
Mediated Agreement

1 SEE SIGNATURE PAGE FOR
2 A COMPLETE LIST OF COUNSEL
3 SUBMITTING THE DOCUMENT
4 FOR FILING

5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF OREGON

U. S. DISTRICT COURT
DISTRICT OF OREGON
FILED
MAR 24 1983

6 NORTHWEST COALITION FOR ALTERNATIVES)
7 TO PESTICIDES, et al.,)
8 Plaintiffs,)
9 v.)
10 RICHARD LYNG¹, Secretary, United)
11 States Department of Agriculture,)
12 et al.,)
13 Defendants,)
14 and)
15 OREGONIANS FOR FOOD AND SHELTER, INC.,)
16 Defendant-Intervenor.)

ROBERT M. CHRIST, CLERK
W. E. Roberts DEPUTY

Civil No. 83-6272-
E-BU

JOINT MOTION TO
DISSOLVE INJUNCTION
AND
DISMISS COMPLAINT
WITH PREJUDICE


16 The parties to this action, plus intervenor-applicant
17 Paul Merrell, move this court to dissolve the injunction and
18 dismiss with prejudice plaintiffs' and intervenor-applicant's
19 complaints against the vegetation management program of the
20 Secretary of Agriculture and the United States Forest Service
21 upon the terms of the accompanying proposed stipulated order.
22 The motion is made under Rule 60(b) of the Federal Rules

23 _____
24 ¹Pursuant to Rule 25(d)(1) of the Federal Rules of Civil
25 Procedure, Clayton Yeutter should be substituted for Richard
26 Lyng as Secretary of the United States Department of
Agriculture.


JOINT MOTION TO DISSOLVE--PAGE ONE

1 of Civil Procedure. The reasons in support of the motion are
2 set out in the proposed stipulated order.


3 Respectfully submitted this 24th day of May, 1989.

4 
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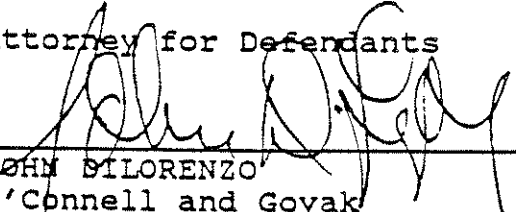
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST COALITION FOR ALTERNATIVES)
TO PESTICIDES, et al.,)
)
Plaintiffs,)
)
and)
)
PAUL MERRELL,)
)
Plaintiff-Intervenor,)
)
v.)
)
CLAYTON YEUTTER,¹ Secretary, United)
States Department of Agriculture,)
et al.,)
)
Defendants,)
)
and)
)
OREGONIANS FOR FOOD AND SHELTER, INC.,)
)
Defendant/Intervenor.)
_____)

U. S. DISTRICT COURT
DISTRICT OF OREGON
FILED

MAY 24 1989

ROBERT M. CHRIST, CLERK
BY *R. Roberts* DEPUTY

Civil No. 83-6272-E-BU

STIPULATED ORDER

In a motion dated January 24, 1989, defendants asked this court to dissolve its previous order enjoining the Secretary of Agriculture from using herbicides within Region Six of the United States Forest Service. The motion was made pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.

¹Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Clayton Yeutter is substituted for Richard Lyng as the Secretary of the United States Department of Agriculture.

STIPULATED ORDER--PAGE ONE

1 Its basis was the Forest Service's Pacific Northwest Region's
2 Record of Decision (ROD) and accompanying new environmental
3 impact statement, entitled Managing Competing and Unwanted
4 Vegetation--Final Environmental Impact Statement (FEIS).
5 Oregonians for Food and Shelter subsequently joined in the
6 motion.

7 After a status conference by telephone, plaintiffs
8 filed on February 6, 1989 an "Initial Response and Opposition
9 to Lift Injunction." Paul Merrell filed a motion to intervene.
10 He asserted an interest in the subject matter of this lawsuit
11 stemming from Merrell v. Block, Civil No. 81-6138 (D.Ore. April
12 15, 1983), affirmed sub nom., Save Our Ecosystems v. Clark, 740
13 F.2d 1275 (9th Cir. 1984).

