

To: Katzenelson, Alyssa[alyssa.katzenelson@sol.doi.gov]
From: Damm, Laura
Sent: 2017-06-29T14:39:00-04:00
Importance: Normal
Subject: Re: DLR Question
Received: 2017-06-29T14:39:10-04:00
[Bears Ears interim report 6.10.17 \(2\).pdf](#)
[CSNM murphy complaint D.Or 2.17.17.pdf](#)
[Solicitors Opinion M.30506 MArch 1940.pdf](#)
[AOCC Complaint 2.13.17.pdf](#)
[Dkt-1-AFRC-Complaint 3.10.17.pdf](#)

Hi Alyssa, Here are a few documents I mentioned that you may find interesting.

Laura

On Thu, Jun 29, 2017 at 1:49 PM, Damm, Laura <laura.damm@sol.doi.gov> wrote:

Hi Alyssa, Please come on by around 2 if you want to chat. My door is closed, but come on in!

Laura

On Wed, Jun 28, 2017 at 5:19 PM, Katzenelson, Alyssa <alyssa.katzenelson@sol.doi.gov> wrote:

2pm works. (If we have the branch meeting, then we can meet immediately after. If it is cancelled, I might go to Lexis training. That is supposed to end around 2, so we can still meet around 2.)

On Wed, Jun 28, 2017 at 4:15 PM, Damm, Laura <laura.damm@sol.doi.gov> wrote:

Sounds good. I'm teleworking (b)(6), but should be in tomorrow. How about after our branch meeting at 2?

On Wed, Jun 28, 2017 at 3:59 PM, Katzenelson, Alyssa <alyssa.katzenelson@sol.doi.gov> wrote:

Hi Laura,
Can we meet to discuss on Thursday? I am busy 1-2, but otherwise available.

Thanks,
Alyssa

On Tue, Jun 27, 2017 at 1:16 PM, Damm, Laura <laura.damm@sol.doi.gov> wrote:

Hi Alyssa,

(b)(5) ACP

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Please feel free
to stop by!

Laura

On Tue, Jun 27, 2017 at 10:45 AM, Katzenelson, Alyssa <alyssa.katzenelson@sol.doi.gov>
wrote:

Hello,
I have a question prompted by yesterday's brownbag:

(b)(5) ACP

Thank you,
Alyssa

--
Laura W. Damm, Attorney Advisor
Office of the Solicitor
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ASSOCIATION OF O&C COUNTIES,
16289 HWY 101 South Ste. A, Brookings
OR 97415,

Plaintiff,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States of
America, 1600 Pennsylvania Avenue NW
Washington, DC 20500; **UNITED STATES
OF AMERICA**; **KEVIN HAUGRUD**, in
his official capacity as acting Secretary of the
Interior, U.S. Department of the Interior,
1849 C Street NW, Washington, DC 20240;
and **BUREAU OF LAND
MANAGEMENT**, 1849 C Street NW,
Washington, DC 20240,

Defendants.

Civil No. 1:17-cv-0280

Action for Declaratory and Injunctive
Relief to Remedy Violations of the Oregon
and California Railroad Lands Act of 1937,
43 U.S.C. § 1181a; and the Antiquities Act
of 1906, 54 U.S.C. § 320301

COMPLAINT

Plaintiff Association of O&C Counties (“AOCC” or “Plaintiff”) for its complaint against Defendants Donald J. Trump, in this official capacity as President of the United States of America; the United States of America; Kevin Haugrud, in his official capacity as Acting Secretary of the Interior (“Secretary”); and the Bureau of Land Management (“BLM”) states and alleges as follows:

I. INTRODUCTION

1. This case arises out of President Barack Obama’s Proclamation issued on January 12, 2017 (“Proclamation 9564”), expanding the boundaries of the Cascade-Siskiyou National

Monument pursuant to the Antiquities Act, 54 U.S.C. §§ 320301-320303. Proclamation 9564 adds approximately 48,000 acres to the existing Cascade-Siskiyou National Monument.

Proclamation 9564 states that the Secretary will manage the lands through the BLM as a unit of the National Landscape Conservation System, under the same laws and regulations that apply to the rest of the monument. Those laws and regulations include a blanket prohibition on commercial timber harvest inside the monument.

2. Of the 48,000 acres set aside for the monument expansion, approximately 40,400 of those acres *have already been set aside* by Congress for a special purpose in the Oregon and California Railroad Grant Lands Act of 1937 (“O&C Act”), 43 U.S.C. §§ 1181a-1181f. The federally-owned lands governed by the O&C Act (the “O&C Lands”) serve a particular purpose. In particular, Congress mandated that all of the O&C Lands classified as timberlands “shall be managed” for the purpose of “permanent forest production” on a sustained yield basis and required that at least 50 percent of the proceeds from the timber sales on such lands shall be paid to local county governments. Congress entrusted the Secretary to manage these O&C Lands, but with an express mandate: the timber “shall be sold, cut, and removed in conformity with the principal of sustained yield.” 43 U.S.C. § 1181a. Furthermore, to ensure adequate revenues to the counties, Congress expressly mandated that the amount of timber sold each year from the O&C Lands shall not be less than one-half billion board-feet or the annual sustained yield capacity of those forests. *Id.*

3. President Obama’s inclusion of O&C Lands within the Cascade-Siskiyou National Monument violates the O&C Act and exceeds the scope of presidential authority under the Antiquities Act. Where Congress has set aside lands for a specific purpose, the President is

without authority to reserve those lands for another purpose. Congress set aside O&C Lands for sustained yield timber production for the benefit of counties in Oregon. The President may not, therefore, reserve those lands for a monument that *prohibits* the very sustained yield timber production for which the same lands were previously set aside by Congress. As a result, the President's inclusion of O&C Lands in Proclamation 9564 must be set aside as *ultra vires*.

II. JURISDICTION AND VENUE

4. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. §§ 2201-2202 (declaratory judgment and injunctive relief). *See Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1136 (D.C. Cir. 2002) (“In reviewing challenges under the Antiquities Act, the Supreme Court has indicated generally that review is available to ensure that the Proclamations are consistent with constitutional principles and that the President has not exceeded his statutory authority.”); *id.* (judicial review of Presidential action available where “the authorizing statute or another statute places discernible limits on the President’s discretion”).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because this is an action against the United States and United States agencies and officials and because a substantial part of the events and omissions giving rise to the claims in this case occurred in this District, and the Defendants reside in the District. Furthermore, the President signed 9564 Proclamation at issue in this case in the District.

III. PARTIES

A. Plaintiff Association Of O&C Counties

6. Plaintiff AOCC is an association whose members are 17 counties in western Oregon containing O&C Lands managed by BLM (“O&C Counties”). AOCC’s members include Klamath, Douglas, Curry, Coos, Lane, Lincoln, Linn, Polk, Yamhill, Marion, Clackamas, Multnomah, Columbia, Washington, Tillamook, Jackson and Josephine Counties. AOCC’s sole function is to protect and enhance the O&C Counties’ interest in the O&C Lands. AOCC (then known as the O&C County Courts Association) was a proponent of the legislation that ultimately became the O&C Act. AOCC has also participated actively in every significant administrative or legislative process concerning such lands from 1937 to present.

7. AOCC’s member counties are the intended beneficiaries of the O&C Act. The O&C Act expressly provides that AOCC’s member counties have the right to 75 percent of gross receipts from timber sales and harvests on O&C Lands, 43 U.S.C. § 1181f(a), which percentage since the 1950s has been reduced to 50 percent by periodic Interior Appropriations Acts. As such, AOCC’s members have a direct financial stake in the validity of Proclamation 9564 because it removes 40,400 acres of O&C Lands from timber production by placing such lands into the Cascade-Siskiyou National Monument. The monument designation of these O&C Lands causes, and will continue to cause, immediate and direct financial harm to AOCC’s member counties by removing timberlands from sustained yield timber production, thereby thwarting the purpose of the O&C Act. Proclamation 9564 will necessarily deprive the O&C Counties of the receipts from timber sales that would otherwise be harvested on those lands each year. Proclamation 9564 will also necessarily deprive the O&C Counties of timber supply that would

support the wood products industries in those counties, resulting in increased levels of unemployment, as well as increased demand on certain services provided by the O&C Counties.

