Senate Natural Resources
EXHIBIT NO. 2
DATE March 4, 2009
BILL NO. HB139

Timber Program Appeal - Litigation Status

Updated January 30, 2009

Unit Regional Summary

UNIT	Project Name	NEPA doc title if different	NEPA type	Decision Date	Original Planned FY Offer Date	Est Vol MMBF	Appealed	Appellant	Litigated	Litigant	Status	Anticipated FY Offer	Comments
B-D	Basin Creek Haz Fuels		EIS	January-05	2005	15.9	March-05	NEC	June-05	Wildwest Inst v Kimbell	Sold	Sold	Upheld by 9th Ciruit. All logging and road building completed.
B-D	Thompson Park Salvage (tied to Basin)		CE CFR 220.6(d)(4) repair and maintenance of roads, trails and landline boundaries	Summer 2009	2005	0.3					Revising NEPA	FY09	Planning reviewed Draft EA and felt it do not address purpose and need. Decision was made to not to go forward with EA and rescope project as hazard tree removal along trail system only
B-D	Price Powder Salvage		CE Cat.13	August-07	2007	1.9	October-07	AWR and Native ecocsystems	June-08	AWR and NEC	Decision Withdrawn after litigation was filed.	FY09	Beetle hit Lodgepole pine
B-D	Grasshopper Stewardship		EIS	June 20-2005	2006	1.4	9/7/2005 Withdrawn	AWR and Native Ecocsystems	December-07	Patty Lovass	in Litigation	Sold	No PI. Sale can continue pending final decision
B-D	Cowfly		CE Cat.13	May -31 -2007	2007	1.2	July-16-2007	AWR and Native ecocsystems	Nov-17-2007	AWR and Native ecocsystems	in Litigation	Sold	PI denied by District Court. Purchaser agreed to delay harvest until summer of 2009 to avoid PI request in the 9th Circuit.
B-D	Bear Gulch Hazardous Fuels		CE Cat. 10	March-06	2006	0.2					Sale can proceed, Rx no longer applies. Ranger to initiate 18.3 for development of new Rx	FY09	Exempt, can proceed under Cat. 10
BD	Maxville Hazardous Fuels		CE Cat. 10	February-06	Offered and sold	2.7	No Appeal				No Activity		Adverse Cat. 10 Decision. No decision at this time on how to preceed
B-D	Georgetown Lake Hazardous Fuels		CE Cat. 10	March-06	Offered and sold	8.7	No Appeal				No Activity		Adverse Cat. 10 Decision. To rewrite decision with EA
B-D	Meadow Creek Fuels		CE Cat. 10	December-06	Offered and sold	8.9	Yes, two Appeals	AWR and Native ecocsystems	March-08	AWR and Native ecocsystems	No Activity		Adverse Cat. 10 Decision. (Won Initial Law Suite May 4, 2007 in District Court) No dedision as this time on how to preceed
B-D	Barton Springs Commercial Thin		CE Cat. 14	February-08	March-09	0.3	Yes	AWR and Native ecocsystems	December-08	AWR and Native ecocsystems			Prep field work completed
					TOTAL	41.4							
BTR	Springer II HFR		CE Cat. 10			0.1			Yes		Will redo NEPA	FY09	Project work never began.
BTR	Painted Rocks West		CE Cat. 10			0.4			Yes		Will redo NEPA	FY09	
					TOTAL	0.5							

