological opinion on the Snake River Basin LRMPs as the teams deem appropriate to protect the anadromous fish habitat resource.

3. Involve the public early in the process so that there is opportunity to provide input into the development of salvage sales, particularly in recognition of the importance of public involvement given the prohibition to administrative appeals contained in Public Law 104-19. Maintain and promote collaboration with other Federal, Tribal, State and local partners.

4. Reiterate their commitments to work together from the beginning of the process, particularly in salvage sale design, building on existing joint memoranda that streamline consultation procedures under Section 7 of ESA including the following two agreements, other applicable agreements, and improvements thereon:

The May 31, 1995, agreement on streamlining consultation procedures under section 7 of the ESA, between Forest Service Regional Foresters of Regions 1, 4, 5, and 6; Bureau of Land Management State Directors for Oregon/Washington, Idaho, and California; Fish and Wildlife Service Regional Director; and National Marine Fisheries Service Regional Directors.

The March 8, 1995, agreement on consultation time lines and process streamlining for Forest Health Projects, between the Chief of the Forest Service, Director of the Bureau of Land Management, Director of the National Marine Fisheries Service, and Director of the Fish and Wildlife Service.

The March 8, 1995, agreement as it applies to consultation time lines and processes streamlining will be revised to apply nationwide.

5. Ensure that personnel from their respective agencies work cooperatively and professionally to implement faithfully the objectives of Public Law 104-19 and Executive Branch direction in a timely manner. In the event that disagreements cannot be resolved at the regional level (Level 3) of the process, a panel consisting of appropriate representatives of the Forest Service, Bureau of Land Management, National Marine Fisheries Service, Fish and Wildlife Service, and EPA, will review the evidence and make a binding decision within 14 days of notice of the disagreement.

6. Agree to conduct project analyses and interagency coordination consistent with NEPA and ESA (as set forth in paragraph 4 of this MOA) in a combined joint environmental assessment (EA) and biological evaluation (BE) called for in Public Law 104-19, except where it is more timely to use existing documents. There will be a scoping period, as described in agency guidelines, during the preparation of all salvage projects. Sales that would currently fall within a categorical exclusion promulgated by the Forest Service or Bureau of Land Management in their NEPA procedures will require no documentation absent extraordinary circumstances. For sales that the Secretary determines, in his discretion, ordinarily should require an EA under the land management agencies' NEPA procedures, agencies will prepare the combined EA/BE, including a determination of affect under ESA and circulate the analysis for 20 days of public review and comment. For sales that the Secretary determines, in his discretion, ordinarily should require an EIS under the land management agencies' NEPA procedures, the combined EA/BE will include analysis consistent with section 102(2)(c) of NEPA and will be circulated for 30 days of public review and comment. The decision maker will respond to substantive comments on the EA/BE, but will not be required to recirculate a final EA/BE.

7. Develop and use a process which will facilitate interagency review of proposed salvage sale programs on a regional scale, thus allowing other agencies to identify broad-scale issues and help set priorities for allocation of their resources.

8. Include mitigation needs identified in the environmental assessment in timber sales design to the extent possible within existing authority. As appropriate, funds will be used for mitigation work not included in the timber area.

9. Measure performance of all parties' and individuals' efforts involved in the development and implementation of timber prepared pursuant to this MOA based upon the combined achievement of the goals set forth in this MOA.

10. Monitor and evaluate timber sale objectives and mitigation requirements as an integral part of salvage sales and the salvage

program as prescribed in Forest Plans, Land Use Plans and agency direction. Public and stakeholder involvement in monitoring and evaluation will be encouraged. There will be a national salvage program review involving regions and States with significant activity under this Act.

11. Recognize and use the definition of salvage timber sale as contained in Public Law 104-19, which is a timber sale "for which an important reason for entry includes the removal of disease or insect-infested trees, dead, damaged, or down trees, or trees affected by fire or imminently susceptible to fire or insect attack." This definition allows for treating associated trees or trees lacking the characteristics of a healthy and viable ecosystems for the purpose of ecosystem improvement or rehabilitation as long as a viable salvage component exists. While this definition provides necessary flexibility to meet salvage objectives, care must be taken to avoid abuse by including trees or areas not consistent with current environmental laws and existing standards and guidelines as set forth in this MOA.

This Memorandum of Agreement is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The undersigned Agency heads attest that they understand the direction in this Memorandum of Agreement and will fully comply with that direction.