8. The relief requested by AOCC will redress that harm by ensuring that the Secretary manages the O&C Lands by and through the BLM in accordance with the O&C Act for the intended purpose of permanent forest production on a sustained yield basis with the required statutory minimum level of timber harvest. This relief will ensure that AOCC's members receive the receipts from timber sales promised by the O&C Act, and will further help provide for the economic stability and development of the O&C Counties as contemplated by the O&C Act.

9. AOCC and its member counties have no other plain, speedy, or adequate remedy at law. President Obama's decision to withdraw O&C Lands from sustained yield timber production and place those lands in the Cascade-Siskiyou National Monument is final, and ripe for judicial review.

B. Defendants

10. Defendant Donald J. Trump is the President of the United States of America. President Trump's predecessor President Obama issued Proclamation 9564 that is the subject of this lawsuit. Defendant Kevin Haugrud is the acting Secretary and the official charged with administering the O&C Act and the Cascade-Siskiyou National Monument through the BLM. Defendant BLM is responsible for managing O&C Lands and the Cascade-Siskiyou National Monument.

IV. BACKGROUND ALLEGATIONS

A. The Antiquities Act Of 1906

11. The Antiquities Act of 1906 authorizes the President to proclaim national monuments on federal lands that contain “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.” 54 U.S.C. § 320301(a). The President is to reserve “the smallest area compatible with the proper care and management of the objects to be protected.” *Id.* § 320301(b).

B. The O&C Act Of 1937

12. The O&C Act of 1937 mandates that approximately 2.1 million acres of federally-owned land located in eighteen western Oregon counties that have been classified as timberlands, namely the O&C Lands, be managed for permanent forest production on a sustained yield basis, and that between fifty and seventy-five percent of the revenue from the timber sales on such land be paid to the counties in which the land is located, namely the O&C Counties. 43 U.S.C. § 1181a .

13. The O&C Act was enacted to guide the management of lands that Congress had originally granted to the Oregon and California Railroad (the “Railroad”) in connection with the construction of a rail line connecting Portland, Oregon to California. *See* Act of July 25, 1866, ch. 242, § 1, 14 Stat. 239. Under the original land grant, as subsequently amended, the Railroad was required to sell the lands in 160-acre parcels at a price of \$2.50 per acre to foster settlement and development of the region. Act of July 25, 1866, ch. 242, § 2, 14 Stat. at 240. However, the Railroad sold only a small portion of the lands in 160-acre tracts, choosing instead to sell off much larger tracts at prices ranging between \$5 and \$40 per acre for timber speculation, in direct contravention to the statutory terms of the land grant. Eventually, in 1903, the Railroad, which

by then had been acquired by Southern Pacific Railroad, withdrew all of the remaining lands from sale, asserting they were timberlands and unsuitable for settlement.

14. The Railroad's refusal to sell additional O&C Lands had a detrimental impact on the anticipated settlement and development of the O&C Counties and was criticized by local governments. In response, Congress directed the U.S. Attorney General to enforce the terms of the O&C grant. *See* S.J. Res. 18, 60th Cong., 35 Stat. 571 (1908). As a result, the federal government filed suit and obtained a decree forfeiting the unsold O&C Lands back to the United States (causing the railroad to cease making property tax payments on the lands); however, the United States Supreme Court reversed the forfeiture decree and invited Congress to formulate an appropriate remedy. *Oregon & California Railroad Co. v. United States*, 238 U.S. 393 (1915).

15. Congress then stepped in again in 1916 by passing the Chamberlain-Ferris Revestment Act (39 Stat. 218), which, among other things, (a) revested all of the unsold lands granted to the railroad back into the United States, (b) directed the United States to pay the O&C Counties the unpaid property taxes owed on such lands and (c) directed the Department of the Interior to sell the timber from those lands "as rapidly as reasonable prices [could] be secured" in a normal market. Chamberlain-Ferris Revestment Act of 1916, ch. 137, § 4, 39 Stat. at 220. Finally, because the O&C Counties would not be able to impose property taxes on the O&C Lands revested in the federal government, the Act also provided that a portion of the revenues from such timber and land sales would be directed to the O&C Counties. Chamberlain-Ferris Revestment Act of 1916, ch. 137, §§ 9-10, 39 Stat. at 221-22.

16. But timber sales under the Chamberlain-Ferris Act produced little revenue, causing continued financial hardship to the O&C Counties and eventually leading Congress to

pass the O&C Act in 1937 “to provide the counties in which the O&C land was located with the stream of revenue which had been promised but not delivered by the Chamberlain-Ferris Revestment Act.” *Headwaters, Inc. v. BLM, Medford Dist.*, 914 F.2d 1174, 1183 (9th Cir. 1990).

17. To achieve this purpose, the O&C Act mandates that that the O&C Lands be managed for permanent forest production on a sustained yield basis for the benefit of the O&C Counties. Specifically, the O&C Act provides that the O&C Lands

which have heretofore or may hereafter be classified as timberlands, and power-site lands valuable for timber, *shall* be managed . . . for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facil[i]ties[.]

43 U.S.C. § 1181a (emphasis added).¹ In addition, the O&C Act provides that no less than “[f]ifty per centum” and up to 75 percent of the revenue obtained from such sales shall be payable “to the counties in which the [O&C] lands revested . . . are situated.” *Id.* § 1181f(a).

18. In a further effort to ensure a dependable revenue stream to the O&C Counties, the O&C Act also expressly requires a minimum level of annual timber sales. At the time of the enactment of the O&C Act, the best available estimate of the standing timber on O&C Lands

¹ As the Ninth Circuit Court of Appeals has held, this language makes “clear that the primary use of the revested lands is for timber production.” *O’Neal v. United States*, 814 F.2d 1285, 1287 (9th Cir. 1987). Thus, while the statute mentions additional benefits of sustained yield timber management such as protecting watersheds and recreation, there is nothing in the statute or its history to “suggest that wildlife habitat conservation or conservation of old growth forest is a goal on a par with timber production, or indeed that it is a goal of the O & C Act at all.” *Headwaters, Inc.*, 914 F.2d at 1184. Instead, timber production is the “dominant use” of the O&C Lands. *Id.*

was approximately 50 billion board feet and the best estimate of the annual sustained yield was at least 500 million board feet per year, based on an assumed 100-year rotation period on the O&C Lands. This reasoning is reflected in the statute:

The annual productive capacity for such lands shall be determined and declared as promptly as possible after August 28, 1937, but until such determination and declaration are made the average annual cut therefrom shall not exceed one-half billion feet board measure: Provided, That timber from said lands in an amount not less than one-half billion feet board measure, or not less than the annual sustained yield capacity when the same has been determined and declared, shall be sold annually, or so much thereof as can be sold at reasonable prices on a normal market.

Id. § 1181a (underline added).

19. The purpose of this minimum harvest requirement is also reflected in the legislative history of the 1937 O&C Act. The underlined language in the above paragraph was added to the O&C Act at the insistence of Representative Mott (of Oregon) and the AOCC. As originally introduced in H.R. 5858, 75th Cong. (1937), the O&C Act would have provided only that “[t]he annual productive capacity shall be determined and declared as promptly as possible after passage of this act, but until such determination and declaration are made, the average annual cut shall not exceed one-half billion board feet.” While this language plainly capped harvest in the short term, it provided no minimum cut. Representative Mott noted this and objected to any bill that would not provide minimum harvest levels needed to guarantee adequate revenues for the O&C Counties. *See* Report of Hearing from April 13, 1937, at 6-8, 25-27, 30.

20. Similar objections were made by the witness for the AOCC. Testifying before Congress, the AOCC’s attorney Guy Cordon offered the following language to provide a minimum cut level: “Timber from said lands in an amount not less than one-half billion board

feet measure or not less than the maximum annual sustained yield capacity shall be sold annually if the same can be done at reasonable prices on a normal market.” Report of Hearings from May 25, 1937, at 121-22. Representative Mott and Mr. Cordon both emphasized several times that the intent of the proposed amendment was to limit the Secretary’s discretion and to guarantee a minimum harvest level for the benefit of the O&C Counties. *Id.* at 122-24.