14 Thereafter the parties, plus Mr. Merrell, engaged in
15 court-approved and arranged mediation. They succeeded. The
16 outcome is the attached mediated agreement, together with its
17 incorporated Exhibit A (hereafter "mediated agreement").

18 Accordingly, by joint motion and on the basis of the
19 mediated agreement, the parties to the mediation have asked
20 that I do the following:

- 21 1. Grant Mr. Merrell's motion to intervene;
- 22 2. Approve the terms of the mediated agreement;
- 23 3. Incorporate the terms of the mediated agreement as
24 part of this order;

25 STIPULATED ORDER--PAGE TWO
26

- 1 4. Recognize that this court shall not retain
2 jurisdiction for supervising compliance under the
3 mediated agreement;
- 4 5. Provide that the terms of the mediated agreement
5 represent obligations on the part of Forest
6 Service's Pacific Northwest Region that are
7 enforceable by the parties to it and subject to
8 judicial review in accordance with the terms of
9 the mediated agreement;
- 10 6. Conclude that no controversy remains among the
11 parties to this action regarding the ROD and FEIS,
12 in that as part of the mediated agreement all
13 parties thereto have consented to entry of this
14 order;
- 15 7. Conclude further that defendants' motion, dated
16 January 24, 1989, is moot;
- 17 8. Dissolve that portion of the prior order in this
18 action enjoining the Secretary of Agriculture and
19 the United States Forest Service from implementing
20 the ROD;
- 21 9. Dismiss with prejudice the complaints in this
22 action against the vegetation management program
23 of the Secretary of Agriculture and the United
24 States Forest Service;

25 STIPULATED ORDER--PAGE THREE
26

MEDIATED AGREEMENT

1
2 Long-standing has been the dispute over how the United
3 States Forest Service manages vegetation on national forests
4 and grasslands in the Pacific Northwest. Principal
5 participants in the dispute have included Paul Merrell,
6 Northwest Coalition for Alternatives to Pesticides ("NCAP")¹,
7 Oregonians for Food and Shelter ("OFS"), and the United States
8 Forest Service ("Forest Service").

9 On December 8, 1988, the Forest Service's Pacific
10 Northwest Region released a multi-volume document entitled
11 Managing Competing and Unwanted Vegetation--Final Environmental
12 Impact Statement ("FEIS"). Concurrently, and on the basis of
13 that record, the Regional Forester for the Forest Service's
14 Pacific Northwest Region issued a Record of Decision ("ROD").
15 These documents proposed a program for managing vegetation on
16 national forests and grasslands throughout the Forest Service's
17 Pacific Northwest Region, formerly known as Region Six. The
18 ROD provides for the limited use of herbicides.

19 The dispute reawakened in January of this year when the
20 federal government filed a motion asking the court to dissolve
21 an order enjoining the Secretary of Agriculture and the Forest
22 Service from using herbicides in the Pacific Northwest Region.
23 See Northwest Coalition for Alternatives to Pesticides v.

24 ¹NCAP, for purposes of this mediated agreement, also
25 includes Oregon Environmental Council and Portland Audubon
26 Society.

1 Block, Civil No. 83-6272-E-BU (D. Ore. 1984).² In turn, NCAP
2 noticed its opposition to that motion and Mr. Merrell sought to
3 intervene. OFS joined in the government's motion.

4 Recognizing that a better way must exist for resolving
5 the dispute, the parties and the court looked toward the
6 alternative of mediation. One day after the court ordered the
7 parties to mediate, they began the process in earnest. They
8 did so with the able assistance of three mediators; Elaine
9 Hallmark, Bryan Johnston and Sid Lezak. Numerous meetings took
10 place among the participants in March, April and May of 1989,
11 culminating in agreement. Specifically:

12 1. In implementing the ROD, the Forest Service's
13 Pacific Northwest Region shall comply with the provisions set
14 out in the accompanying document, entitled "Exhibit A to
15 Mediated Agreement" ("Exhibit A"). Those provisions are
16 incorporated as part of this mediated agreement. As used
17 throughout this document, "mediated agreement" includes Exhibit
18 A. Moreover, Exhibit A is the Forest Service's Pacific
19 Northwest Region's interpretation of its obligations under the
20 ROD.