James R. Lyons, Under Secretary, Natural Resources and Environment, Department of Agriculture.

Robert P. Davison for George T. Frampton, Jr., Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior.

Katherine W. Kimball for Douglas K. Hall, Assistant Secretary for Oceans and Atmosphere, Department of Commerce.

Robert L. Armstrong, Assistant Secretary for Land and Minerals Management, Department of the Interior.

Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, Environmental Protection Agency.

Jack Ward Thomas, Chief, Forest Service, Department of Agriculture.

John G. Rogers for Mollie Beattie, Director, Fish and Wildlife Service, Department of the Interior.

Rolland Schmitt, Director, National Marine Fisheries Service, Department of Commerce.

Mike Dombeck, Director, Bureau of Land Management, Department of the Interior.

GUIDANCE CONCERNING ITEMS IN THE MEMORANDUM OF AGREEMENT ON TIMBER SALVAGE RELATED ACTIVITIES UNDER PUBLIC LAW 104-19

Item 1. Comply with previously existing environmental laws, except where expressly prohibited by P.L. 104-19. The Act expressly prohibits administrative appeals (Section 2001(e)), and it limits judicial review (Section 2001(f)).

Item 2. P.L. 104-19 does not include specific volume targets for salvage timber sales. However, it does contain the following direction:

"During the emergency period, the Secretary concerned is to achieve, to the maximum extent feasible, a salvage timber sale volume level above the programmed level to reduce the backlogged volume of salvage timber." (Section 2001(b))

Section 2001(c)(2) of P.L. 104-19 is a reporting requirement. No later than August 30,

1995, the Secretary concerned is required to report to the appropriate committees of Congress on implementation of the salvage provisions of the Act, and to update and resubmit the report every six months thereafter until completion of all salvage timber sales covered by the Act. As required by Section 2001(c)(2), these reports will include a plan and schedule for an enhanced salvage timber sale program by National Forest and BLM District for fiscal years 1995, 1996, and 1997 using the authority provided by the Act.

The teams referred to in Item 2 of the MOA are the interagency teams established to implement the streamlined Section 7 consultation process in northwestern states under the Endangered Species Act, pursuant to the interagency agreements referenced in Item 4 of the MOA. The explanation of Item 4, below, describes the team process and its expansion nationwide.

The reference in Item 2 to the National Marine Fisheries Service (NMFS) biological opinion of March 1, 1995, on the Snake River Basin Land and Resource Management Plans is made specifically to clarify that the interagency consultation teams in the Snake River Basin will deal with implementation of the goals, objectives and guidelines contained in that biological opinion as related to the anadromous fish habitat resource.

Item 3. Due to the abbreviated time frames it is important to have public involvement early in the process and continuing through the review of the document developed. You should also promote collaboration with other federal, Tribal, State and local partners as appropriate. An interagency communication plan is being finalized and will be sent separately.

Item 4. Consistent with the President's direction and Items 1 and 2 of the MOA, agencies will work together to design salvage sales so as to avoid or minimize adverse effects to threatened or endangered species, and no salvage sale will be offered if it would be likely to jeopardize the continued existence of a listed or proposed species, or if it would be likely to result in the destruction or adverse modification of designated or proposed critical habitat. The March 8, 1995 interagency agreement signed by the heads of the FS, BLM, FWS and NMFS provides direction for streamlining interagency consultations under the Endangered Species Act for forest health and salvage timber projects on National Forest System and BLM lands in several western states. Key elements of this streamlined process are:

Use an interagency team approach to facilitate early input to the NEPA process concerning species proposed or listed as threatened or endangered, as well as proposed or designated critical habitat, under the Endangered Species Act.

Informal or formal consultation/conferencing, if needed, will occur concurrently with project development so that consultation is completed within the NEPA timeframes.

The MOA states that the consultation/conferencing timelines and processes described in the March 8 agreement will be expanded to apply nationwide. Regional and State Office agency leaders who are not covered by the agreements mentioned below should meet on a regional basis as soon as possible to implement this direction. A copy of the March 8 agreement, plus an interagency letter explaining the streamlined process in more detail, will be sent under separate cover to each Regional/State office not already covered by that agreement.

The MOA provides that the agencies will build upon existing joint memoranda, applicable agreements, and improvements thereon that streamline the consultation/conferencing process. This means:

The interagency agreement of April 6, 1995, between the FS and FWS for implementing

the streamlined consultation process on National Forest System lands in Montana will continue to apply.