C. Implementation Of The O&C Act

21. Following passage of the O&C Act, the Secretary immediately began to determine the inventory of standing timber and the proper classification of O&C Lands as timberlands or agricultural lands suitable for settlement. By 1942, the Secretary, through the Department of the Interior, determined that 2,446,000 acres of O&C Lands were properly classified as “timberlands.” U.S. Department of Interior General Land Office, *Forever Timber: Perpetual Sustained Yield Forestry on the Revested Oregon and California Railroad Grant Lands and the Reconveyed Coos Bay Wagon Road Grant Lands in Western Oregon* 17 (1945).

22. In addition, the Secretary immediately began identifying the annual productive capacity of the O&C Lands and marketing timber from such lands in accordance with the O&C Act. Starting in fiscal year 1940, the Secretary, through the Department of the Interior, sold 593 million board feet of timber (above the 500 million board feet minimum harvest requirement). W. Horning, U.S. Department of Interior General Land Office, *The O&C Lands and their Management, an Important Advance in Forest Conservation* 7 (Dec. 1940). Over time, the allowable sale quantities were steadily increased until starting in 1959 the BLM began selling an average of more than 1.1 billion board feet of timber from the O&C Lands every year for the next 32 years, with the peak sale level of 1.662 billion board feet occurring in 1960. *See* Final Environmental Impact Statement for the Revision of the Resource Management Plans of the

Western Oregon Bureau of Land Management at 3-239 to -240 (Oct. 2008).

23. The revenues from such timber sales provided substantial economic benefits to the O&C Counties. Indeed, in the first 50 years of implementation, the O&C Act returned more than \$1.4 billion to the O&C Counties. Those funds have been used to build and maintain public buildings and construct other public works, and to support basic public services such as law enforcement, corrections, public and mental health services, taxation and assessment, libraries, and a broad array of other services supported by O&C County general fund budgets.

D. The United States Previously Determined That O&C Lands Cannot Be Reserved Under The Antiquities Act

24. Proclamation 9564 is not the first time that a President has considered incorporating a portion of the O&C Lands into a national monument. In 1940, President Roosevelt was considering expanding the Oregon Caves National Monument, a 488-acre area in the Siskiyou Mountains. The contemplated expansion would have included O&C Lands.

25. The Secretary sought a legal opinion from the Office of the Solicitor as to the whether the President has the authority to set aside O&C Lands “as an addition to the Oregon Caves National Monument.” Solicitor’s Opinion M. 30506 (Mar. 9, 1940). The Solicitor concluded that “[i]t is my opinion that the President does not have such authority.” *Id.*

26. The Solicitor explained that through the O&C Act,

Congress directed that certain 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.’ . . . It is clear from the foregoing that Congress specifically provided a plan for the utilization of the Oregon and California Railroad Company revested lands. The 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 purpose.

Id. at 2-3 (emphasis added).

27. The Solicitor then contrasted this purpose with the management of property under the Antiquities Act, in which “the disposal of timber in national monuments is restricted” to insect and disease control. *Id.* at 3.

28. Based on that review, the Solicitor concluded that

[t]here 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 President is without authority to reserve the lands for another purpose inconsistent with that specified by Congress. In my opinion, therefore, **the President is not authorized to include the Oregon and California Railroad Company revested lands in the Oregon Caves National Monument.**”

Id. at 4-5.

29. The Solicitor has also issued a number of subsequent opinions conforming the specific purpose of the O&C Lands. The Solicitor concluded that O&C Lands could not be used for mining purposes (*see* Department of Interior Memorandum, Aug. 25, 1941), could not be withdrawn for a state park (*see* Solicitor Opinion, May 17, 1955), and could not be included within wilderness study areas otherwise required as part of FLPMA (*see* Solicitor Opinion, June 1, 1977).

30. In addition, in 1986 the Solicitor issued an opinion to the Secretary on the issue of whether the BLM could develop a program to conserve northern spotted owls on BLM-managed land. *See* Solicitor Opinion, Oct. 28, 1986. The Solicitor concluded that the BLM could develop such a program consistent with the multiple use provisions of FLPMA. But that freedom was “limited” on any O&C Lands because “Congress defined how the Secretary must manage” those

lands under the O&C Act. The Solicitor explained that the Secretary could establish a program for managing spotted owls on O&C Lands “if it is possible to do so without creating a conflict with the dominant use there – timber production.” *Id.* However, “[i]f a program for managing northern spotted owls conflicts with producing timber on a sustained basis in O&C timberlands, the O&C Act will preclude the program’s application to that reality.” *Id.*

E. The Cascade-Siskiyou National Monument

31. President Clinton created the Cascade-Siskiyou National Monument under the Antiquities Act by Presidential Proclamation 7318 on June 9, 2000 (“Proclamation 7318”). Proclamation 7318 set aside 52,000 acres of federal land. The proclamation states that “[t]he commercial harvest of timber or other vegetative material is prohibited, except when part of an authorized science-based ecological restoration project aimed at meeting protection and old growth enhancement objectives.” 65 Fed. Reg. 37249, 37250 (June 9, 2000). The proclamation further states that “[n]o portion of the monument shall be considered to be suited for timber production, and no part of the monument shall be used in a calculation or provision of a sustained yield of timber.” *Id.*

32. Proclamation 7318 placed management of the Cascade-Siskiyou National Monument with the Secretary, through the BLM, and instructed the Secretary to prepare a management plan for the monument.

33. The current management plan for the Cascade-Siskiyou National Monument was issued in 2008. As per the instruction in Proclamation 7318, the plan prohibits commercial timber harvest inside the monument.

F. President Obama Acts To Expand The Cascade Siskiyou National Monument To Include O&C Lands Despite The United States' Own Prior Determination That O&C Lands Cannot Be Reserved Under The Antiquities Act

34. In October of 2016, the BLM released a proposed expansion to the Cascade - Siskiyou National Monument. The proposed expansion was for 53,100 additional acres, of which 50,900 were O&C Lands.

35. AOCC sent a letter on October 14, 2016 to the Assistant Secretary explaining that the President lacked the authority to include O&C Lands in the Cascade-Siskiyou National Monument, and cited and provided the 1940 opinion from the Solicitor General. The letter further explained that the designation would “cut deeply” into the available harvest areas for O&C Lands and would cause significant financial hardship to Klamath and Jackson Counties in particular.

36. On January 12, 2017, President Obama issued Proclamation 9564, titled Boundary Enlargement of the Cascade-Siskiyou National Monument. Proclamation 9564 expands the boundaries set by President Clinton in Proclamation 7318, including an additional 48,000 acres.

37. Proclamation 9564 states that “[a]ll Federal lands and interests in lands within the boundaries” of the monument “are hereby . . . withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws.” 82 Fed. Reg. 6145, 6148-49 (Jan. 12, 2017).

38. Proclamation 9654 further states that the Secretary “shall manage the area being added to the monument through the [BLM] as a unit of the National Landscape Conservation System, under the same laws and regulations that apply to the rest of the monument.” *Id.* at 6149.

39. The effect of this Proclamation is that sustained yield timber production is prohibited on all federal lands within the new portions of the monument, just as they are currently prohibited in the original portions of the monument.

40. The 48,000-acre expansion includes 42,600 acres in Oregon, of which 40,400 acres are O&C Lands, approximately 95% of the expansion in Oregon.

41. At least 35,500 acres of those O&C Lands within the new monument are classified as timber lands that must be managed on a sustained yield basis under the O&C Act. As a result of Proclamation 9564, none of those 35,500 acres will be managed for sustained yield timber production as mandated by Congress.

FIRST CLAIM FOR RELIEF

Proclamation 9564 Violates The O&C Act And Exceeds Presidential Authority Under The Antiquities Act By Reserving O&C Lands From Timber Production

42. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

43. Congress set aside the O&C Lands for a specific purpose: to benefit the O&C Counties.

44. In accordance with that purpose, the O&C Act requires the Secretary to manage all O&C Lands under the jurisdiction of the Department of the Interior that are classified as timberlands and power site lands valuable for timber for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principle of sustained yield. 43 U.S.C. § 1181a.

