SEE SIGNATURE PAGE FOR
A COMPLETE LIST OF COUNSEL
SUBMITTING THE DOCUMENT
FOR FILING

U. S. DISTRICT COURT
DISTRICT OF OREGON
FILED
MAR 24 ...
ROBERT M. CHRIST, CLERK
BY T. E. Roberts DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST COALITION FOR ALTERNATIVES TO PESTICIDES, et al., Plaintiffs, v. RICHARD LYNG[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 JOINT MOTION TO DISSOLVE INJUNCTION AND DISMISS COMPLAINT WITH PREJUDICE

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

---

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

FORM OBD-183
MAR 83

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

Respectfully submitted this 24th day of May, 1989.

RALPH A. BRADLEY
Bradley and Gordon
296 East Fifth Avenue, Suite 309
Eugene, Oregon 97401
(503) 343-8247

Attorney for Plaintiffs

PAUL MERRELL
7493 East Five Rivers Road
Tidewater, Oregon 97390
(503) 528-7151

Pro Se for Intervenor-Applicant

ALLAN D. BROCK
U.S. Department of Justice
Land and Natural Resources Division
General Litigation Section/Room 846
P.O. Box 663
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20044-0663
(202) 272-8237

Attorney for Defendants

JOHN DILORENZO
O'Connell and Goyak
One Financial Center, Suite 800
121 S.W. Morrison Street
Portland, Oregon 97204-3138
(503) 227-2900

Attorney for Defendant-Intervenor

FORM OBD-183
MAR 81

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

U. S. DISTRICT COURT
DISTRICT OF OREGON
FILED
MAY 24 1989
ROBERT M. CHRIST, CLERK
BY D. Roberts DEPUTY

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 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.

[1]Pursuant 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.

FORM OBD-183
MAR 83

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

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

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

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

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

FORM OBD-183
MAR 83

4. Recognize that this court shall not retain jurisdiction for supervising compliance under the mediated agreement;

5. Provide that the terms of the mediated agreement represent obligations on the part of Forest Service's Pacific Northwest Region that are enforceable by the parties to it and subject to judicial review in accordance with the terms of the mediated agreement;

6. Conclude that no controversy remains among the parties to this action regarding the ROD and FEIS, in that as part of the mediated agreement all parties thereto have consented to entry of this order;

7. Conclude further that defendants' motion, dated January 24, 1989, is moot;

8. Dissolve that portion of the prior order in this action enjoining the Secretary of Agriculture and the United States Forest Service from implementing the ROD;

9. Dismiss with prejudice the complaints in this action against the vegetation management program of the Secretary of Agriculture and the United States Forest Service;

FORM OBD-183
MAR 83

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 24 day of May, 1989.

James M. Burns

JAMES M. BURNS
United States District Court Judge

FORM OBD-183
MAR 83

MEDIATED AGREEMENT

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

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

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

---

[1]NCAP, for purposes of this mediated agreement, also includes Oregon Environmental Council and Portland Audubon Society.

FORM OBD-18
MAR 8

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

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

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

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

---

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

FORM OBD-183
MAR 83

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

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

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

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

OBD-183
MAR 83

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

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

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

FORM OBD-183
MAR 83

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

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

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

FORM OBD-193
MAR 83

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

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

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

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

FORM OBD-183
MAR 83

regulation or any other legally cognizable interest

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

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

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

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

Mary O'Brien

By MARY O'BRIEN
For Northwest Coalition for Alternatives to Pesticides, Portland Audubon Society, and Oregon Environmental Council

Paul Merrell

By PAUL MERRELL

James Torrence

By JAMES TORRENCE
For United States Forest Service, Pacific Northwest Region

Terry Witt

By TERRY WITT
For Oregonians for Food and Shelter

FORM OBD-183
MAR 83

EXHIBIT A TO MEDIATED AGREEMENT

PART I. PROGRAM IMPLEMENTATION

A. CLARIFYING MANAGEMENT DIRECTION

1. Prevention: Prevention means to detect and ameliorate the conditions that cause or favor the presence of competing or unwanted vegetation in the forests. Prevention is in contrast to treatment, which refers to activities for controlling or eradicating infestations of competing or unwanted vegetation. It also should not be confused with early treatment, which refers to activities for controlling or eradicating initial, small infestations of competing or unwanted vegetation before they interfere with the agency's objectives for managing that area or adjacent lands. Guidance for implementing this directive is set out in the section entitled Site-Specific Analyses.