The interagency agreement of May 31, 1995, among the FS, BLM, FWS and NMFS for consultation/conferencing on actions involving National Forest System and BLM administrative units in Washington, Oregon, California, and portions of Idaho and Montana, as identified in that agreement, will continue to apply.

The April 6 and May 31 agreements can be used as examples, but need not be duplicated by other Regions/States if a different approach will accomplish the timelines and streamlined process called for in the March 8 agreement. You are expected to establish and use an interagency team process to facilitate information flow, emphasize early input into project design to avoid or minimize adverse effects to listed or proposed species and designated or proposed critical habitat, and ensure timely resolution of any disagreements that may arise. See the descriptions for Items 5 and 6, below, for additional clarification.

Item 5. It is imperative that the agencies work cooperatively to implement the objectives of P.L. 104-19 and the MOA in a timely manner. This includes promptly resolving any disagreements that may arise.

Interagency coordination, especially early in project planning, will be crucial to avoiding or minimizing disagreements. It is expected that most disagreements will be resolved by technical specialists at the field level. Any issues which cannot be resolved will be promptly elevated to the next appropriate level for resolution. An interagency, tiered process will be used for resolving disagreements, beginning at the field level and moving up through decision-makers until the issue is resolved. The MOA specifies that in the event that an issue cannot be resolved at the region/state level, a national issue resolution panel consisting of appropriate representatives from the FS, BLM, FWS, NMFS, and EPA, will review information provided and make a binding decision within 14 days of a request by the interagency regional/state level.

For example, it is expected that EPA specialists will work with the National Forest or BLM interdisciplinary planning team for a project to quickly identify and resolve any issues that might arise concerning compliance with the Clean Water Act, NEPA, or other environmental laws involving EPA input. If an issue cannot be resolved at this level, it will be promptly elevated to the Forest Supervisor or District Manager and the appropriate EPA counterpart for joint resolution. If they are unable to agree, they would jointly elevate the issue to the Regional Forester or State Director and the EPA Regional Administrator for resolution. In the effort to reach agreement, it is expected that the "line officers" will seek input from regional/state technical specialists concerning the particular issue. The national issue resolution panel will address an issue if it cannot be resolved at the regional/state level.

The April 6 and May 31, 1995, interagency agreements on streamlining consultations for Forest Service and BLM projects in northwestern states establish tiers of interagency teams to coordinate on projects and resolve issues involving the Endangered Species Act. These existing teams and the issue resolution process will continue to apply. If a regional/state team cannot resolve an issue, the team will elevate it to the national issue resolution panel. Although the existing team process in the northwestern states was formed to deal with consultation issues, it is expected that the "Level 2" and higher teams established through the April 6 and

May 31, 1995 agreements will work with EPA to resolve issues that do not involve Endangered Species Act implementation and cannot be resolved at the Interdisciplinary team level.

Item 6. The action agency is responsible for completing the combined environmental assessment (EA) and biological evaluation (BE) for each salvage timber sale, as required by Section 2001(c)(1) of P.L. 104-19. The combined EA/BE will indicate that the project is being carried out under a different authority than a normal salvage sale. The only exception to preparing a combined EA/BE will be for those situations in which using existing documents will be more timely (e.g. an EIS is almost final).

The MOA provides clarification regarding scoping and other public involvement. Public and agency comments received on the combined EA/BE will be evaluated and a response to substantive comments will be provided in an appendix to the EA/BE. The decision document will reflect the public and agency input as appropriate.

The normal agency procedure for documenting a decision (e.g. preparation of a Decision Notice by the Forest Service and a Record of Decision for the Bureau of Land Management) will be used and the public will be informed of the decision following normal agency procedures. The decision document will include:

A statement explaining that pursuant to Subsection 2001(e), the salvage sale is not subject to administrative review.

A statement indicating that under the provisions of Subsection 2001(i) of P.L. 104-19, the documents and procedures required for preparation, advertisement, offering, awarding, and operation of the salvage timber sale are deemed to satisfy the requirements of applicable environmental laws as listed in 2001(i).

An explanation of the expedited judicial review process provided for in Subsection 2001(f) of P.L. 104-19.

All anticipated environmental effects and mitigation and monitoring requirements will be disclosed in the EA. This includes an analysis of effects on listed, proposed and sensitive species, and proposed or designated critical habitat, for all alternatives analyzed. The EA/BE should be no longer than necessary to adequately address the issues. A Finding of No Significant Impact (FONSI) will not be required.

