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From: Damm, Laura
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Thanks for discussing.

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Date: Tue, Jun 13, 2017 at 3:46 PM
Subject: Murphy v. Trump -- Motion for Stay, as filed:
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

MURPHY COMPANY, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 1:17-cv-00285-CL

FEDERAL DEFENDANTS' NOTICE OF
EXECUTIVE ORDER AND CABINET
SECRETARY REVIEW AND
CONSENT MOTION TO STAY CASE

Hon. Mark D. Clarke

In this action, Plaintiffs challenge the January 2017 expansion of the Cascade-Siskiyou National Monument in Southwestern Oregon, undertaken pursuant to the Antiquities Act of 1906, *now codified at* 54 U.S.C. §§ 320301 320303 (“Antiquities Act”). Federal Defendants provide notice of an Executive Order from the President of the United States, “Review of Designations Under the Antiquities Act,” that directs the Secretary of the Interior (“Secretary”) to review certain designations made under the Antiquities Act, including the Cascade-Siskiyou National Monument. *See* Presidential Executive Order on the Review of Designations Under the Antiquities Act (Apr. 26, 2017) (“Executive Order”), 82 Fed. Reg. 20429 (May 1, 2017). Pursuant to this directive, the Secretary is reviewing the designation of the Cascade-Siskiyou National Monument, and that designation could ultimately be changed in ways that would affect this litigation. The Secretary should be afforded the opportunity to fully review the designation and respond to the President’s direction in a manner that is consistent with the terms of the Executive Order. Deferral of further judicial proceedings is thus warranted.

Accordingly, Federal Defendants respectfully request that the Court stay this case while the agency conducts its review of the Cascade-Siskiyou National Monument designation and that the stay remain in place until 30 days after the August 24, 2017 deadline for the Secretary’s final report to the President, that is,

until September 23, 2017, to allow for consideration of any resulting proposals affecting this case, with a joint status report concerning further proceedings due upon expiration of the stay period. As discussed further below, this stay will promote judicial economy by avoiding unnecessary adjudication and will support the integrity of the administrative process.

Federal Defendants contacted counsel for Plaintiffs and Intervenor-Defendants regarding this motion. Plaintiffs do not oppose the motion, and Intervenor-Defendants take no position on it.

I. Background

The Cascade-Siskiyou National Monument in Southwest Oregon was designated in 2000 by President Clinton under the Antiquities Act of 1906, *now codified at* 54 U.S.C. §§ 320301–320303 (“Antiquities Act”), and originally was to include approximately 52,000 acres. Proclamation No. 7318, 65 Fed. Reg. 37249 (June 9, 2000). In 2017, President Obama expanded the Monument by approximately 48,000 additional acres. Proclamation No. 9564, 82 Fed. Reg. 6145 (Jan. 12, 2017).

Plaintiffs in this case, two wood products industry companies, allege that they are adversely affected by the Monument’s expansion and challenge the expansion. (ECF No. 1, Compl. ¶¶ 4, 5, 12, 15–16.) Federal Defendants’ response to the Complaint is currently due June 23, 2017 (ECF No. 21, Minute Order of Apr. 14,

2017, granting motion for extension of time). Four parties have been granted intervention as defendants (ECF No. 12): Soda Mountain Wilderness Council, Klamath-Siskiyou Wildlands Center, Oregon Wild, and The Wilderness Society.

On April 26, 2017, the President of the United States, Donald J. Trump, signed an Executive Order establishing the policy of the United States that National Monument “[d]esignations should be made in accordance with the requirements and original objectives of the [Antiquities] Act and appropriately balance the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.” *See* Executive Order § 1. The Executive Order also states that National Monument designations have a substantial impact on the management of Federal lands and the use and enjoyment of neighboring lands. *Id.*

As a result of this impact, the Executive Order directs the Secretary of the Interior to review all Presidential designations or expansions of designations made under the Antiquities Act since January 1, 1996, where the designation covers more than 100,000 acres, where the designation after expansion covers more than 100,000 acres, or where the Secretary determines that the designation or expansion was made without adequate public outreach and coordination. *Id.* § 2(a). The goal of the Secretary in this review is to determine whether each designation or expansion conforms to the policy set forth in section 1 of the Executive Order. *Id.* In

making his determination, the Secretary may consult with other executive departments and agencies as well as any affected state, tribal, or local officials. *Id.*

§ 2(b), (c). An interim report on Bears Ears National Monument and other designations selected by the Secretary must be provided within 45 days of the date of the Executive Order. *Id.* § 2(d). The final report on all relevant designations is due within 120 days of the date of the Executive Order, so by August 24, 2017, and is to include recommendations for Presidential action, legislative proposals, or other actions consistent with the law. *Id.* § 2(e).