21 2. Each party agrees to be bound by the terms of the
22 mediated agreement. OFS enters into the mediated agreement
23 solely for the purpose of reaching settlement here. OFS does

24 ²Subsequent references to the lawsuit shall substitute
25 Clayton Yeutter, the current Secretary of the United States
26 Department of Agriculture, as lead defendant.

1 not endorse the terms set out in Exhibit A or the
2 interpretation placed on them in the mediated agreement.

3 3. Once the court dismisses with prejudice
4 plaintiffs' and intervenor-applicant's complaints against the
5 vegetation management program of the Secretary of Agriculture
6 and the Forest Service in Northwest Coalition for Alternatives
7 to Pesticides v. Yeutter, supra, the Forest Service's Pacific
8 Northwest Region hereby adopts as part of its administrative
9 practice Exhibit A's terms. Written directives will issue
10 within six months from that event so as to ensure that Exhibit
11 A's provisions are recognized by personnel as being so
12 incorporated into the agency's administrative practice. Copies
13 of the written directives as they issue will be provided to the
14 parties to the mediated agreement. The absence of written
15 directives is no defense to a claim of failure to conform to
16 the mediated agreement.

17 4. The parties to this mediated agreement are
18 entitled to maintain an action to enforce or seek judicial
19 review of compliance with it. Any trivial violation shall not
20 give rise to a cause of action.

21 5. If any dispute arises about the agency's
22 incorporation of or compliance with the mediated agreement, any
23 party to it, prior to initiating any legal proceeding, shall
24 notify in writing the Regional Forester and the other parties
25 to the mediated agreement. The notice shall set forth the
26 the bases for the allegation(s) with sufficient detail to put
STIPULATED ORDER--PAGE SEVEN

1 the Forest Service on notice about the disputed issues. It
2 shall be given thirty days before bringing an action under the
3 above paragraphs. Upon notice being provided, the Regional
4 Forester or designated official and the aggrieved party, plus
5 the other parties to this mediated agreement if they elect,
6 will confer with the aim of settling the controversy and make a
7 good faith effort to resolve the dispute without litigation.
8 If the Forest Service's proposed disputed action does not allow
9 for thirty days' notice prior to implementation, reasonable
10 notice under the circumstances shall suffice. If upon request
11 the Forest Service does not promptly stay the disputed action
12 pending completion of settlement discussion(s), no additional
13 notice shall be required.

14 6. The parties agree that Paul Merrell should be
15 granted his application to intervene in Northwest Coalition for
16 Alternatives to Pesticides v. Yeutter, supra.

17 7. NCAP, OFS and Mr. Merrell shall join the federal
18 government in a motion asking the court to dissolve the
19 injunction and dismiss with prejudice the complaints against
20 the vegetation management program of the Secretary of
21 Agriculture and the Forest Service in Northwest Coalition for
22 Alternatives to Pesticides v. Yeutter, supra. NCAP withdraws
23 its objections to the legality of the ROD and FEIS to
24 facilitate this mediated agreement. Dismissal of Mr. Merrell's
25 complaint in intervention is without prejudice to any
26 subsequent action by him as to how the Forest Service manages
STIPULATED ORDER--PAGE EIGHT

1 vegetation within the Siuslaw National Forest, including any
2 claim about the ROD and FEIS for managing vegetation regionally
3 insofar as they apply or relate to the Siuslaw National Forest.
4 If Mr. Merrell maintains an action for the limited purpose
5 stated above, he agrees to limit the relief he seeks to the
6 boundaries of the Siuslaw National Forest. The foregoing
7 provision, however, shall not limit Mr. Merrell's right to
8 raise any claim about the adequacy of the ROD and FEIS for
9 managing vegetation regionally to the extent those documents
10 are raised as a defense in any such action.