To implement the MOA direction for interagency coordination and compliance with the Endangered Species Act, all of the required elements of a biological assessment (BA), as described in 50 CFR Part 402, must be included in the appropriate section of the combined EA/BE for the preferred or selected alternative. These elements can be included in appropriate sections of the EA/BE or can be attached as a separate section. For the purposes of Public Law 104-14, the BE shall meet the requirements of a BA. The action agency and the consulting agency will mutually agree on the BE prior to the EA/BE being issued for public comment.

If the project is determined to have no effect on listed or proposed species or designated or proposed critical habitat, consultation or conferencing is not required and the EA/BE should so indicate.

If the interagency consultation team agrees with the determination that the project may affect but is not likely to adversely affect listed species, or is not likely to result in destruction or adverse modification of designated or proposed critical habitat, informal consultation will occur using the streamlined process per Item 4 of the MOA. The letter of concurrence from the consulting agency will be discussed and incorporated by reference in the decision document for the project.

If the project is determined to be likely to adversely affect listed species, or likely to jeopardize a species proposed for listing, or likely to result in destruction or adverse modification of designated or proposed critical habitat, the consulting agency will provide a biological opinion or conference report using the streamlined consultation process. The results of the biological opinion or conference report will be discussed and incorporated by reference in the decision document.

To summarize the process:

1. Scoping and interdisciplinary and interagency teams will determine the issues to be addressed in the combined EA/BE.

2. The completed EA/BE will be sent to the public for review. The action agency and the consulting agency will mutually agree on the BE prior to the EA/BE being issued for public comment.

3. Public comment received will be analyzed and the response documented in an appendix to the EA/BE prior to completion of the decision document.

4. The decision document will reflect public input as appropriate. In those instances when a letter of concurrence, a biological opinion, or a conference report is needed from a consulting agency, it will be discussed and incorporated by reference in the decision document.

Item 7. Region/State agency heads will work together to develop a process to facilitate interagency review of the proposed salvage sale program on a regional or state scale, as appropriate. This process will provide an opportunity for identification of broad issues. It should include an understanding of priorities in relation to projects other than salvage timber sales (e.g. grazing permits, green timber sales) which involve interagency action. This is intended to allow interagency coordination to occur on highest priorities first and to facilitate allocations of staff and time accordingly.

Item 8. Self-explanatory

Item 9. Self-explanatory

Item 10. In addition to the requirements of the Act, it is important for us to monitor our actions to ensure ourselves and the public that we are carrying out the salvage program in an environmentally sound manner and that the requirements identified in the decision document are being met. Monitoring guidance has been developed for your use (see Enclosure 5).

Item 11. Self-explanatory

MONITORING

In addition to the requirements of P.L. 104-19, it is important for us to monitor our actions to assure ourselves and the public that we are doing the right things for the right reasons, that we are doing what we said we would do, and that the effects are what we predicted. Below are some thoughts and actions that each Forest Service Region/BLM State should consider in developing a monitoring plan that is responsive to your sales and situation.

Public Trust and Involvement

There will be lots of scrutiny and interest; We need to build trust and credibility; Do the right thing for the right reason; If we say we will do it, do it;

Involve other Agencies, states, Tribes, the public and interest groups.

Key Agency Messages

Monitoring and Evaluation are key and vital aspects in implementing a successful stewardship salvage program.

Monitoring and Evaluation are central to an adaptive management approach which is a cornerstone for ecosystem management.

Existing Direction

There is existing direction on monitoring in the agencies directive system which iden-

tify and explain the three types of monitoring and requirements for monitoring.

Follow Standards and Guidelines in existing Forest Plans and Resource Management Plans, as amended, and including any biological opinions issued on such plans or amendments.

Other Considerations

A key for success is monitoring what is appropriate and feasible, not the world. Monitoring programs must be designed to address specific questions, and clearly identify who is responsible for implementation.

Monitoring should be hierarchical: every project will have implementation monitoring;

Forests and BLM Districts will develop a well designed sampling scheme for effectiveness monitoring;

Observation and documentation by anyone in the sale area is helpful for implementing the monitoring. A key person will be the Sale Administrator who will likely be the first to observe problems.

Any problems should be immediately documented, activities suspended (if needed) and appropriate changes made to the sale contract.