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IPNF	Mission Brush		EIS	May-06	2005	24.4	June-06	Lands Council & WildWest Institute	October-06	Lands Council v McNair	In process. District court briefings on the complaint were completed 12/08. Awaiting the judge's decision on the merits of the complaint	FY06	2 sales awarded (9.4MMBF); (3.8MMBF removed)(5.6MMBF enjoined), 1 sale no bids (15 MMBF), won't reoffer until litigation is complete.
IPNF	Iron Honey		EIS	February-02	2002	17.0	April-02	Ecology Center et al.	October-02	Lands Council v Powell	Project has been dropped - **will not** proceed w/ supplemental analysis for a new decision	N/A	Lost in 9th Circuit
IPNF	Deerfoot		EA	August-03	2004	7.6	September-03	Lands Council & KEA	July-04	Lands Council v Powell	New decision issued 5/08 and affirmed on administrative appeal (6/08). Currently awaiting improved market conditons to offer.	FY09 or beyond	Cleared to offered/sold/awarded.
IPNF	Templemental Fuels		EA	March-06	2006	4.5	April-06	Idaho Cons League; reversed twice	N/A		New NEPA decision issued 4/08. Sale bid date was 8/08	SOLD	
IPNF	Tumbledown		EA	May-07	2007	4.9	N/A	N/A	See Comments	See Comments	EA issued 12/08. Decision expected 2/09	Currently under contract	Was a CE 10 project, but NEPA required to be reworked per 9th Circuit decision in Sierra Club v. Bosworth, which invalidated Hazardous Fuels Reduction Categorical Exclusion.
IPNF	Lone Mountain		CE Cat. 10			0.0			Yes		Will not redo NEPA	None	No plans to move forward. No bids
IPNF	Emerald Creek Campground		CE Cat. 10			0.0			Yes		Will not redo NEPA	None	No plans to move forward. No bids
					TOTAL	58.4							
CLWR	Avon Timber Sale Bear Stew Stewardship	Corraled Bear	EIS	December-08	1st and 4th quarter FY10	18.0	January-09	Friends of the Clearwater			District Ranger met with appellant 1/27/09 to attempt to resolve appeal	1st and 4th quarter FY10	Note from Mark Craig (1/29/2009): Appeal has been withdrawn
					TOTAL	18.0							
CUS	East Otter	East Fork Otter Hazardous Fuels	CE	March-07	2007	3.3			November-08	Sierra Club v Bosworth	Timber Sale contract was awarded 9/10/2007. Forest is currently preparing new NEPA document (EA) with decision expected in late March 2009.	Sold	Suspension letter was sent to Purchaser on 12/18/2008. No on-the-ground work has occurred on this sale.
CUS	Slim Buttes Intg Veg		CE Cat. 10			0.6			Yes		Don't know if they will redo NEPA	Unknown	50 acres of 1360 acres of slasing completed. Burning of hand piles remains to be completed.
					TOTAL	3.9							

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FLAT	Elk Brush, Swaney Dun & Sylvia Ingalls Salvage Sales	Sheppard Creek Post-fire Project	EIS	October-08	2009	34.2	December-09	WildWest Institute, Alliance for the Wild Rockies, The Lands Council, Friends of the Wild Swan, and Stephen Braun			Upheld on Appeal 1/15/2009	SOLD AS 3 SALES Q1 FY09	Logging in progress
					TOTAL	34.2							
GAL	Big Timber Canyon		CE	Feb-08		0.9		Native Ecosystem Council	Feb-08	Native Ecosystem Council	Finshed our response to plaintiffs response brief; awaiting ruling from Lovett's court	FY10	Reworked the contract after no bids and consulted with industry
GAL	Smith Creek Vegetation Treatment Project		EA	7-Dec		1.9		Native Ecosystem Council, Alliance for the Wild Rockies, Sharon Hapner	Jul-08	Native Ecosystem Council, Alliance for the Wild Rockies, Sharon Hapner	We lost on one point in Molloy's court - failure to do the mapping associated with a Forest Plan wildlife standard (key habitat components map). Supplemental EA was done, sent out for comments and we'll be responding to comments and if we find no reason to cahnge the Decision Notice, we will reissue the FONSI	FY09	One Stewardship; proposal received and extended for 90 days
					TOTAL	2.8							
HEL	Clancy - Unionville		EIS	February-03	2000	10.4	March-07	Ecology Center et al.; 5/19/03 appeal decision affirmed (previously decision was reversed in 2/01)	April-04	AWR v Kimbell	in process	FY08	in 9th circuit - hearing 12/9/08.
HEL	Elliston Face		CE	March-07	2006	4.0	April-07	Alliance for the Wild Rockies & Native Ecosystem Council	August-07	Alliance for the Wild Rockies & Native Ecosystem Council	Decision to withdraw	FY 2009	EA and FONSI by 4/09
					TOTAL	14.4							