11 8. Upon the court dissolving the injunction and
12 dismissing with prejudice the complaints against the vegetation
13 management program of the Secretary of Agriculture and the
14 Forest Service in Northwest Coalition for Alternatives to
15 Pesticides v. Yeutter, supra, Mr. Merrell and NCAP hereby
16 withdraw their administrative appeals of the ROD currently
17 pending before the Chief of the Forest Service. In addition,
18 neither NCAP nor Mr. Merrell shall oppose the Chief of the
19 Forest Service from vacating the existing administrative stay
20 of the ROD. In the event the Chief of the Forest Service
21 vacates the stay, OFS hereby withdraws its administrative
22 appeal of the ROD.

23 9. The Forest Service's Pacific Northwest Region and
24 Mr. Merrell intend to further discuss how to manage vegetation
25 in the Siuslaw National Forest with the aim of avoiding any
26 subsequent litigation, including but not limited to whether the
STIPULATED ORDER--PAGE NINE

1 injunction remains in effect in Merrell v. Block, Civil No. 81-
2 6138-E (D.Ore. 1983), affirmed sub nom., Save Our Ecosystems v.
3 Clark, 740 F.2d 1275 (9th Cir. 1984). The other parties to the
4 mediated agreement shall be invited to participate in those
5 discussions before any substantive agreements have been
6 concluded. Mr. Merrell maintains that the injunction in
7 Merrell v. Block, supra, remains in effect. The Forest Service
8 contends that the injunction in that case has self-dissolved.
9 If litigation should resume in that case, Mr. Merrell agrees
10 not to oppose any application to intervene that may be filed by
11 OFS or NCAP.

12 10. The mediated agreement only applies to how the
13 Forest Service's Pacific Northwest Region implements its ROD.

14 11. Any oral statement, recording or writing made or
15 used by any party or its attorney leading to this agreement or
16 Exhibit A, as well as any oral statement, recording or writing
17 made or used in the course of mediation, shall not be offered
18 for any purpose in any administrative or judicial proceeding.

19 12. Although third parties may seek judicial review of
20 the Forest Service's Pacific Northwest Region's compliance with
21 Exhibit A's terms, they may do so only upon final agency action
22 that injures or threatens an otherwise legally cognizable
23 interest. As to third parties, the failure of the agency to
24 adhere to any terms contained in Exhibit A shall not give rise
25 to a cause of action independent of applicable statute, rule,

26 STIPULATED ORDER--PAGE TEN

1 regulation or any other legally cognizable interest.

2 13. In the event a third party attempts to bring an
3 action challenging the adequacy of the FEIS or the ROD, the
4 parties here agree that no provision of the mediated agreement--
5 --including Exhibit A--should be deemed an admission against
6 interest or otherwise used against the agency.

7 14. The parties' consent to the mediated agreement is
8 conditioned upon entry by the court of the proposed stipulated
9 order attached hereto as Exhibit B.

10 15. The parties to the mediated agreement are to bear
11 their own attorneys fees, expenses and costs incurred to date.

12 Executed by the parties this 24th day of May, 1989.

13 Mary O'Brien
14 By MARY O'BRIEN
15 For Northwest Coalition for Alternatives to
16 Pesticides, Portland Audubon Society,
17 and Oregon Environmental Council

18 Paul Merrell
19 BY PAUL MERRELL

20 James Torrence
21 By JAMES TORRENCE
22 For United States Forest Service,
23 Pacific Northwest Region

24 Terry Witt
25 By TERRY WITT
26 For Oregonians for Food and Shelter

STIPULATED ORDER--PAGE ELEVEN

1 (Exhibit A to Mediated Agreement, cont., page two)

2 (2) Expense: If all methods (including no-
3 action) other than 2,4-D would render
4 resource management goals untenable
5 economically, then they are too expensive.

6 b. If the agency is considering the use of 2,4-D, it
7 must make that consideration known to the public
8 at the earliest practicable time.

9 c. Additional guidance for implementing these
10 directives is set out in the section entitled
11 site-specific analysis.