Monitor and document successes as well as problems and areas needing improvement.

There must be a clear focus on oversight and accountability.

Line Officers will be held accountable.

Regions/BLM States and Forests/BLM Districts should schedule project reviews to sample the activities of salvage sales and their effects; encourage public involvement.

The WO will conduct salvage program reviews of every Region/BLM State having significant activity under P.L. 104-19.

CONGRESS OF THE UNITED STATES,

HOUSE OF REPRESENTATIVES,

Washington, DC, June 30, 1995.

Hon. DAN GLICKMAN,

Secretary, Department of Agriculture,
Washington, DC.

DEAR DAN: We are gratified that leaders in the House of Representatives and Administration representatives worked out the remaining concerns regarding HR 1944 and are pleased with the bill's solid passage by the House. We are writing to follow up on the letter you sent the Speaker last night regarding the Forest Service salvage sale program.

Both of us spoke with Assistant Secretary Jim Lyons and received the commitment of your Department and the Forest Service to offer a minimum of 4.5 billion board feet of salvage timber during the emergency period, which begins on the date of enactment and expires December 31, 1996. Any personnel resources needed to get the added volume are provided in Section 2001 by granting the Forest Service additional contracting authority and lifting restrictions that could impede the Service's ability to hire adequate personnel. As opportunities arise for more salvage volume, you can utilize the expanded authority to increase expectations.

If you move quickly to implement this new salvage timber policy, there is no reason the 4.5 billion board foot target could not be met. The President has stated that the Administration will carry out this program with its full resources and a strong commitment to achieving the goals of the program. We urge you to utilize the flexibility we have provided to produce the maximum feasible salvage timber volume available in our national forests.

As you know, included in the emergency timber sale program is a requirement for you to report on the Department's progress in implementing the new policy. We look forward to your first progress report and working together to achieve the timber salvage

objectives of the program set forth under HR 1944.

Sincerely,

CHARLES H. TAYLOR,
Member of Congress.
NORM D. DICKS,
Member of Congress.

U.S. DEPARTMENT OF AGRICULTURE,
NATURAL RESOURCES & ENVIRONMENT
U.S. DEPARTMENT OF THE INTERIOR,
LAND AND MINERALS MANAGEMENT

August 22, 1995.

[Memorandum]

To: Jack Ward Thomas, Chief, Forest Service; and Elaine Zielinski, Oregon State Director, Bureau of Land Management.

From: —. for James R. Lyons, Under Secretary of Agriculture, Natural Resources and Environment; and —. for Mike Dornbeck, Director, Bureau of Land Management.

Subject: Section 2001(k) of the 1995 Rescission Act.

Section 2001(k) of the 1995 Rescissions Act (Public Law 101-121) directs the Secretaries to award, release, and permit to be completed the remaining section 318 timber sales. Several parties have urged us to interpret section 2001(k) as applying to all timber contracts offered in the geographic area described in section 318 of the Fiscal Year 1990 Interior and Related Agencies Appropriations Act, in addition to the few remaining timber sales that were offered subject to section 318. The language of section 2001(k) is clear on its face, and applies only to the remaining section 318 timber sales.

The section 318 sales have a turbulent history, having been fiercely debated by Congress, by the press, by public advisory boards, and before the Supreme Court. It is this well-known and discrete set of sales, the sales offered in Fiscal Year 1990 under the procedures established in section 318(b)-(j) of Public Law 101-121, which Congress refers to in section 2001(k) of the 1995 Rescissions Act as "subject to section 318."

We have been involved in the debate over the federal forests in the Pacific Northwest for a long time, as have members of Congress. Our understanding of the section 2001(k) release of timber sales "subject to section 318" is informed by that experience. Unlike timber sales before or after, the section 318 sales were developed based on specific ecological criteria developed by Congress and were provided limited judicial review. The Supreme Court approved section 318's limitation of judicial review, and about 4 billion board feet of timber was sold subject to section 318. The award or release of the few remaining 318 sales, totaling approximately 300 million board feet, has been delayed due to litigation, consultation based on the listing of the marbled murrelet, and other events. Congress used section 318 as its model in drafting section 2001 of the 1995 Rescission Act, and included the provisions of section 2001(k) to require resolution of the few remaining section 318 sales.

