

From: <Kashieka_Minor@ios.doi.gov>
To: Randal_Bowman@ios.doi.gov
Subject: DCN: EST-00002203 - Re: Executive Order 13792 to Review the Designation of National Monuments Under the Antiquities Act
Date: Wednesday, August 23, 2017 5:35:19 AM
Attachments: [IN-2203.pdf](#)

FYI

Tillamook County



Land of Cheese, Trees and Ocean Breeze

Board of Commissioners
Bill Baertlein, Tim Josi, David Yamamoto
201 Laurel Avenue
Tillamook, Oregon 97141
Phone 503-842-3403
Fax 503-842-1384
TTY Oregon Relay Service

May 10, 2017

Secretary Ryan Zinke
Department of the Interior
1849 C Street, N.W.
Washington, D. C. 20240

Re: Executive Order 13792 to Review the Designation of National Monuments Under the Antiquities Act

Dear Secretary Zinke:

On behalf of Tillamook County we are writing to express our support of the Executive Order directing you to review the designation of National Monuments under the Antiquities Act since January 1, 1996. As one of the Oregon & California (O&C) counties that receives revenue from timber harvests which occur anywhere on the O&C lands, we are adversely impacted by the designation and expansion of the Cascade-Siskiyou National Monument. Our request for your review is in part due to the illegality of including O&C lands in a national monument. Please see the Solicitor's Opinion M-30506 (1940) attached.

A review of the designation of the Cascade-Siskiyou National Monument will help restore the trust between the impacted O&C counties and the federal government. As a member of the Association of O&C Counties, we are committed to working with you and others to craft a broadly supported plan for the O&C lands in Oregon. A good first step in that process would be your careful review of the Cascade-Siskiyou National Monument designation.

Sincerely,

BOARD OF COMMISSIONERS FOR TILLAMOOK COUNTY, OREGON

Bill Baertlein, Chair

Tim Josi, Vice Chair

David Yamamoto, Commissioner

EXECUTIVE SECRETARIAT
OFFICE OF THE

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Solicitor
Washington

M. 30506.

March 9, 1940

The Honorable

The Secretary of the Interior.

My dear Mr. Secretary:

My opinion has been requested as to whether the President is authorized to set apart certain lands as an addition to the Oregon Caves National Monument.

It is my opinion that the President does not have such authority.

The lands in question were located within indemnity limits of the grant to the Oregon and California Railroad Company pursuant to the act of July 25, 1866 (14 Stat. 239), as amended. Subsequently, they were included within the limits of national forest reserves by proclamation of the President, but in the case of United States v. Oregon and California Railroad Company, 8 F. (2d) 645, 660, this action was held unauthorized and the lands were held to be covered by the grant to the railroad company. Accordingly, the title to these lands was revested in the United States by the act of June 9, 1916 (39 Stat. 218), as amended. This act, after revesting title in the United States to the unsold lands granted to the Oregon and California Railroad Company, directs the Secretary of the Interior to classify the lands as (1) power-site lands, (2) timberlands or (3) agricultural lands. The Secretary upon certain conditions is directed to sell the timber on the class 2 lands and such lands upon removal of the timber

shall fall into class 3. The nonmineral lands of class 3 are to be disposed of by the Secretary under the homestead laws with certain additional requirements, among them being the payment by the entryman of \$2.50 per acre. All moneys received from or on account of said lands and timber are to be deposited in the Treasury in a special fund designated "The Oregon and California land-grant fund." These moneys are to be used to pay the balance, computed on the basis of \$2.50 per acre, due the Oregon and California Railroad Company for the lands granted to it, and for specified payments into the reclamation fund and to the States and counties in which the lands are situated.

By the act of August 28, 1937 (50 Stat. 874), Congress directed that certain of the lands (those heretofore or hereafter classified as timberlands and power-site lands valuable for timber) be managed "for permanent forest production and the timber thereon shall be sold, cut, and removed in conformity with the principle of sustained yield." The Secretary of the Interior is authorized to lease for grazing any of the lands which may be so used without interfering with the production of timber or other purposes of the act, the proceeds to be covered into the special fund. The act also provided for a new method of distributing the moneys in the special fund, principally to the counties in which the lands are situated.

While the lands proposed to be added to the Oregon Caves National Monument have not yet been classified formally, I am advised by the

Chief Forester, O. and C. Administration, that they are in fact timberlands.

It is clear from the foregoing that Congress has specifically provided a plan of utilization of the Oregon and California Railroad Company revested lands. This plan among other things involves the disposal of lands and timber and the distribution of the moneys received from such disposition. It must be concluded that Congress has set aside the lands for the specified purposes.

Pursuant to the act of August 25, 1916 (39 Stat. 535), Congress has directed that national monuments under the jurisdiction of the National Park Service shall be administered in such a manner as "to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." The power of the Secretary with regard to the disposal of timber in national monuments is restricted to "cases where in his judgment the cutting of such timber is required in order to control the attacks of insects or diseases or otherwise conserve the scenery or the natural or historic objects * * *."

There can be no doubt that the administration of the lands for national monument purposes would be inconsistent with the utilization of the O. and C. lands as directed by Congress. It is well settled that where Congress has set aside lands for a specific purpose the

M. 30506.

President is without authority to reserve the lands for another purpose inconsistent with that specified by Congress. See opinion of the Attorney General to the Secretary of the Interior dated June 12, 1935.

In my opinion, therefore, the President is not authorized to include the Oregon and California Railroad Company reversioned lands in the Oregon Caves National Monument.

Respectfully,

(Sgd) Nathan R. Margold,
Solicitor.

Approved: March 9, 1940.

(Sgd) E. K. Burlew,
First Assistant Secretary.



Howarth, Robert <robert_howarth@ios.doi.gov>

Fwd: Request to have the Cascade-Siskiyou National Monument included in the Executive Review of Monuments Designated Made since 1996

1 message

Williams, Timothy <timothy_williams@ios.doi.gov>
To: "Howarth, Robert" <Robert_Howarth@ios.doi.gov>

Wed, May 10, 2017 at 5:50 PM

----- Forwarded message -----

From: **Rocky McVay** <(b) (6)>

Date: Wed, May 10, 2017 at 4:18 PM

Subject: RE: Request to have the Cascade-Siskiyou National Monument included in the Executive Review of Monuments Designated Made since 1996

To: "Moses-Nedd, IEA_Cynthia" <iea-cynthia_moses-nedd@ios.doi.gov>, "Williams, Timothy" <timothy_williams@ios.doi.gov>

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Cynthia and Tim,

Attached you will find a letter from Tillamook County Oregon Board of Commissioners requesting the Secretary of the Interior to include the Cascade-Siskiyou National Monument in the review under Executive Order 13792. Thank you,

Rocky McVay

Executive Director

Association of O&C Counties

541-412-1624

www.OandC.org

Department Of The Interior

External and Intergovernmental Affairs

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