45. Proclamation 9564 permanently removes at least 35,000 acres of O&C Lands classified as timberlands from sustained yield timber production. The reservation is inconsistent with and directly contrary to the purpose for which these lands were designated in the O&C Act.

46. Once Congress sets aside lands for a particular purpose, the President is without authority to reserve those lands for a different purpose. By reserving O&C Lands for a monument purpose, and prohibiting their use for sustained yield timber production, Proclamation 9564 violates the O&C Act, and exceeds the authority granted to the President in the Antiquities Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Adjudge and declare that Proclamation 9564 violates the O&C Act and the Antiquities Act by reserving O&C Lands from sustained yield timber production;
- B. Vacate and enjoin Proclamation 9564 to the extent that it includes O&C Lands;
- C. Award Plaintiff its reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- D. Grant Plaintiff such further relief as may be just, proper, and equitable.

DATED: February 13, 2017.

STOEL RIVES LLP

/s/ Per Ramfjord
Per Ramfjord (D.C. Bar No. 392237)
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
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Attorneys for Plaintiff

CIVIL COVER SHEET

JS-44 (Rev. 7/16 DC)

I. (a) PLAINTIFFS ASSOCIATION OF O&C COUNTIES, 16289 HWY 101 South Ste. A, Brookings OR 97415 (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ (EXCEPT IN U.S. PLAINTIFF CASES) (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Per A. Ramfjord (D.C. Bar No. 392237) STOEL RIVES LLP 760 SW Ninth Ave, Suite 3000, Portland, OR 97205 503-294-9257	DEFENDANTS DONALD J. TRUMP, President of the United States of America; UNITED STATES OF AMERICA; KEVIN HAUGRUD, Secretary of the Interior; and BUREAU OF LAND MANAGEMENT COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>																								
II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY) <input type="radio"/> 1 U.S. Government Plaintiff <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY! <table style="width: 100%; border: none;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input checked="" type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
<input type="radio"/> E. General Civil (Other) OR <input type="radio"/> F. Pro Se General Civil			
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) <i>*(If pro se, select this deck)*</i>	<input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (If Privacy Act) <i>*(If pro se, select this deck)*</i>	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify)
 ☐ 6 Multi-district Litigation
 ☐ 7 Appeal to District Judge from Mag. Judge
 ☐ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Declaratory and Injunctive Relief - 43 U.S.C. § 1181a; 54 U.S.C. § 320301

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	If yes, please complete related case form

DATE: 02/13/2017	SIGNATURE OF ATTORNEY OF RECORD
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

ASSOCIATION OF O&C COUNTIES,
16289 HWY 101 South Ste. A, Brookings OR 97415

Plaintiff(s)

v.

DONALD J. TRUMP, President of the United States
of America; UNITED STATES OF AMERICA; KEVIN
HAUGRUD, Secretary of the Interior; and BUREAU
OF LAND MANAGEMENT,

Defendant(s)

Civil Action No. 1:17-cv-0280

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* DONALD J. TRUMP, President of the United States of America
1600 Pennsylvania Avenue NW
Washington, DC 20500

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,

whose name and address are: Per A. Ramfjord
STOEL RIVES LLP
760 SW Ninth Ave, Suite 3000
Portland, OR 97205
Telephone: 503-294-9257

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 1:17-cv-0280

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

ASSOCIATION OF O&C COUNTIES,
16289 HWY 101 South Ste. A, Brookings OR 97415

Plaintiff(s)

v.

DONALD J. TRUMP, President of the United States
of America; UNITED STATES OF AMERICA; KEVIN
HAUGRUD, Secretary of the Interior; and BUREAU
OF LAND MANAGEMENT,

Defendant(s)

Civil Action No. 1:17-cv-0280

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* JEFF SESSIONS, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,

whose name and address are: Per A. Ramfjord
STOEL RIVES LLP
760 SW Ninth Ave, Suite 3000
Portland, OR 97205
Telephone: 503-294-9257

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

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Printed name and title

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

ASSOCIATION OF O&C COUNTIES,
16289 HWY 101 South Ste. A, Brookings OR 97415

Plaintiff(s)

v.

DONALD J. TRUMP, President of the United States
of America; UNITED STATES OF AMERICA; KEVIN
HAUGRUD, Secretary of the Interior; and BUREAU
OF LAND MANAGEMENT,

Defendant(s)

Civil Action No. 1:17-cv-0280

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* CHANNING D. PHILLIPS
United States Attorney's Office
555 4th Street, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,

whose name and address are: Per A. Ramfjord
STOEL RIVES LLP
760 SW Ninth Ave, Suite 3000
Portland, OR 97205
Telephone: 503-294-9257

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 1:17-cv-0280

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Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

ASSOCIATION OF O&C COUNTIES,
16289 HWY 101 South Ste. A, Brookings OR 97415

Plaintiff(s)

v.

DONALD J. TRUMP, President of the United States
of America; UNITED STATES OF AMERICA; KEVIN
HAUGRUD, Secretary of the Interior; and BUREAU
OF LAND MANAGEMENT,

Defendant(s)

Civil Action No. 1:17-cv-0280

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* KEVIN HAGRUD
Secretary of the Interior
1849 C Street NW
Washington, DC 20240

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,

whose name and address are: Per A. Ramfjord
STOEL RIVES LLP
760 SW Ninth Ave, Suite 3000
Portland, OR 97205
Telephone: 503-294-9257

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 1:17-cv-0280

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☐ I personally served the summons on the individual at *(place)* _____
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Plaintiff(s)

v.

DONALD J. TRUMP, President of the United States
of America; UNITED STATES OF AMERICA; KEVIN
HAUGRUD, Secretary of the Interior; and BUREAU
OF LAND MANAGEMENT,

Defendant(s)

Civil Action No. 1:17-cv-0280

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* BUREAU OF LAND MANAGEMENT
1849 C Street NW
Washington, D.C. 20240

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Per A. Ramfjord
STOEL RIVES LLP
760 SW Ninth Ave, Suite 3000
Portland, OR 97205
Telephone: 503-294-9257

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CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

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My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:



THE SECRETARY OF THE INTERIOR
WASHINGTON

JUN 10 2017

MEMORANDUM TO THE PRESIDENT

FROM: RYAN K. ZINKE

SUBJECT: Interim Report Pursuant to Executive Order 13792

I. SUMMARY

In the final weeks of his second term, President Obama exercised his authority under the Antiquities Act (Act) to designate the Bears Ears National Monument (BENM) in Utah. The external boundary of BENM encompasses almost 1.5 million acres of land. The lands within BENM consist of Federal lands managed by the Bureau of Land Management (BLM) within the Department of the Interior (Department) and U.S. Forest Service (USFS) within the Department of Agriculture; the external boundary also encompasses sections of State land and smaller private parcels, one of which is owned by The Nature Conservancy. While there are designated wilderness and wilderness study areas (WSAs) within BENM, much of the land is compatible with multiple-use practices, including recreation; grazing; timber harvest; mining; and traditional activities such as gathering of medicinal herbs and plants, hunting, fishing, and wood-gathering.

The BENM contains unique geologic features and objects of historic or scientific interest deemed culturally important to Native American tribes, including artifacts, rock art, archeological sites, dwellings, and areas used for traditional rituals, gatherings, and tribal practices. Selected Native tribes have a formal advisory role under Proclamation No. 9558, but are not authorized a formal management role under existing law.

The Act authorizes the President to designate objects of scientific or historic interest on Federal lands for protection as a monument as defined in the establishing proclamation, but the authority to reserve lands as part of a monument is limited to an area that is "the smallest area compatible" with the proper care and management of those objects. The protection of qualifying objects within the monument can be identified and reasonably segregated to reflect the "smallest area compatible" intent and to concentrate preservation resources.

Therefore, in consultation with the Secretary of Agriculture, the Secretary of the Interior (Secretary) recommends that (1) the existing boundary of the BENM be modified to be consistent with the intent of the Act; (2) Congress authorize tribal co-management of designated cultural areas; (3) Congress designate selected areas within the existing BENM as national recreation areas or national conservation areas, as defined by law; and (4) Congress clarify the intent of the management practices of wilderness or WSAs within a monument.