The Executive Branch, particularly the Forest Service, was involved in all stages of the development of section 2001, providing technical information and, later, in the negotiation of changes to provisions that concerned the Administration. It was the remaining section 318 sales that the Administration viewed as being affected by section 2001(k) at the time the bill was signed by the President. It was the remaining section 318 sales that were the basis of the April 27, 1995, Forest Service effects statement on the proposed legislation that was transmitted to Congress and was then used by members of Congress in their floor statements and debates. The specific sale contracts that section 201(k) addresses are only the sales of-

ferred under the unique procedures of section 318(b)-(j). The interpretation of section 2001(k) as applying to timber sales throughout Washington and Oregon, and to timber sales that were not developed subject to the ecological and procedural criteria provided in section 318(b)-(j), is wholly inconsistent with the history of the section 318 sales issue.

In the 1995 Rescission Act, Congress seeks to end the delays in the remaining section 318 sales and to expedite implementation of the President's Northwest Forest Plan which was designed with the section 318 sale program in mind. We must read the law in a manner that makes sense of the entire Act, including direction to expeditiously implement the President's Northwest Forest Plan, and in a manner that avoids reading section 2001(k) so expansively as to generate windfall profits at the expense of the public and the environment. We must faithfully implement the law as enacted by Congress while acting with full consideration for the environmental significance of the remaining section 318 timber sales and the fact that section 2001 reduces the usual public policy protections that would otherwise guide our implementation. For these reasons, any ambiguities in the language of section 2001(k) is intended to apply only to those remaining timber sales developed and offered subject to section 318(b)-(j) of the Fiscal Year 1990 Interior and Related Agencies Appropriations Act, as directly addressed in section 2001(k)(1).

U.S. DEPARTMENT OF AGRICULTURE,
NATURAL RESOURCES & ENVIRONMENT
U.S. DEPARTMENT OF THE INTERIOR,
LAND AND MINERALS MANAGEMENT

August 23, 1995.

[Memorandum]

To: Jack Ward Thomas, Chief, Forest Service; and Elaine Zielinski, Oregon State Director, Bureau of Land Management.

From: —. for James R. Lyons, Under Secretary of Agriculture, Natural Resources and Environment; and —. for Mike Dornbeck, Acting Director, Bureau of Land Management.

Subject: Additional Direction on Section 2001(k) of the 1995 Rescission Act.

Yesterday we issued direction relating to section 318 sales which are affected by section 2001(k)(1) of the 1995 Rescission Act (P.L. 104-19). The purpose of this memorandum is to set forth the administration's interpretation of the other subsections of 2001(k).

As we stated yesterday, "We must read the law in a manner that makes sense of the entire Act, including direction to expeditiously implement the President's Northwest Forest Plan, and in a manner that avoids reading section 2001(k) so expansively as to generate windfall profits at the expense of the public and the environment." In support of these principles, we will act to award, release, and permit to be completed, subject to the exclusionary provisions of 2001(k), all remaining section 318 timber sale contracts which are currently being delayed. Those sales are:

1. Sales for which apparent high bidders have been identified, but the sales have not yet been awarded to the high bidder, except that these sales will contain all previously mutually agreed upon changes to the original terms;

2. Sales for which apparent high bidders have been identified and the sale awarded, but where the contract has not yet been executed by the high bidder, except that these sales will contain all previously mutually agreed upon changes to the original terms;

3. Sales for which the apparent high bidder has been identified, but the bid bond was returned before award of the contract.

Sales which have been awarded and executed will not be modified or altered to the

originally advertised terms, volumes, and bid prices.

Section 2001(k)(2) provides that sales subject to section 2001(k)(1) shall not be released or completed "if any threatened or endangered bird species is known to be nesting" within the sale unit. Although the phrase "threatened or endangered bird species" certainly includes northern spotted owls, Congress' primary attention was focused on the impact of the remaining Section 318 sales on the marbled murrelet. This direction will outline the criteria used to determine whether any marbled murrelets are "known to be nesting" within the remaining section 318 sale units that are subject to section 2001(k).

Congress did not define the phrase "any threatened or endangered bird species is known to be nesting." Therefore, the implementing agencies must interpret this phrase in accordance with general principles of law. In interpreting this phrase, we choose to be guided by the best scientific information available. We have consulted with agency experts and they have provided us with the following information. The marbled murrelet is a rapidly-disappearing sea bird that uses old-growth forest areas only for nesting and breeding, or for activities that are in support of nesting and breeding. The remainder of its life is spent on the ocean. Murrelets are believed to have a high nesting site fidelity, that is, adult murrelets return to the same tree stands year after year to nest. Therefore, if a stand of forest that murrelets use for nesting is cut, they probably will not continue to reproduce. Murrelets do not construct typical bird nests (they lay their eggs on broad branches of older trees or in trees with deformations) and they hide from predators during nesting, which makes detection of nesting activity difficult. Indeed, the first marbled murrelet nest was not discovered until 1974, and there are very few identified nests to this day.