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KOOT	West Troy (9 separate projects in EC2 litigation)		EIS	June-04	2005	4.0	Jul-04	Ecology Center et al.; appeal decision 9/16/04 affirm	11/8/2004 2/15/2006	Alliance for the Wild Rockies, et al. Cabinet Resource Group, et al. WildWest Institute v Castaneda	in process	Pending upon court settelement	on hold for resolution of grizzly bear access amendment lawsuit -Access Amendment no longer valid, back to 87 Plan. NEPA/Bear analysis being reviewed and updated to be consistent with 87 Plan. New Lawsuit 2006 (Ecology Center 2) -- District Court ruling appealed to 9th Circuit 1/07.
KOOT	Big Steep	Lower Big	EIS	June-04	2006/2007	9.6		Ecology Center; decision 10/1/04 affirm, but delay implementation	11/8/2004; 2/15/2006	Alliance for the Wild Rockies, Cabinet Resource Group, Wild West Institue v. Castaneda	in process	FY 08	Named in grizzly bear access amendment lawsuit, multiple projects. Access Ammendment no longer valid, back to 87 Plan. NEPA/Bear analysis being reviewed and updated to be consistent with 87 Plan. New Lawsuit 2006 (Ecology Center 2) -- District Court ruling appealed to 9th Circuit 1/07. Big Steep 9.6 MMBF Planned Offer FY 09
KOOT	Northeast Yaak		EIS	6/5/2005; new decision 4/16/07	2005/2006	16.7	8/10/2005; 6/4/07	Ecology Center et al.; appeal decision 9/26/05 to reverse; WildWest Institute 2007	Notice of Intent -- filed 6/22/07	Alliance for the Wild Rockies	Tentative advertise December 07	FY08	Reversed on appeal -- new decision signed 4/16/07 - Uphold on appeal -- NOI filed 6/22/07 - **Lawsuit filed 12/05/07 - Joe Mama TS awarded.**
KOOT	Lower Big		EIS	June-04	2008/2010	24.1		Ecology Center; decision 10/1/04 affirm, but delay implementation	11/8/2004; 2/15/2006	Alliance for the Wild Rockies, Cabinet Resdource Group, Wild West Institue v. Castaneda	in process	Pending upon court settelement	Named in grizzly bear access amendment lawsuit, multiple projects. Refer to Comments stated above under Lower Big.
KOOT	Whiskibas and Left Over Elk	Fortine	EIS	October-04	2006	4.1	11/1/2004	Ecology Center, Lands Council, Alliance for the Wild Rockies; decision affirmed 1/10/05	February-06	Ecology Center (WildWest Institute)	in process	Pending upon court settelement	Ad Postponed - New Lawsuit - 2006 (Ecology Center 2) District Court ruling appealed to 9th Circuit 1/07
KOOT	McSutton		EIS	May-05	May-05	3.4	July-05	Ecology Center; decision 8/31/05 affirm	February-06	Ecology Center (WildWest Institute)	in process	Pending upon court settelement	Ad Postponed - New Lawsuit - 2006 (Ecology Center 2) multiple projects - District Court ruling appealed to 9th Circuit 1/07 - Jerry's Salv 3.4 MMBF planned offer FY08 -delayed
KOOT	McSutton		EIS	May-05	May-05	18.4	July-05	Ecology Center; decision 8/31/05 affirm	February-07	Ecology Center (WildWest Institute)	in process	FY 09 -11	New Lawsuit - 2006 (Ecology Center 2) multiple projects - District Court ruling appealed to 9th Circuit 1/07
KOOT	Bristow		EA	June-04		13.5	August-04	Ecology Center; decision 9/16/04 affirmed	February-06	Alliance for the Wild Rockies, Cabinet Resource Group, Wild West Institue v. Castaneda	in process	Sold	New Lawsuit - 2006 (Ecology Center 2)District Court ruling appealed to 9th Circuit 1/07
KOOT	Davis Be Good		EIS	October-04		3.6	November-04	Ecology Center, Lands Council, Alliance for the Wild Rockies. Affirmed 1/10/05	February-06	Alliance for the Wild Rockies, Cabinet Resource Group, Wild West Institue v. Castaneda	in process	Sold	New Lawsuit - 2006 (Ecology Center 2) District Court ruling appealed to 9th Circuit 1/07

