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9  
10 Counsel for Defendants

Hon. William L. Dwyer

8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON

10 OREGON NATURAL RESOURCES COUNCIL )  
11 ACTION, et al., )  
12 )  
13 Plaintiffs, )  
14 v. )  
15 UNITED STATES FOREST SERVICE and )  
16 BUREAU OF LAND MANAGEMENT, )  
17 )  
18 Defendants, )  
19 )  
20 and )  
21 LONE ROCK TIMBER CO., SENECA SAW- )  
22 MILL COMPANY, FRERES LUMBER CO., )  
23 INC. and HAMPTON TREE FARMS, INC., )  
24 )  
25 Defendant-Intervenors )

Civ. No. C98-0942WD

DEFENDANTS' FINAL  
RESPONSE TO PLAINTIFFS'  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION

21 Based on ongoing consultation with the parties' counsel, defendants understand that the  
22 scope plaintiffs' preliminary injunction motion remains limited to the 26 awarded timber sales  
23 that were before this Court on August 6, 1999. Defendants understand that plaintiffs are not  
24 expanding their motion for preliminary injunction to include any of the awarded sales that were  
25 first identified in the declarations filed by defendants on August 10, 1999, for reasons that  
26 include those stated in the declarations. Therefore, the awarded BLM timber sales at issue are

27 Defendants' Response to TRO/PI Motion;  
28 ONRC Action et al. v. Forest Service et al.

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1 limited to: Serpents Grave, "B" Lost, Flying Lost, Round Forks, Titanic, Poor Bishop, Isabelle,  
2 Deer Mom, and the Torched Mill. The awarded Forest Service sales are limited to: Bald Elk  
3 YG, Happy Thin, Jack Heli, Upper South Fork, Beegum Rock, Yaka 22/23, Roundup, Carberry  
4 Ck, Too Wild, Chapter 4 Salvage, Pigout TS, T-Line Salvage, Prairie Thin, Jigsaw, Whitebird,  
5 Prairie Fence, and Rhody.

6 Subject to this limited scope, and given the nature of this Court's ruling on the parties'  
7 motions for summary judgment, defendants present no arguments in opposition to the plaintiffs'  
8 motion for preliminary injunctive relief.

9 With regard to defendant-intervenors' arguments against a preliminary injunction,  
10 defendants take no position except to note their disagreement with the defendant-intervenors'  
11 argument that the felling of trees for BLM scaling in the area of the Flying Lost and B Lost  
12 timber sales constitute "ground-disturbing activities" that exempt them from the requirement to  
13 survey for Category 2 species, as interpreted by this Court. Def-Ints.' Opp., Geisinger Decl. at 7,  
14 ¶ 17. The BLM has maintained that the felling of individual trees for estimating timber volume  
15 in advance of offering timber sales is part of the general forest management program, and is not  
16 part of the specific timber sale decision. See In re. Rural Information Network, IBLA 96-386  
17 (July 19, 1999), 149 IBLA 336, 342-44 (copy attached). This activity is included in the BLM's  
18 programmatic environmental analysis and is not usually included in the environmental analysis  
19 of site-specific projects. Even where it is evaluated in site-specific analysis, a decision would be  
20 made on the scaling activity that is separate from the decision to authorize a timber sale. Since  
21 this activity is independent of the timber sale decision, it is not proper to consider felling of these  
22 trees as an implementation of the timber sale decision that may or may not follow.

23 Defendants reserve all rights to oppose permanent injunctive relief, and to petition the  
24 Court for modification of any preliminary injunction order issued.

1 DATED this 19th day of August, 1999.

Respectfully submitted,

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