The consequence of adopting an interpretation of "known to be nesting" that requires "physical" detection of nesting activity is potentially quite dire for the entire marbled murrelet population and for related conservation efforts, including the President's Forest Plan. The remaining Forest Service Section 318 sales encompass ten to twenty percent of the known nesting sites for the marbled murrelet.

We believe that there is a more rational interpretation of the phrase "known to be nesting" that is based upon the best scientific information available about the murrelets. Because of its highly secretive behavior and lack of typical nesting behavior, our agency experts inform us that actual detection of a nest is not the only, or the exclusive, reliable indicator of nesting. The Pacific Seabird Group—a group composed of federal, state, private and academic biologists—developed a reliable scientific protocol for determining the existence of murrelet nesting activities. This protocol is designed to determine more than mere "presence" of murrelets. Surveys based on this protocol provide the best scientifically valid information, available within the 45 days provided by Congress, on whether murrelets are known to be nesting in these units. Based on the protocol's scientific analysis, we conclude that the protocol's criteria should be utilized in evaluating whether Section 318 sales are subject to section 2001(k)(2).

Application of the protocol's criteria to determine whether murrelets are "known to be nesting" in a particular area is the way to provide for meaningful implementation of subsection 2001(k)(2) given the needs of this species. Again, agency experts inform us that murrelets do not "nest" or "reside," that is, nest or breed, in a way that permits of typical nest detection, yet their nesting

and breeding behavior is just as critically dependent on availability of nesting habitat as any other species. In order to comply with the directive to withhold sales where the murrelet is nesting, the scientifically valid approach is to utilize the criteria in the protocol. There simply is no other practical or biologically justifiable method for identifying murrelet nesting, or for insuring that our actions will not be likely to jeopardize the continued existence of the murrelet.

We are informed that within the 45 days allowed by Congress, the Forest Service is completing a second year of surveys for murrelets. Sale purchasers are being provided with the survey data sheets and asked for their comments. As an example of how the process has been used on a particular forest, purchasers questioned the validity of 12 of the units in the Siuslaw National Forest. Forest Services biologists reviewed all applicant comments, conducted additional surveys of 4 of the sales and determined that the data was sufficient for another 4 sales. A purchaser hired a surveyor for the remaining 4 sales, which confirmed the Forest Service's findings. Additionally, government agencies are reviewing all surveys data, verifying all "questionable" determinations and continue to confirm the strength of all survey determinations.

In subsection 2001(k)(3), Congress included a provision for alternative timber for the remaining Section 318 sales that are not released within the 45-day timeframe specified in Subsection (k)(1). This provision applies to any sale which "for any reason" cannot be released within the 45-day period. This provision is therefore applicable to sales or units of sales that are not released under Subsection (k)(2).

In accordance with the standards and guidelines for the President's Northwest Plan, and within the limits of available personnel and appropriated funds, we will assess the availability of alternative volume.

THE WHITE HOUSE,

Washington, DC, June 29, 1995.

Hon. NEWT GINGRICH,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I am pleased to be able to address myself to the question of the Emergency Salvage Timber Sale Program in H.R. 1944. I want to make it clear that my Administration will carry out this program with its full resources and a strong commitment to achieving the goals of the program.

I do appreciate the changes that the Congress has made to provide the Administration with the flexibility and authority to carry this program out in a manner that conforms to our existing environmental laws and standards. These changes are also important to preserve our ability to implement the current forest plans and their standards and to protect other natural resources.

The agencies responsible for this program will, under my direction, carry the program out to achieve the timber sales volume goals in the legislation to the fullest possible extent. The financial resources to do that are already available through the timber salvage sale fund.

I would hope that by working together we could achieve a full array of forest health, timber salvage and environmental objectives appropriate for such a program.

Sincerely,

BILL CLINTON.

THE WHITE HOUSE,
Washington, DC, August 1, 1995.

[Memorandum]

For: The Secretary of Interior, The Secretary of Agriculture, The Secretary of Commerce, and The Administrator, Environmental Protection Agency.
Subject: Implementing Timber-Related Provisions to Public Law 104-19.