12 B. REGIONAL COORDINATOR

13 1. A Regional Coordinator in the Forest Service's Pacific
14 Northwest Region has, but is not limited to, the
15 following responsibilities:

16 a. Review selected proposed projects that may have
17 implications for the use of herbicides to treat
18 competing and unwanted vegetation before a
19 decision issues to proceed with them;

20 b. Monitor agency compliance with its program to
21 prevent and treat competing and unwanted
22 vegetation, with one of those duties being to
23 insure that the agency's practice reasonably
24 conforms with the Regional expectation governing
25 the use of herbicides and other vegetation
26 management methods.

c. Arrange for annual meetings open to the public, to
address ideas, progress, and difficulties
regarding the agency's program to prevent and
treat competing and unwanted vegetation.

d. Serve as a contact with the public regarding
Regional vegetation management issues.

e. Continue to develop, arrange and incorporate new
information about vegetation management methods.

STIPULATED ORDER--PAGE THIRTEEN

1 C. SITE SPECIFIC ANALYSES

2 1. In planning for, and before proceeding with site-
3 specific projects that may have implications for
4 vegetation management, one requirement is to consider
and analyze the strategy of prevention.

5 a. The following questions are part of the analysis:

6 (1) What is the nature and role of associated
vegetation?

7 (2) Do conditions exist that favor the presence
8 of competing and unwanted vegetation?

9 (3) If conditions exist that favor the presence
10 of competing and unwanted vegetation, have
past management actions exacerbated the
situation?

11 (4) Do natural controls exist on the site?

12 (5) Can management actions be taken that either
13 encourage natural controls or help avoid the
conditions that favor the presence of
14 competing and unwanted vegetation?

15 (6) Is it feasible to undertake the management
16 actions, and if not, why? If undertaken, are
impacts on other Forest Service objectives
and goals acceptable?

17 b. In considering prevention at the planning stage of
18 site specific projects, the analysis of the
strategy as described above is to be made at the
earliest reasonable time.

19 c. Although not considered a substitute for
20 prevention, early treatment methods should be
21 seriously considered where prevention alone is
insufficient or infeasible.

22 d. The site-specific analysis is to take place in
23 conjunction with and part of the environmental
review of the project under the National
24 Environmental Policy Act.

1 2. In planning for, and before proceeding with site-
2 specific projects to treat competing or unwanted
3 vegetation, another requirement is to analyze the
 proposed strategy.

4 a. The following elements are basic to the analysis:

- 5 (1) an understanding of the resource management
 goals and objectives for the site;
- 6 (2) required mitigation measures and anticipated
7 resource outputs;
- 8 (3) potential risk of adverse human health
 effects, for both workers and the public;
- 9 (4) risk of environmental damage;
- 10 (5) project feasibility, which is defined by
11 logistical considerations, including timing
 of the project as well as the availability of
12 money, people, time, and equipment; and,
- 13 (6) potential for development of preventive
14 strategies through post habitat modifications
 or the complementing of natural ecosystems
 and processes.

15 b. Also basic to the analyses is a consideration of
16 potential environmental effects for proposed
17 projects, as well as the project's design and
18 measures to mitigate adverse effects. The
19 diversity and integrity of the natural ecosystem
20 and long-term productivity are major components of
21 the analysis.

1 c. Additional elements to the analyses are as
2 follows:

- 3 (1) describe and interpret the physical and
4 biological characteristics of the site, with
5 emphasis on potential competition, diversity,
6 and production, including:
7
8 (a) the management history of the site;
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10 (b) the vegetation management history of the
11 site, including specific past treatments
12 and known effects;
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14 (c) plant associations that have
15 demonstrated a beneficial, neutral or
16 problematic impact on this (or similar)
17 sites;
18
19 (d) the proportion of the site on which
20 vegetation is or may become a problem;
21 and,
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23 (e) surface and groundwater characteristics
24 and relationships on the site, as well
25 as soil types and potential for impact.
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- (2) Evaluate the relationship between the associated vegetation and the potential to adversely impact specific management goals and objectives, based on operational experience, existing data, or research results.
- (3) Identify the least amount of acreage that needs to be treated. Look for specific early treatment opportunities, with attention to the minimal corrective action needed.
- (4) Consider the efficacy of the proposal and alternative actions, and explain how efficacy was determined.