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KOOT	Elk Mtn North		EIS	October-04		3.1	November-04	Ecolgy Center, Lands Council, Alliance for the Wild Rockies. Affirmed 1/10/05	February-06	Alliance for the Wild Rockies, Cabinet Resource Group, Wild West Institue v. Castaneda	in process	Sold	New Lawsuit - 2006 (Ecology Center 2) District Court ruling appealed to 9th Circuit 1/07
KOOT	Fortine West		EIS	October-04		1.1	November-04	Ecology Center, Lands Council, Alliance for the Wild Rockies. Affirmed 1/10/05	February-06	Alliance for the Wild Rockies, Cabinet Resource Group, Wild West Institue v. Castaneda	in process	Sold - In Process of being closed.	New Lawsuit - 2006 (Ecology Center 2) District Court ruling appealed to 9th Circuit 1/07
KOOT	Upper Pipe		EIS	June-04		2.8		Ecology Center; decision 9/16/04 affirmed	February-06	Alliance for the Wild Rockies, Cabinet Resource Group, Wild West Institue v. Castaneda	in process	Sold	New Lawsuit - 2006 (Ecology Center 2) District Court ruling appealed to 9th Circuit 1/07
KOOT	Shafer Creek		EIS	June-04		2.3		Ecology Center; decision 9/16/04 affirmed	February-06	Alliance for the Wild Rockies, Cabinet Resource Group, Wild West Institue v. Castaneda	in process	Sold	New Lawsuit - 2006 (Ecology Center 2) District Court ruling appealed to 9th Circuit 1/07
KOOT	South McSwede		EA	June-04		3.9		Ecology Center; decision 9/16/04 affirmed	February-06	Alliance for the Wild Rockies, Cabinet Resource Group, Wild West Institue v. Castaneda	in process	Sold - In Process of being closed.	New Lawsuit - 2006 (Ecology Center 2) District Court ruling appealed to 9th Circuit 1/07
KOOT	Alder Creek		EA	June-05		1.3		Alliance for Wild Rockies, affrimed 9/13/05	February-06	Alliance for the Wild Rockies, Cabinet Resource Group, Wild West Institue v. Castaneda	in process	Sold	New Lawsuit - 2006 (Ecology Center 2) District Court ruling appealed to 9th Circuit 1/07
KOOT	Cow Creek		EA	June-05		7.1		Alliance for Wild Rockies, affrimed 9/13/05	February-06	Alliance for the Wild Rockies, Cabinet Resource Group, Wild West Institue v. Castaneda	in process	Sold	New Lawsuit - 2006 (Ecology Center 2) District Court ruling appealed to 9th Circuit 1/07
KOOT	West Elk Interface		CE Cat. 10			0.0					Won't redo NEPA		No plans to move forward due to helicopter volume
KOOT	Big Parsnip HFR		CE Cat. 11			0.0					Will redo NEPA	Unknown at this time	No plans to proceed with this project at this time.
					TOTAL	119.0							