II. INTRODUCTION AND PURPOSE

Executive Order 13792, “Presidential Executive Order on the Review of Designations Under the Antiquities Act,” dated April 26, 2017 (Order), directs the Secretary to conduct a review of certain Presidential designations made under the Act, to determine if the designations conform to the policies set forth in the Order. The Order further directs the Secretary to provide two reports summarizing his review:

- (1) an Interim Report under section 2(d), due within 45 days, addressing the Bears Ears National Monument established by Proclamation No. 9558, dated December 28, 2016, and “other such designations as the Secretary determines to be appropriate for inclusion”; and
- (2) a Final Report under section 2(e), due within 120 days, summarizing the findings of the review for all other monument designations covered by the Order.

The Order directs the Secretary to include recommendations in both reports for “Presidential actions, legislative proposals, or other actions consistent with law” to conform designations to the policy set forth in the Order.

This memorandum constitutes the Interim Report under section 2(d) of the Order and addresses the findings of the Secretary’s review of BENM.

III. BACKGROUND

A. The Antiquities Act

Passed in 1906, the Act, now codified at 54 U.S.C. 320301-320303, authorizes the President to: “declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.” 54 U.S.C. 320301(a). The Act also authorizes the President to reserve parcels of Federal land as part of such monuments, but limits those reservations to “*the smallest area compatible* [emphasis added] with the proper care and management of the objects to be protected.” 54 U.S.C. 320301(b).

Shortly after passage of the Act, President Theodore Roosevelt first utilized the Act’s authority to designate the 1200-acre Devils Tower National Monument in Wyoming. In addition to President Roosevelt, 15 other Presidents have exercised the authority to designate monuments more than 150 times.

Although there are many instances of the use of the Act for the proper stewardship of objects of historic or scientific interest, concerns have been raised regarding (1) the use of the Act to designate “landscape” monuments that reserve large areas of Federal lands for the purposes of restricting public access and traditional uses; (2) the use of monument designations to prevent or restrict land use rather than to “protect” and preserve objects of significance; (3) the process by which Presidents have exercised such authority, including whether it included proper public outreach and coordination with state, tribal, and local officials; and (4) the potential losses of economic opportunity and jobs as a result of a monument designation.

B. Executive Order 13792

The President signed Executive Order 13792 on April 27, 2017. Echoing the concerns noted above, section 1 of the Order states:

Designations of national monuments under the [Antiquities Act], have a substantial impact on the management of Federal lands and the use and enjoyment of neighboring lands. Such designations are a means of stewarding America's natural resources, protecting America's natural beauty, and preserving America's historic places. Monument designations that result from a lack of public outreach and proper coordination with State, tribal, and local officials and other relevant stakeholders may also create barriers to achieving energy independence, restrict public access to and use of Federal lands, burden State, tribal, and local governments, and otherwise curtail economic growth. Designations should be made in accordance with the requirements and original objectives of the 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.

The Order directs the Secretary to review all designations or expansions resulting in a designation covering more than 100,000 acres or any other designations that the Secretary determines were "made without adequate public outreach and coordination with relevant stakeholders" to determine whether it conforms to the policy set forth in section 1. The Order listed several factors for the Secretary to consider when making that determination:

- (1) the requirements and original objectives of the Act, including the Act's requirement that reservations of land "...be confined to the smallest area compatible with the proper care and management of the objects to be protected";
- (2) whether designated lands are appropriately classified under the Act as historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest;
- (3) the effects of a designation on the available uses of designated Federal lands, including consideration of the multiple-use policy of section 102(a)(7) of the Federal Land Policy and Management Act (43 U.S.C. 1701(a)(7)), as well as the effects on the available uses of Federal lands beyond the BENM boundaries;
- (4) the effects of a designation on the use and enjoyment of non-Federal lands within or beyond the BENM boundaries;
- (5) concerns of state, tribal, and local governments affected by a designation, including the economic development and fiscal condition of affected states, tribes, and localities;
- (6) the availability of Federal resources to properly manage designated areas; and
- (7) such other factors as the Secretary deems appropriate.

As noted above, section 2 of the Order directs the Secretary to provide, within 45 days of the date of the Order, an Interim Report regarding the BENM, including the results of the review and any resulting recommendations.

C. Bears Ears National Monument

The BENM was established by Proclamation No. 9558, dated December 28, 2016. It consists of 1,351,849 acres of Federal land in San Juan County, Utah, and is jointly managed by BLM (1.063 million acres) and USFS (290,000 acres). When accounting for State land and private land within the boundaries of BENM, the total area encompassed is close to 1,500,000 acres. This is four times larger than Canyonlands—the largest national park in Utah, which is almost 340,000 acres.

Within BENM, there are areas that contain numerous cultural and archeological sites, unique geologic features, and areas important to the practicing of tribal cultural traditions and ceremonies to include the collection of medicinal and ceremonial plants. Portions of the area are also home to significant recreational opportunities, including hiking, backpacking, canyoneering, mountain biking, and rock climbing.

Also within and adjacent to the BENM boundaries, numerous management authorities and plans govern the patchwork of Federal, State, and private lands. Directly adjacent to the BENM is Glen Canyon National Recreation Area, which is managed by the National Park Service (NPS), as well as Natural Bridges National Monument. National recreation areas, which can be managed by BLM, USFS, or NPS, are generally designated by Congress with the purpose of promoting recreation potential of national significance. The BENM also overlaps 11 BLM WSAs aggregating approximately 381,000 acres, which BLM is required to manage so as not to impair their suitability for preservation as wilderness by Congress until Congress determines otherwise. The BENM also overlaps the 46,353-acre Dark Canyon Wilderness on USFS lands, which is required to manage so as to preserve its wilderness characteristics under the Wilderness Act of 1964. Further, much of the area was subject to special management to protect natural, cultural, and historic resources under BLM and USFS management plans in existence prior to designation of the BENM.

The Proclamation No. 9558 (1) retains the existing management responsibility for the lands in the respective Agencies; (2) establishes a local advisory committee consisting of interested stakeholders including State and local governments, tribes, recreational users, local business owners, and private landowners; and (3) establishes the Bears Ears Commission consisting of representatives of the Hopi Tribe, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah and Ouray Reservation, and Zuni Tribe. The Commission does not include the Native American San Juan County Commissioner elected by the majority-Native American voting district in that County.

D. Review Process

The Department issued a press release on May 5, 2017, announcing the impending publication of a notice in the Federal Register seeking public comment on the review. Public comments are being received by the Department both online at Regulations.gov and by mail. Comments on BENM were due at Regulations.gov on or before May 26, 2017, or by mail postmarked on or before May 26, 2017.

The Department received approximately 76,500 comments on BENM, the majority of which also commented on the overall review. These include comments from Members of Congress, governors, state and tribal leaders, and the public. Comments expressed a variety of views on

the BENM; however Federal and State elected officials from Utah strongly oppose the current BENM boundary.

IV. RESULTS OF THE INTERIM REVIEW

The BENM contain some objects that are appropriate for protection under the Act. This includes rock art, dwellings, ceremonial sites, granaries, and other cultural resources that reflect its long historical and cultural significance to Native Americans. There are also areas that may not include objects but are of importance to tribes for traditional cultural practices. However, having conducted the review set forth in section 2 of the Order, in consultation with the Secretary of Agriculture and based on information to date, I find that the designation of the BENM does not fully conform with the policies set forth in section 1 of the Order.

Specifically, the review shows that rather than designating an area encompassing almost 1.5 million acres as a national monument, it would have been more appropriate to identify and separate the areas that have significant objects to be protected to meet the purposes of the Act, including that the area reserved be limited to the smallest area compatible with the proper care and management of the objects. Additionally, many of the lands reserved as part of BENM are already congressionally or administratively protected – in some cases, such as designated wilderness or WSA, which may provide a higher level of protection – such that designation under the Act was unnecessary. Moreover, other lands within the BENM are more appropriately set aside under another type of special designation, such as a national recreation area. For those areas that should remain protected under the Act, some management prescriptions appear to be too restrictive, and tribal interests have not been granted an adequate role in management of BENM given the unique significance of the area to tribes and their traditional knowledge, expertise, and use.