1 (5) Evaluate the costs of the alternatives,
2 including:

3 (a) costs such as:

- 4 --administration
- 5 --training
- 6 --performance of the work
- 7 --emergency response planning
- 8 --notification and posting
- 9 --herbicide storage
- 10 --marking buffers and sensitive areas
- 11 --pre- and post-treatment monitoring
- 12 --other mitigation measures
- 13 --public meetings and information
14 sessions
- 15 --protective equipment and clothing
- 16 --public information center and hotline
- 17 --recordkeeping

18 (b) costs and benefits of foregoing action
19 pending development of more complete
20 information.

21 (6) Evaluate specific to the project the
22 risks to humans, fish and wildlife, as
23 well as to the physical environment, that may
24 arise from the proposal.

25 (7) Predict the expected results of the proposed
26 course of action, including the expected
occupancy of associated vegetation that would
result and the degree to which it can be
tolerated.

(8) Describe what information needs to be tracked
to determine the beneficial roles and
competition of associated vegetation or
productivity of the site over time, the
selection of control sites for no action in
order to draw comparisons with the treatment,
and identify post-treatment evaluations to
assess efficacy.

d. The analyses are to take place in conjunction with
and part of the environmental review of the
project under the National Environmental Policy
Act.

1 D. PUBLIC PARTICIPATION

- 2 1. When a site-specific project to prevent or treat
3 competing or unwanted vegetation is being considered,
4 the official responsible for that project is to notify
5 the public. This notice is to be given at or before
6 the scoping stage of the environmental review of the
7 project under the National Environmental Policy Act.
- 8 2. Before a decision is made to proceed, the public is to
9 be invited to review and comment on the site specific
10 analyses undertaken in concert with the environmental
11 review of the project.
- 12 3. The public is to be notified of the final decision for
13 a site-specific project as soon as it has been made.

14 E. MONITORING AND EVALUATION

- 15 1. In monitoring Forest-wide vegetation management
16 programs, address the following points:
- 17 a. The projected needs for vegetative management by
18 method over the next three to five years;
- 19 b. Describe how the projected need for treatment can
20 be reduced, and identify the steps that can be
21 taken to reduce reliance on herbicides and
22 prescribed burning; and,
- 23 c. Determine criteria that can be used to review
24 progress on an annual basis toward reducing
25 reliance on herbicides and prescribed burning.

1 d. How well the program is achieving resource
2 management goals such as:

- 3 (1) preparation of sites for planting trees
4 (2) seedlings planted and survival rates
5 (3) release of young conifers from competing
6 vegetation
7 (4) managing fuel hazards and preventing
8 wildfires
9 (5) improving range condition for livestock
10 (6) controlling noxious weeds
11 (7) improving wildlife habitat
12 (8) maintaining recreational and administrative
13 facilities
14 (9) maintaining roadside and utility corridors
15 (10) supporting tree genetics and other research
16 programs
17 (11) maintaining timber growth and yields to meet
18 long-term forest product needs of the area.

16 2. In monitoring individual vegetation management
17 projects, address the following considerations:

18 a. Site-specific post-treatment information to aid
19 future project planning, including:

- 20 (1) efficacy of treatment or no treatment
21 (2) experienced costs of the project (direct and
22 indirect)
23 (3) residue analysis as appropriate
24 (4) analysis of unintended effects as appropriate
25 (5) accidents