The National Monument whose expansion Plaintiffs challenge in this case comes within the review required by the Executive Order. In fact, the Cascade-Siskiyou National Monument is expressly included on the list of those National Monuments under review. *See* 82 Fed. Reg. 22,016 (May 11, 2017).

II. Argument

The Executive Order and National Monument review mark substantial new developments that warrant staying this litigation. A stay will further the Court's interests in avoiding unnecessary adjudication, support the integrity of the administrative process, and ensure due respect for the prerogative of the executive branch to evaluate the policy decisions of a prior Administration.

Courts have broad discretion to stay proceedings and to defer judicial review in the interest of justice and efficiency. “[T]he power to stay proceedings is

incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936), *quoted in Air Line Pilots Ass’n v. Miller*, 523 U.S. 866, 879 n.6 (1998); *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962); *see also Am. Petroleum Inst. v. EPA* (“API”), 683 F.3d 382, 388 (D.C. Cir. 2012) (premature and unnecessary judicial review “would hardly be sound stewardship of judicial resources”). Further, agencies generally have authority to reconsider past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). Here, the President has directed the Secretary of the Interior to review various National Monument designations and expansions, has instructed the Secretary to consider the Act’s requirement that reservations of land not exceed the smallest area compatible with the proper care and management of the objects to be protected, and has established a specific 120-day period for the Secretary’s review to be accomplished. The Secretary’s review will culminate in recommendations for Presidential action, legislative changes, or other actions consistent with the law.

In light of this recent development, a stay is warranted in this case. The President of the United States has directed the Interior Secretary to immediately

take all steps necessary to review a number of designations, including the Cascade-Siskiyou National Monument, and if appropriate, make recommendations that may substantially affect or alter the designation. The impending review has the potential to affect issues at the core of this action.

Staying the present challenge will preserve the status quo, in which the designation is presently pending judicial review. Plaintiffs, which challenge the expansion of the Cascade-Siskiyou National Monument, do not oppose the requested stay of proceedings.

Federal Defendants therefore request that this Court stay this case and all pending deadlines while the Secretary conducts his review of the designation for the Cascade-Siskiyou National Monument and that the stay remain in place until 30 days after the August 24, 2017 deadline for the Secretary's final report to the President, that is, until September 23, 2017. At the end of the stay, the parties will submit a joint status report concerning further proceedings in this matter.

Respectfully submitted,

DATED: June 13, 2017

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CERTIFICATE OF SERVICE

I, David B. Glazer, hereby certify that I have caused the foregoing to be served upon counsel of record through the Court's electronic service system.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 13, 2017

/s/ David B. Glazer
David B. Glazer

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MEDFORD DIVISION

MURPHY COMPANY, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 1:17-cv-00285-CL

[PROPOSED] ORDER GRANTING
FEDERAL DEFENDANTS' MOTION
TO STAY CASE

Hon. Mark D. Clarke

Upon consideration of Federal Defendants' Consent Motion to Stay Case, good cause having been shown, it is hereby ORDERED that the Motion is GRANTED and that all pending deadlines are stayed while the Secretary of the Interior conducts his review of the designation for the Cascade-Siskiyou National Monument and that the stay shall remain in place until 30 days after the August 24, 2017 deadline for the Secretary's final report to the President, that is, until September 23, 2017. At the end of the stay, the parties will submit a joint status report concerning further proceedings in this matter.

SO ORDERED:

Dated: _____

MARK D. CLARKE
United States Magistrate Judge

CERTIFICATE OF SERVICE

I, David B. Glazer, hereby certify that I have caused the foregoing to be served upon counsel of record through the Court's electronic service system.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 13, 2017

/s/David B. Glazer
David B. Glazer