On July 27th, I signed the rescission bill (Public Law 104-19), which provides much-needed supplemental funds for disaster relief and other programs. It also makes necessary cuts in spending, important to the overall budget plan, while protecting key investments in education and training, the environment, and other priorities.

While I am pleased that we were able to work with the Congress to produce this piece of legislation, I do not support every provision, most particularly the provision concerning timber salvage. In fact, I am concerned that the timber salvage provisions may even lead to litigation that could slow down our forest management program. Nonetheless, changes made prior to enactment of Public Law 104-19 preserve our ability to implement the current forest plans' standards and guidelines, and provides sufficient discretion for the Administration to protect other resources such as clean water and fisheries.

With these changes, I intend to carry out the objectives of the relevant timber-related activities authorized by Public Law 104-19. I am also firmly committed to doing so in ways that, to the maximum extent allowed, follow our current environmental laws and programs. Public Law 104-19 gives us the discretion to apply current environmental standards to the timber salvage program, and we will do so. With this in mind, I am directing each of you, and the heads of other appropriate agencies, to move forward expeditiously to implement these timber-related provisions in an environmentally sound manner, in accordance with my Pacific Northwest Forest Plan, other existing forest and land management policies and plans, and existing environmental laws, except those procedural actions expressly prohibited by Public Law 104-19.

I am optimistic that our actions will be effective, in large part, due to the progress the agencies have already made to accelerate dramatically the process for complying with our existing legal responsibilities to protect the environment. To ensure this effective coordination, I am directing that you enter into a Memorandum of Agreement by August 7, 1995, to make explicit the new streamlining procedures, coordination, and consultation actions that I have previously directed you to develop and that you have implemented under existing environmental laws. I expect that you will continue to adhere to these procedures and actions as we fulfill the objectives of Public Law 104-19.

WILLIAM J. CLINTON.

The SPEAKER pro tempore (Mr. METCALF). The Chair would like to thank the gentlewoman from Idaho [Mrs. CHENOWETH] for one of the great speeches from the House of Representatives.

INJUSTICES IN REDISTRICTING

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentlewoman from Georgia [Ms. MCKINNEY] is recognized for 60 minutes as the designee of the minority leader.

Ms. MCKINNEY. Mr. Speaker, I want to express my concerns about the words of the gentlewoman from Idaho, and to say to her and to the American people that I share her love for the institutions of this country, and I wish that tonight I had a better story to tell than the story that she just told. But, unfortunately, I think we are going to have to endure another 60 minutes of another tragedy. Let us hope that it does not become a tragedy.

On my way back from Atlanta today, I thought about what an honor it is for me to represent the good people of the 11th Congressional District of Georgia, and what I am going through right now I sincerely hope no other Member of Congress has to endure. Unfortunately, I fear that others will.

So tomorrow I have requested that other Members of Congress who are impacted come and, at about this hour, also tell their stories of what it is like to fight the fiercest political fight there is, and that is the battle for redistricting.

The first question that I pose this evening is, is redistricting about shape or shade? I have got some maps here. This is a map of Illinois' Sixth District, which has gone unchallenged despite its irregular shape. It is a district that has a supermajority of white constituents at 95 percent. This district has gone unchallenged.

I have another map of Texas' Sixth District, which is of irregular shape, which also has a supermajority of white constituents at 91 percent. This district has gone through a similar court battle as has been experienced by the 11th Congressional District, and this district has been declared constitutional.

Finally, there is Georgia's 11th Congressional District, not of grossly irregular shape, not the monstrosity that it has been called, consisting of a supermajority that is 64 percent black. However, this district was both challenged and, unfortunately, found unconstitutional.

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I am forced to conclude that the redistricting battle that the Supreme Court has embarked this Nation upon is one about shade and not shape.

The battle in Georgia, as of today, has just been landed in the courts. That is because the Georgia Legislature was caught in an impasse.

One of the questions I pose is, was the redistricting impasse in the Georgia Legislature about Democrats and Republicans?

Now, I have a newspaper article here from the Metro Courier, which is published in the city of Atlanta, GA. The headline reads, "Committee Okays One Black District. Plan Offers Little Representation for Blacks."

In this article, it reads,

Political analysts project that as black voters are shifted from Georgia's other two solidly black districts to simply black-influenced districts, Georgia's political landscape