V. INTERIM RECOMMENDATIONS

As a result of the review, and in consultation with the Secretary of Agriculture, I make the following interim recommendations. I recommend that:

- the BENM boundary be revised through the use of appropriate authority, including lawful exercise of the President's authority granted by the Act;
- the President request congressional authority to enable tribal co-management of designated cultural areas within the revised BENM boundaries;
- Congress make more appropriate conservation designations within the current BENM such as national recreation areas or national conservation areas, as defined by law; and
- Congress clarify the intent of the management practices of wilderness or WSAs within a monument.

I further recommend that the Department of the Interior conclude the full review under section 2(d) of the Order before more specific recommendations are made regarding the Bears Ears National Monument.

cc: Director, Office of Management and Budget
Assistant to the President for Economic Policy
Assistant to the President for Domestic Policy
Chairman, Council on Environmental Quality

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
(Medford Division)

MURPHY COMPANY, an Oregon
corporation; **MURPHY TIMBER**
INVESTMENTS, LLC, an Oregon limited
liability company,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States of America;
KEVIN HAUGRUD, in his official capacity as
Acting Secretary of Interior, **U.S.**
DEPARTMENT OF INTERIOR, and
BUREAU OF LAND MANAGEMENT,

Defendants.

Case No.:

COMPLAINT

**ACTION FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION.

1. This case challenges the legality of President Barack Obama's Proclamation issued on January 12, 2017 expanding the boundaries of the Cascade-Siskiyou National Monument pursuant to the Antiquities Act of 1906. Proclamation 9564, which was published in the Federal Register on January 18, 2017, adds approximately 48,000 acres of federal land to the existing Cascade-Siskiyou National Monument. Pursuant to Proclamation 9564, the Secretary

of the Interior is directed to manage these lands through the Bureau of Land Management as a unit of the National Landscape Conservation System under the same laws and regulations that apply to the rest of the monument.

2. Over 80% of the acres included within the monument expansion are O&C Lands which have been specially designated by Congress in the O&C Act of 1937 for the express purpose of "permanent forest production." The President's Proclamation changing the statutory purpose of O&C Lands from permanent timber production to the park-like preservation status of a national monument clearly violates the O&C Act and exceeds the scope of presidential authority under the Antiquities Act.

JURISDICTION AND VENUE.

3. This Court has jurisdiction over the Antiquities Act and O&C Act claims in this action pursuant to 28 U.S.C. § 1331 and over plaintiffs' claims for declaratory and injunctive relief pursuant to 28 U.S.C. § 2201-2202. Venue in this district is proper under 28 U.S.C. § 1391(b)(2) because the lands included within the expansion of the Cascade-Siskiyou National Monument that are the subject of this action lie primarily in Oregon and predominantly within the Medford Division in this district.

PARTIES.

4. Plaintiff Murphy Company is an Oregon corporation employing over 500 workers at four wood products manufacturing plants in Oregon and one in Washington. The Oregon facilities include a veneer plant in White City, a softwood plywood plant in Rogue River, a hardwood plywood plant in Eugene and a laminated veneer lumber ("LVL") facility in Sutherlin. In Washington, Murphy Company owns and operates a veneer plant in Elma.

5. Plaintiff Murphy Timber Investments, LLC is an Oregon limited liability company that owns 49,483 acres of timberland in southern Oregon, specifically Jackson, Josephine, Klamath and Douglas counties. Of these timberlands, a total of 2,101 acres are contained within the boundaries of the expansion of the Cascade-Siskiyou National Monument.

6. Defendant Donald J. Trump is the President of the United States of America. President Trump succeeded President Barack Obama, who issued Proclamation 9564 that is challenged in this litigation. Defendant Kevin Haugrud is the Acting Secretary of the Department of Interior and the official charged with administering the O&C Act and the Cascade-Siskiyou National Monument through its agency, the Bureau of Land Management ("BLM"). Defendant BLM manages all of BLM's timberlands in western Oregon including O&C Lands and the Cascade-Siskiyou National Monument.

**THE O&C ACT OF 1937 RESTRICTS USE OF O&C LANDS
TO TIMBER PRODUCTION.**

7. The O&C Act of 1937 requires that approximately 2.1 million acres of those federally owned timberlands in western Oregon be managed for permanent forest production on a sustained yield basis. The O&C Act specifically provides that the O&C Lands

which have heretofore or may hereafter be classified as timberlands, and power-site lands valuable for timber, shall be managed . . . for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities.

43 U.S.C. § 1181a (emphasis added).

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8. In two cases, the Ninth Circuit Court of Appeals has ruled that Congress designated timber production as the primary use of O&C Lands. Headwaters v. BLM, Medford Dist., 914 F.2d 1174, 1184 (9th Cir. 1990) (holding that timber production is the "dominant use" of O&C Lands); O'Neal v. United States, 814 F.2d 1285, 1287 (9th Cir. 1987) (there is nothing in the O&C Act to "suggest that wildlife habitat conservation or conservation of old growth forest is a goal on a par with timber production, or indeed that it is a goal of the O&C Act at all.").

**O&C LANDS DESIGNATED BY CONGRESS FOR TIMBER PRODUCTION
ARE EXEMPT FROM RESERVATION UNDER THE ANTIQUITIES ACT**

9. In 1940, when President Roosevelt was considering expanding the Oregon Caves National Monument, the Secretary of Interior sought a legal opinion from its Office of the Solicitor as to whether the President had the authority to include O&C Lands in the monument expansion. In concluding that the President had no such authority, the Solicitor discussed the clear purpose established for the O&C Lands by Congress:

Congress directed that certain 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.' . . . 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 specific purpose.

Solicitor's Opinion M. 30506, 2-3 (Mar. 1940) (emphasis added).

10. The Solicitor then turned to the land management options under the Antiquities Act, which severely limits any timber harvest in national monuments to insect and disease

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control. Given the clear conflict between the timber production purpose of the O&C Act and the preservation purpose of the Antiquities Act, the Solicitor reached the following unequivocal conclusion:

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 President is without authority to reserve the lands for another purpose inconsistent with that specified by Congress. [citation omitted] In my opinion, therefore, the President is not authorized to include the Oregon and California Railroad Company revested lands in the Oregon Caves National Monument.

Id. at 3-4.

FIRST CLAIM FOR RELIEF

11. Plaintiffs reallege paragraphs 1 through 10.

12. Plaintiff Murphy Company's Oregon operations are dependent upon timber harvest from public forests in southern Oregon for approximately half of their annual raw material needs. These public timber sources include timber sales purchased by plaintiff from the U.S. Forest Service, BLM, the Oregon Department of Forestry and Josephine County. On average, timber harvested from lands managed by BLM, including O&C Lands, account for over 20% of this volume. Permanent removal of over 40,000 acres of O&C Lands from the timberland base managed by BLM will harm Murphy Company by reducing the supply of timber sold annually by BLM, which jeopardizes plaintiff's log supply and the jobs of over 400 employees at its four Oregon manufacturing plants.

13. In 2014, plaintiff Murphy Company purchased the Howard Timber sale from BLM with an advertised volume of 3.5 million board feet. The Howard Timber Sale is entirely a thinning operation designed to address overstocked stands on 613 acres that pose significant

wildfire risk. This timber sale is currently being harvested on O&C Lands both within and outside the expansion of the Cascade-Siskiyou National Monument. Unless Proclamation 9564 is vacated as illegal, plaintiff Murphy Company will no longer have the opportunity to purchase BLM timber sales on over 40,000 acres of O&C Lands within the Monument expansion that were specifically designated for permanent timber production by Congress.

14. The expansion of the Cascade-Siskiyou National Monument has already caused BLM to withdraw the Griffen Moon Timber Sale, a thinning sale that included 4.0 million board feet, to be withdrawn from BLM's scheduled timber sale offerings in the third quarter of 2017. BLM has not identified any timber sale to replace the lost volume from the Griffen Moon Timber Sale, which represented 15% of the annual timber sale volume for BLM's Medford District in Fiscal Year 2017.