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L & C	Eltein Ridge		CE	Oct-07	2006	2.2	appealed 9/1/2006 remanded; appealed again in December of 2007 upheld.	NEC appealed, Decision upheld on Jan.08, Cat.10 Decision	N/A	N/A	EA Decision to come out in July of 2008.	Jun-09	Cat 10 being re-worked into EA Decision expected in February 09
L & C	Dry Fork Veg Restoration		EIS	April-08	2002	5.5	January-02	Ecology Ceneter et al.; appeal decison 9/12/00 to reverse; Native Ecosystems Council, second appeal decision 2/19/02 to affirm	June-03	Ecology Center v Powell	Revise, Issue supplemental EIS in September 08.	November-09	Lost in the 9th 8/10/05. Plan to write new decision document. Volume may be 4 MMBF.
L & C	Whitetail Salvage		CE	March-08	2008	0.4	April-08	Alliance for the Wild Rockies and Native Ecosystems Council	August-08	Alliance for the Wild Rockies and Native Ecosystems Council		July-09	Advertisement cancelled will be offerred in summer FY 2009
L & C	Newlan Bugs Applied Silv Assessment		CE	March-08	2008	1.0	May-08	Alliance for the Wild Rockies and Native Ecosystems Council	October-08	Alliance for the Wild Rockies and Native Ecosystems Council		August-09	Advertisement did not go out prior to litigation. Planned court decision mid summer.
L & C	Blacktail Hills Fuels		CE Cat. 10			1.2			Yes		Will redo NEPA	FY09	
L & C	Forest Green/Allen Gulch HFR		CE Cat. 10			0.6			Yes		Will redo NEPA	FY09	
					TOTAL	10.9							
LOLO	Swamp		CE	May-09	2006	2.0			June-05	Sierra Club vs Bosworth	In process	Sold	Substantial road work has sbeen completed. No volume harvested. New EA is out for comment 1/09
LOLO	Barrett		CE	May-09	2007	4.3			June-05	Sierra Club vs Bosworth	In process	Sold	Road work is complete. No volume has been harvested. New EA is being prepared.
					TOTAL	6.3							
NEZ	Meadow Face Stewardship Pilot Project (Yew Rock Timber Sale)		EIS; SEIS completed	ROD - 2/1/2003; SEIS - 2/2008	2003	5.0	April-03	Friends of Clearwater et al.; appeal decision 5/19/03 to affirm	June-04	Friends of Clearwater v Lohn	preliminary injunction granted 3/31/05 halting timber harvest activities; judge ordered cumulative effects analysis; draft SEIS has been completed.	Sold	The timber sale contract was ended through mutual cancellation agreement.
NEZ					TOTAL	5.0							

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R1 SUMMARY: MMBF (UPDATED Through January 2009)													
Updated by Niccolucci 1/30/2009													
	TOTAL VOLUME APPEALED AND/OR LITIGATED		VOLUME APPEALED	VOLUME LITIGATED	VOLUME DROPPED	VOLUME SOLD	VOLUME LEFT IN PROCESS						
B-D	41.40		29.60	29.60	0.00	38.80	41.10						
BTR	0.50		0.00	0.50	0.00	0.50	0.50						
IPNF	58.40		53.50	49.00	17.00	13.90	54.60						
CLWR	0.00		0.00	0.00	0.00	0.00	0.00						
CUS	3.90		0.00	3.90	0.00	3.90	3.90						
FLAT	34.20		34.20	0.00	0.00	34.20	34.20						
GAL	2.80		2.80	2.80	0.00	0.00	2.80						
HEL	14.40		14.40	14.40	0.00	0.00	14.40						
KOOT	119.00		119.00	119.00	0.00	55.40	119.00						
L & C	10.90		8.10	8.70	0.00	0.00	8.70						
LOLO	6.30		0.00	6.30	0.00	6.30	6.30						
NEZ	5.00		5.00	5.00	0.00	5.00	5.00						
TOTAL	**296.80**		**266.60**	**239.20**	**17.00**	**158.00**	**290.50**						
MT	**233.40**		**208.10**	**185.20**	**0.00**	**139.10**	**230.90**						
ID	**63.40**		**58.50**	**54.00**	**17.00**	**18.90**	**59.60**						
TOTAL	**296.80**		**266.60**	**239.20**	**17.00**	**158.00**	**290.50**						

NOTE: The volume appealed and volume litigated columns are not additive.

Volume left in process includes all volume sold or left to be offered where we are spending energy on resolving projects.

The main objective of developing the appeals and litigation spreadsheet is to track what projects employees are spending time on to rework or redo projects versus working on new projects.
It is a listing of projects delayed by appeals and litigation. The project listings include appeals and litigation that may be due to internal problems (not following forest plans as an example) that are remanded, affected by local court rulings and projects affected by other court decisions.