2. Expectations Regarding Treatment: Acreage expectations for treatment expressed in the FEIS are not to be used to set management goals or limitations. Site-specific analysis will be used to determine which projects are needed and how many acres will be treated in order to meet vegetation management goals. Vegetation management in the Region will not rely on any single method of treatment or control. A Region-wide review of vegetation management goals and performance will be prepared annually, including a summary of acreage managed by different methods.

3. 2,4-D as a Remedy of Last Resort: Of the thirteen herbicides available for use, one of them, 2,4-D, is to be used only as a last resort. This means that 2,4-D can be used only if all other methods for managing the competing or unwanted vegetation are ineffective or too expensive.

a. Effectiveness and expense are to be measured by the following yardsticks:

(1) Effectiveness: The yardstick is whether another method for treating the competing or unwanted vegetation can achieve the resource management goal. If it does, even though not as easily or quickly as would happen with the use of 2,4-D, then that other method is deemed "effective". Conversely, if all other methods cannot achieve the resource management goal but 2,4-D can, then, the other methods are ineffective.

FORM OBD-183
MAR 81

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

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

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

B. REGIONAL COORDINATOR

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

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

b. Monitor agency compliance with its program to prevent and treat competing and unwanted vegetation, with one of those duties being to insure that the agency's practice reasonably conforms with the Regional expectation governing the use of herbicides and other vegetation 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.

FORM OBD-183
MAR 83

C. SITE SPECIFIC ANALYSES

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

   a. The following questions are part of the analysis:

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

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

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

      (4) Do natural controls exist on the site?

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

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

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

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

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

FORM OBD-183
MAR 91

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

a. The following elements are basic to the analysis:

(1 an understanding of the resource management goals and objectives for the site;

(2) required mitigation measures and anticipated resource outputs;

(3) potential risk of adverse human health effects, for both workers and the public;

4 risk of environmental damage;

(5) project feasibility, which is defined by logistical considerations, including timing of the project as well as the availability of money, people, time, and equipment; and,

(6) potential for development of preventive strategies through post habitat modifications or the complementing of natural ecosystems and processes.

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

OBD-183
MAR 83

c. Additional elements to the analyses are as follows:

(1) describe and interpret the physical and biological characteristics of the site, with emphasis on potential competition, diversity, and production, including:

(a) the management history of the site;

(b) the vegetation management history of the site, including specific past treatments and known effects;

(c) plant associations that have demonstrated a beneficial, neutral or problematic impact on this (or similar) sites;

(d) the proportion of the site on which vegetation is or may become a problem; and,

(e) surface and groundwater characteristics and relationships on the site, as well as soil types and potential for impact.

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.

FORM OBD-183
MAR 83

Evaluate the costs of the alternatives, including:

(a) costs such as:

--administration
--training
--performance of the work
--emergency response planning
--notification and posting
--herbicide storage
--marking buffers and sensitive areas
--pre- and post-treatment monitoring
--other mitigation measures
--public meetings and information sessions
--protective equipment and clothing
--public information center and hotline
--recordkeeping

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

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

Predict the expected results of the proposed 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.

FORM OBD-183
MAR 83

D. PUBLIC PARTICIPATION

1. When a site-specific project to prevent or treat competing or unwanted vegetation is being considered, the official responsible for that project is to notify the public. This notice is to be given at or before the scoping stage of the environmental review of the project under the National Environmental Policy Act.

2. Before a decision is made to proceed, the public is to be invited to review and comment on the site specific analyses undertaken in concert with the environmental review of the project.

3. The public is to be notified of the final decision for a site-specific project as soon as it has been made.

E. MONITORING AND EVALUATION

1. In monitoring Forest-wide vegetation management programs, address the following points:

   a. The projected needs for vegetative management by method over the next three to five years;

   b. Describe how the projected need for treatment can be reduced, and identify the steps that can be taken to reduce reliance on herbicides and prescribed burning; and,

   c. Determine criteria that can be used to review progress on an annual basis toward reducing reliance on herbicides and prescribed burning.

ORM OBD-183
MAR 83

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

(1) preparation of sites for planting trees

(2) seedlings planted and survival rates

(3) release of young conifers from competing vegetation

(4) managing fuel hazards and preventing wildfires

(5) improving range condition for livestock

(6) controlling noxious weeds

(7) improving wildlife habitat

(8) maintaining recreational and administrative facilities

(9) maintaining roadside and utility corridors

(10) supporting tree genetics and other research programs

(11) maintaining timber growth and yields to meet long-term forest product needs of the area.

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

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

(1) efficacy of treatment or no treatment

(2) experienced costs of the project (direct and indirect)

(3) residue analysis as appropriate

(4) analysis of unintended effects as appropriate

(5) accidents

ORM OBD-183
MAR 93

b. Indicate where there is missing operational information regarding efficacy and explain what steps can be taken to fill the data gaps.

c. Facilitate, as useful, Region-wide dissemination of the information gained on this site.