15. Plaintiff Murphy Timber Investments, LLC owns 2,101 acres of timberland in the expanded Cascade-Siskiyou National Monument that is largely surrounded by O&C Lands. Murphy Timber Investments, LLC also owns 1,869 acres that are immediately adjacent to the boundaries of the Monument expansion. Based upon the experience of timberland owners in the original Cascade-Siskiyou National Monument, the value and productivity of timberland declines significantly whenever private timberlands are included within the boundaries of a national monument.

16. Unless Proclamation 9564 expanding the Cascade-Siskiyou National Monument is vacated as illegal, Murphy Timber Investments, LLC will suffer the following losses:

- a. Loss of access needed to efficiently manage its timberlands as a result of BLM decommissioning or abandoning roads to which plaintiff has rights pursuant to reciprocal right-of-way agreements between BLM and plaintiff; and

- b. Substantial increased risk of catastrophic loss through wildfires that begin on adjacent O&C Lands that, if managed as a national monument, will not be thinned to address the risk of catastrophic wildfire.

17. The O&C Lands were set aside for a specific purpose – timber production – in the O&C Act to generate valuable resources and to support local communities through the contribution of 50% to 75% of all timber sale proceeds to the county in which the timber harvest occurs. Pursuant to that statutory mandate, the Secretary of Interior is required to manage O&C Lands for permanent forest production consistent with sustained yield principles.

18. Proclamation 9564 permanently removes over 40,000 acres of O&C Lands from sustained yield timber production. This redesignation of productive forestland for permanent preservation in a national monument violates the Congressionally designated timber production purpose of the O&C Lands set out in the O&C Act as demonstrated by Ninth Circuit precedent and opinions issued by the Office of the Solicitor for the Department of Interior.

19. Since 1937, when Congress set aside the O&C Lands for permanent timber production, the President has had no authority to include those lands within a national monument under the Antiquities Act of 1906. Proclamation 9564 violates the O&C Act and exceeds the authority granted to the President in the Antiquities Act.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment as follows:


1. A declaration that Proclamation 9564 violates the O&C Act and the Antiquities Act;
2. An order vacating Proclamation 9564 to the extent that it includes O&C Lands and enjoining defendants from managing those lands except pursuant to the O&C Act; and

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3. Granting plaintiffs such other relief as the Court deems just and equitable.

DATED this 17th day of February, 2017.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**AMERICAN FOREST RESOURCE
COUNCIL,**

5100 S.W. Macadam Ave., Suite 350
Portland, OR 97239,

Plaintiff,

v.

UNITED STATES OF AMERICA;

BUREAU OF LAND MANAGEMENT;

1849 C Street, N.W.
Washington, DC 20240,

SECRETARY OF THE INTERIOR, in his
official capacity as an officer of the United
States of America,

U.S. Department of the Interior,
1849 C Street, N.W.
Washington, DC 20240;

PRESIDENT OF THE UNITED STATES,

in his official capacity as an officer of the
United States of America,
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500;

Defendants.

CIVIL ACTION NO.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF;
VIOLATIONS OF THE OREGON
AND CALIFORNIA RAILROAD
LANDS ACT OF 1937, 43 U.S.C.
§1181a**

COMPLAINT

Plaintiff American Forest Resource Council (“AFRC”), by and through its undersigned attorneys, brings this Complaint against the United States of America, the Bureau of Land Management (“BLM”), the Secretary of the Interior, and the President of the United States,

alleging violations of the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937, 43 U.S.C. §§ 1181a-1181f:

I. INTRODUCTION

1. AFRC challenges the unlawful expansion of the Cascade-Siskiyou National Monument in the waning hours of the previous Administration. Congress reserved these lands for permanent forest production. The Antiquities Act does not give the President the power to unilaterally override Congress and reserve the lands for uses other than permanent forest production. The monument expansion is against the wishes of the public and violates the federal government's promise, made 80 years ago, that Oregon's forests will be a public resource for sustained prosperity.

2. Since before statehood, Oregon's sustainable forests have been one of the cornerstones of the economy of the Pacific Northwest. The timber industry built the region and is one of the area's most important economic drivers. This is particularly true in rural areas where forestry is often the only sector that provides high-quality, family wage employment. Timber industry employment is the bedrock that promotes stability and prosperity in these communities.

3. In 1937, Congress and President Franklin D. Roosevelt took a critical step in protecting the Northwest's forest economy by passing the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 ("O&C Act"), 43 U.S.C. §§ 1181a-1181f. The O&C Act reserved approximately 2.6 million acres of federally owned forestlands in Oregon ("O&C Lands") "for permanent forest production," and ensured that the sustainable timber within this reserve would be "sold, cut, and removed in conformity with the princip[le] of sustained yield for the purpose of providing a permanent source of timber supply, protecting

watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities.” 43 U.S.C. § 1181a. “Under the O&C Act, O&C lands must be managed for the primary purpose of sustained yield timber production *unless* such lands are unsuitable for timber production.” *Headwaters, Inc. v. Bureau of Land Mgmt., Medford Dist.*, 893 F.2d 1012, 1013 (9th Cir. 1989).

4. The promise of the O&C Act is particularly important to users of Oregon forests because the federal government owns and manages approximately 60 percent of forestlands in the state. Due to the United States’ majority ownership stake, the timber industry in and neighboring Oregon is reliant on the harvesting, replanting, and effective management of federally owned forests. The availability of timber from O&C lands is a significant component of the region-wide supply.

5. In the early 1990s, the timber industry’s access to federal forestlands across the Northwest was sharply curtailed. Large swaths of land were placed in reserves with the remaining lands promised for timber production. But even this modest promise was not kept. For example, during the 1980s Oregon’s annual average timber harvest was over eight billion board feet, with approximately half the harvest being sourced from federally owned lands. By the 1990s, the harvest had fallen by fifty percent with fewer than four billion board feet being harvested annually. This dramatic drop was entirely due to federal restrictions on the harvest of the federally owned forests that had been relied upon for generations. Today, annual harvests continue to hover around four billion board feet, with less than one billion board feet coming from federal lands. The vast majority of Oregon’s forest products are now sourced from well-managed private forestlands where production has remained consistent since the 1980s. These

private forests cannot, however, provide the volume of raw materials demanded by the market and have made it extremely difficult for non-landholding companies to survive.

6. The restriction of federal timberlands has had disastrous consequences for the Northwest's economy. Dozens of sawmills have been forced to curtail operations or close entirely due to a lack of adequate supply. Logging companies have been left idle and forced out of business due to a lack of work. Timber communities have lost thousands of family-wage forestry jobs; the type of jobs that paid enough to allow men and women to provide their families with a high quality of life. With these difficult to replace jobs gone, much of the rural Northwest, particularly rural Oregon, has been forced into an economic recession. Many proud residents of these timber towns have faced the painful reality of having to move out of their hometowns or risk watching their families plunge into poverty.

7. Even while federal regulations have shrunk timber harvest in Oregon over the past 25 years, forestry is the economic backbone of a large swath of the state and provides many good jobs. The industry's ability to persevere has been in part due to the O&C Act's guarantee that the O&C Lands will remain in production. While the federal government's implementation of the O&C Act has been deficient in many ways, the Act has provided an important source of sustainable timber during a time in which other federal policies have removed millions of acres of forestland from production. The O&C Act is the federal government's promise that sustainable timber harvesting will continue to be prioritized on some federal lands. This promise is critical to ensuring that many timber companies, including many members of AFRC, will stay in business and continue to operate in the future.

8. In addition to economic benefits, properly managing forests as required by the O&C Act also creates many important non-economic benefits. For example, properly-managed

forests are more resistant to both forest fires and diseases that cause tree die-offs. In 2015 there was an estimated 350 million dead or “zombie” trees standing in Oregon forests, largely a result of a failure to manage these lands properly. Dead trees and overgrown underbrush provide ideal conditions for wildfires and result in highly-fueled blazes that quickly become uncontrollable. Trees adapted to regular intervals of lower severity fire are killed when these highly-fueled blazes reach the trees’ delicate crowns. It is no surprise that as effective forest management has been scaled back, the Northwest has experienced several of its most destructive wildfire seasons on record. Wildfires and disease outbreaks that originate on unmanaged federal land also routinely move into otherwise healthy private forests, or lands owned by local governments or tribes, resulting in additional damage to the timber industry. The most proven method to prevent tree die-offs and catastrophic forest fires is to sustainably manage forests through harvesting, replanting, and active thinning.