- 1 b. Indicate where there is missing operational
2 information regarding efficacy and explain what
 steps can be taken to fill the data gaps.
- 3 c. Facilitate, as useful, Region-wide dissemination
4 of the information gained on this site.
- 5 3. In monitoring the impacts to human health from using
6 herbicides and other methods of vegetation management,
7 the Region will have the capability to record and
8 compile essential human health information for workers
9 and the public. The capability should include the
10 following:
 - 11 a. A form for workers to use in recording possible
12 health effects connected with vegetation
13 management projects, including as appropriate:
 - 14 (1) Relevant identifying data
 - 15 (2) Herbicide formulation, listed ingredients
 - 16 (3) Other hazards
 - 17 (4) Symptoms experienced
 - 18 (5) Exposure incident(s)
 - 19 b. Systematic recordkeeping that stores pertinent
20 information about workers and the project they
21 worked on, such as:
 - 22 (1) Dates of project work, the specific
23 assignment, pesticide formulations involved
24 and the common chemical name of listed
25 ingredients, or other hazards; and,
 - 26 (2) Complaints filed by the worker.
 - 26 c. A compilation of citizen reports of possible
 health effects connected with herbicide
 applications and other methods of vegetation
 management.
 - d. Annual, Region-wide summary of reported health
 effects of vegetation management methods, so as to
 be useful for region-wide analysis and public
 information.

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PART II. INFORMATION PACKAGES

A. PREFACE. To aid Forest Service staff in implementation of the Environmental Impact Statement for Managing Competing and Unwanted Vegetation, the Forest Service plans to develop information packages for the methods of managing competing and unwanted vegetation, and for each of the herbicides available for consideration under the Record of Decision. These information packages will be available for public review and use, and will be reviewed annually, and revised as needed. Responsible opposing viewpoints will be addressed.

B. INFORMATION ABOUT METHODS.

1. Information packages will address the principal known and reasonably foreseeable health and environmental effects of each of the five methods for managing competing and unwanted vegetation.

2. Information packages will also address the use of herbicides in general, including at a minimum the following statements:

a. Synergism of Secret and Revealed Ingredients:

"The capacity of various ingredients in an herbicide formulation to act synergistically to produce toxic effects is not known. One ingredient, for instance, may be a cancer initiator, another a cancer promoter; a solvent may dry the skin, allowing enhanced passage of another ingredient across the skin into the body."

b. Male and Female Reproductive Health Risks:

"The Forest Service is uncertain whether those herbicide ingredients identified as reproductive toxins may also effect male workers who are exposed."

1 c. Susceptibility of Children

2 "Children can be particularly susceptible to
3 pesticides for quantitative and qualitative
4 physiological reasons including smaller body
5 size, incompletely functioning immune
6 systems, rapidly dividing cells (increasing
7 susceptibility to cancer), thinner blood-
8 brain barriers, and immature reproductive
9 systems."

10 c. INFORMATION ABOUT SPECIFIC HERBICIDES. Information
11 packages for specific herbicides (herbicide profiles)
12 will address as concisely as possible these topics
13 where appropriate:

- 14 1. Reasonably foreseeable significant acute or
15 chronic effects on human health from exposure to
16 the herbicide as proposed for use under the
17 agency's program, including data gaps in the
18 available literature.
- 19 2. Reasonably foreseeable risks posed by
20 contaminants, inert ingredients, and carriers in
21 the herbicides commercial formulations, including
22 data gaps in identifying and characterizing inert
23 ingredients and carriers.
- 24 3. Responsible anecdotal information or reports about
25 actual acute or chronic effects on human health
26 arising from exposure to the herbicide or its
commercial formulations, including the range of
symptoms associated with known incidents of mild
or severe poisoning from the herbicide, its
commercial formulations or methods of application,
and summary information from an annual Region-wide
compilation of worker/citizen complaints.
4. Acute or chronic effects on the health of fish and
wildlife from exposure to the herbicide as
proposed for use or experienced under the agency's
program, including data gaps in the available
literature.
5. Environmental fate of the herbicide in the air,
soil, vegetative communities and water, including
data gaps in the available literature, and
verified methods of residue detection, potential
for by-products if burned.

26 STIPULATED ORDER--PAGE TWENTY TWO

- 1 6. Societal attitudes and perceptions about the use
2 of herbicide.