3. In monitoring the impacts to human health from using herbicides and other methods of vegetation management, the Region will have the capability to record and compile essential human health information for workers and the public. The capability should include the following:

a. A form for workers to use in recording possible health effects connected with vegetation management projects, including as appropriate:

(1 Relevant identifying data

(2) Herbicide formulation, listed ingredients

(3) Other hazards

(4) Symptoms experienced

(5 Exposure incident(s)

b. Systematic recordkeeping that stores pertinent information about workers and the project they worked on, such as:

(1) Dates of project work, the specific assignment, pesticide formulations involved and the common chemical name of listed ingredients, or other hazards; and,

(2) Complaints filed by the worker.

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.

FORM OBD-183
MAR 83

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."

FORM OBD-183
MAR 83

c. Susceptibility of Children

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

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

1. Reasonably foreseeable significant acute or chronic effects on human health from exposure to the herbicide as proposed for use under the agency's program, including data gaps in the available literature.

2. Reasonably foreseeable risks posed by contaminants, inert ingredients, and carriers in the herbicides commercial formulations, including data gaps in identifying and characterizing inert ingredients and carriers.

3. Responsible anecdotal information or reports about actual acute or chronic effects on human health 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.

OBD-183
MAR 83

6. Societal attitudes and perceptions about the use of herbicide.

PART III. PROCESS FOR NEW INFORMATION

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

1. Monitor research findings about vegetation management methods on a continuing basis.

2. Revise assessments of the risk and effects of using vegetation management methods as needed, based on field experience, research findings, and new information about vegetation management methods or their effects.

3. Recommend revisions to mitigation methods and management practices as needed to reflect new information about vegetation management methods.

4. Incorporate new information about herbicide use, availability, and effects in annual revisions of information packages.

5. Disseminate new information regarding prevention and management of vegetation problems.

6. Indicate whether or not underlying data are available to the public.

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

1. 2,4-D Contaminants: Determine the nature and extent of 2,4-D contamination with 2,3,7,8-TCDD.

2. 2,4-D and Malignant Lymphoma: Monitor research findings. Review and revise mitigation measures and management of risk as needed. Revise risk discussions in herbicide profiles as necessary annually.

FORM OBD-183
MAR 81

3. Inert Ingredients: Attempt to determine the inert ingredients used in the herbicides available, and seek clarification of EPA's screening process for rating inert ingredients. Evaluate the need to eliminate the use of formulations that contain formaldehyde.

4. Acute toxicity: Seek acute toxicity information for the full formulation of herbicides cited in the EIS. Evaluate the need to eliminate formulations that have not been tested for legally required acute toxicity (i.e. LD50, skin and eye irritation).

5. Detecting Herbicides in Water: Determine availability of validated methods for detecting the thirteen programmed herbicides (and their ingredients) in water.

6. Burning Herbicide Treated Sites: Determine whether or not burning vegetation that has been treated with herbicide releases toxic chlorinated compounds into the environment.

7. Pesticides in Soil: Review persistence and mobility ratings cited in NCAP's DEIS comments and revise information packages if appropriate.

FORM OBD-183
MAR 91

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

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

[1]Pursuant 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.

FORM OBD-183
MAR 83

Record of Decision (ROD) and accompanying new environmental impact statement, entitled Managing Competing and Unwanted Vegetation--Final Environmental Impact Statement (FEIS). Oregonians for Food and Shelter subsequently joined in the motion.

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

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

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

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

FORM OBD-183

(Exhibit B to Mediated Agreement, cont., page three)

4. Recognize that this court shall not retain jurisdiction for supervising compliance under the mediated agreement;

5. Provide that the terms of the mediated agreement represent obligations on the part of Forest Service's Pacific Northwest Region that are enforceable by the parties to it and subject to judicial review in accordance with the terms of the mediated agreement;

6. Conclude that no controversy remains among the parties to this action regarding the ROD and FEIS, in that as part of the mediated agreement all parties thereto have consented to entry of this order;

7. Conclude further that defendants' motion, dated January 24, 1989, is moot;

8. Dissolve that portion of the prior order in this action enjoining the Secretary of Agriculture and the United States Forest Service from implementing the ROD;

9. Dismiss with prejudice the complaints in this action against the vegetation management program of the Secretary of Agriculture and the United States Forest Service;

FORM OBD-183
MAR 83

(Exhibit B to Mediated Agreement, cont., page four)

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