3 PART III. PROCESS FOR NEW INFORMATION

4 A. REGIONAL COORDINATOR RESPONSIBILITIES. As the Region
5 implements a program for managing competing and
6 unwanted vegetation, it will continue to develop and
7 incorporate new information about vegetation management
8 methods, their usefulness and effects. Accordingly,
9 the Regional Coordinator has the following
10 responsibilities:

- 11 1. Monitor research findings about vegetation
12 management methods on a continuing basis.
- 13 2. Revise assessments of the risk and effects of
14 using vegetation management methods as needed,
15 based on field experience, research findings, and
16 new information about vegetation management
17 methods or their effects.
- 18 3. Recommend revisions to mitigation methods and
19 management practices as needed to reflect new
20 information about vegetation management methods.
- 21 4. Incorporate new information about herbicide use,
22 availability, and effects in annual revisions of
23 information packages.
- 24 5. Disseminate new information regarding prevention
25 and management of vegetation problems.
- 26 6. Indicate whether or not underlying data are
 available to the public.

19 B. SPECIFIC INFORMATION NEEDS. As a beginning to the
20 above process, the Forest Service needs to locate,
21 assess, and to the extent possible, make the
22 information available to the public as follows:

- 23 1. 2,4-D Contaminants: Determine the nature and
24 extent of 2,4-D contamination with 2,3,7,8-TCDD.
- 25 2. 2,4-D and Malignant Lymphoma: Monitor research
26 findings. Review and revise mitigation measures
 and management of risk as needed. Revise risk
 discussions in herbicide profiles as necessary
 annually.

- 1 3. Inert Ingredients: Attempt to determine the inert
2 ingredients used in the herbicides available, and
3 seek clarification of EPA's screening process for
4 rating inert ingredients. Evaluate the need to
5 eliminate the use of formulations that contain
6 formaldehyde.
- 7 4. Acute toxicity: Seek acute toxicity information
8 for the full formulation of herbicides cited in
9 the EIS. Evaluate the need to eliminate
10 formulations that have not been tested for legally
11 required acute toxicity (i.e. LD50, skin and eye
12 irritation).
- 13 5. Detecting Herbicides in Water: Determine
14 availability of validated methods for detecting
15 the thirteen programmed herbicides (and their
16 ingredients) in water.
- 17 6. Burning Herbicide Treated Sites: Determine
18 whether or not burning vegetation that has been
19 treated with herbicide releases toxic chlorinated
20 compounds into the environment.
- 21 7. Pesticides in Soil: Review persistence and
22 mobility ratings cited in NCAP's DEIS comments and
23 revise information packages if appropriate.
- 24
- 25
- 26

EXHIBIT B TO MEDIATED AGREEMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST COALITION FOR ALTERNATIVES)
TO PESTICIDES, et al.,)

Plaintiffs,)

and)

PAUL MERRELL,)

Plaintiff-Intervenor,)

v.)

CLAYTON YEUTTER,¹ Secretary, United)
States Department of Agriculture,)
et al.,)

Defendants,)

and)

OREGONIANS FOR FOOD AND SHELTER, INC.,)

Defendant-Intervenor.)

Civil No. 83-6272-E-BU

PROPOSED STIPULATED
ORDER

In a motion dated January 24, 1989, defendants asked
this court to dissolve its previous order enjoining the
Secretary of Agriculture from using herbicides within Region
Six of the United States Forest Service. The motion was made
pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.
Its basis was the Forest Service's Pacific Northwest Region's

¹Pursuant to Rule 25(d)(1) of the Federal Rules of Civil
Procedure, Clayton Yeutter is substituted for Richard Lyng as
the Secretary of the United States Department of Agriculture.

10. Caveat; none of the foregoing is with prejudice to the reservations governing the Siuslaw National Forest granted Paul Merrell under the mediated agreement; and,

11. Confirm that each party is to bear its own attorneys fees, expenses and costs incurred to date.

After considering the joint motion, the mediated agreement and the record in this action, I grant these eleven requests, and,

IT IS SO ORDERED.

Dated this 5th day of May, 1989.

James M. Burns
JAMES M. BURNS
United States District Court Judge

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List of Contributors

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