9. AFRC members are also leaders in innovation in environmentally-friendly wood products, particularly the development of engineered wood products like cross-laminated timber that are revolutionizing the green-building industry. These products enable building construction with substantially less energy use than traditional materials such as steel and concrete. The O&C Lands are keys to this sustainable future.

10. Active management of federal forestlands also provides local Oregon governments with critical revenue. Timber sales on O&C Lands are particularly important to eighteen Oregon counties that collectively are entitled to 50 to 75 percent of the gross receipts generated from sales of O&C timber. Without sufficient active forest management, and sufficient O&C revenues, many Oregon communities lack critical mental health, public safety,

and after school services. Indeed, revenue shortfalls due to lack of timber harvest recently forced Douglas County, Oregon, to close its libraries.

11. In the final days of his presidency, President Obama unilaterally repurposed approximately 40,000 acres of O&C Lands in violation of the O&C Act. This action was taken without any meaningful consultation with the local and regional stakeholders, and will have negative impacts on the regional economy and environment. President Obama repurposed these lands by issuing Presidential Proclamation 9564 expanding the boundaries of the Cascade-Siskiyou National Monument by approximately 48,000 acres of primarily O&C Lands. *Proclamation 9564 of January 12, 2017: Boundary Enlargement of the Cascade-Siskiyou National Monument*, 82 Fed. Reg. 6145 (Jan. 18, 2017). These lands have been congressionally reserved “for permanent forest production. . . in conformity with the princip[le] of sustained yield,” since 1937 when the O&C Act was passed. In contravention of that reservation, Proclamation 9564 now requires that all forest production activities be prohibited on those lands by requiring the Department of the Interior, through the Bureau of Land Management (“BLM”), to manage the lands under guidelines that strictly prohibit the commercial harvest of timber.

12. The legal question before the Court is straightforward: can the President of the United States unilaterally issue a proclamation under the Antiquities Act directing the land in question be used for a particular purpose (a national monument) that directly contravenes, nullifies, and voids a 1937 Act of Congress that requires the same lands be managed for a different purpose (timber production). Underlying this legal question is the fundamental Constitutional principle of separation of powers that states a President cannot unilaterally override Congress. For this reason, Presidential Proclamation 9564 is illegal, *ultra vires*, and overreaches the President’s authority. AFRC requests Proclamation 9564 be declared null and void, that the

defendants' enforcement of the proclamation be enjoined, and the defendants be ordered to immediately begin managing the O&C Lands impacted by the proclamations in accordance with the O&C Act's sustainable yield mandate.

II. JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this case because it involves questions of federal law. 28 U.S.C. § 1331.

14. Venue is proper in this Court because this is an action against the United States, its agencies, and its officers, and also because a substantial part of the events and omissions giving rise to the claims in this case occurred in this District. 28 U.S.C. § 1391(e). Specifically, the Proclamation was prepared by officials in the Washington, D.C. Office of the Department of the Interior and was signed and issued by President Obama at the White House.

15. This Court has authority to grant the declaratory and injunctive relief requested pursuant to 28 U.S.C. §§ 2201-2202.

III. PARTIES

16. Plaintiff American Forest Resource Council ("AFRC") is a forest products trade association and Oregon nonprofit corporation, which represents approximately 90 lumber and plywood manufacturing companies and landowners throughout Oregon, California, Washington, Idaho, and Montana. AFRC supports sustainable and environmentally responsible management of public lands, and AFRC and its members actively participate in federal agency land management decisions that involve the allocation and use of forest resources in the areas where its members conduct business. AFRC maintains offices in Olympia, Washington and Portland and Eugene, Oregon, and employs field representatives throughout the five states in which it works.

17. The interests of AFRC members are directly tied to the availability of timber, and for its members which purchase timber in Oregon, particularly tied to the availability of timber from O&C Lands managed by BLM. AFRC members based in and outside Oregon have harvested and processed timber from O&C Lands, and AFRC members intend to continue to do so in the future. The business interests of AFRC's members have been and continue to be adversely impacted by the federal government's failure to provide adequate timber harvests from federal forest lands, and for its members with interests in Oregon forests, particularly adversely impacted by the BLM's failure to provide adequate timber harvests from O&C Lands. AFRC's members have curtailed operations or gone out of business entirely as a consequence of the lack of legally available timber to harvest from federal lands, including the lack of legally available timber to harvest from O&C Lands. AFRC members have harvested and processed timber from the O&C Lands at issue in this case before those lands were illegally repurposed for the expansion of the Cascade-Siskiyou National Monument, and members intended to continue to harvest and process timber from those lands. As a result of the expansion of the Cascade-Siskiyou National Monument, AFRC members have been denied the opportunity to harvest and process over forty thousand acres of timber reserved by Congress for timber production.

18. Defendant United States of America is a sovereign entity that holds title to and manages the lands in question.

19. Defendant BLM is an agency of the United States government that is situated within the Department of the Interior. The BLM is charged with managing both O&C Lands and the Cascade-Siskiyou National Monument.

20. Defendant Secretary of the Interior is the officer of the United States who heads the United States Department of the Interior, which houses the BLM. The Secretary of the

Interior is charged with managing both O&C Lands and the Cascade-Siskiyou National Monument.

21. Defendant President of the United States is an officer of the United States who acts as both the head of state and head of government. The Cascade-Siskiyou National Monument expansion at issue in this case was enacted by a proclamation of then-President Barack Obama.

IV. BACKGROUND ALLEGATIONS

A. The Antiquities Act Of 1906

22. The Antiquities Act of 1906 authorizes the President to establish by proclamation national monuments on federal lands that contain “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.” 54 U.S.C. § 320301(a). In establishing national monuments, the President is limited to protecting “the smallest area compatible with the proper care and management of the objects to be protected.” *Id.* § 320301(b).

B. The O&C Act Of 1937

23. The O&C Act was the final management decision arising from an 1866 congressional land grant made to facilitate the construction of a railroad between Portland, Oregon, and the California border. The grant was made not only to build a railroad but also to promote economic development in Western Oregon and Northern California. The original grant included over three million acres of land that the railroad was permitted to sell under particularized circumstances as compensation for railroad construction. The railroad’s handling of land sales became mired in fraud and corruption, resulting in Congress taking actions to curtail the original grant while still promoting the economic development of Oregon.

24. Decades after the original land grant, and after exposure of the widespread fraud, Congress passed the Chamberlain-Ferris Revestment Act in 1916 which revested all of the unsold grant lands back to the United States. These revested lands are what today are the O&C lands. The Chamberlain-Ferris Revestment Act also acknowledged the importance of these lands to Oregon's economic vitality and instructed the Department of the Interior to sell the timber from the O&C Lands as “rapidly as reasonably prices can be secured.” Chamberlain-Ferris Revestment Act of 1916, ch. 137, § 4, 39 Stat. 218, 220.

25. In 1937 Congress passed the O&C Act to ensure that the lands would be managed in perpetuity for timber production. The O&C Act requires that the revested lands:

"shall be managed. . . for permanent forest production, and the timber thereon **shall** be sold, cut, and removed in conformity with the principal of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities."

43 U.S.C. § 1181a (emphasis added). The act goes on to read:

"A forest unit will provide, insofar as practicable, a permanent source of raw materials for the support of dependent communities and local industries of the region."

Id. Congress was unwaveringly clear that the O&C Lands “shall be managed” as a timber reserve on a permanent basis. It was also clear that the lands were to be a source of “raw materials” for “local industries.”

26. Since passage of the Act, the O&C Lands have been managed as working timberlands. Annual production from O&C Lands has fluctuated over the years, reaching as high as approximately 1.6 billion board feet in 1960, before plummeting in the 1990s as a result of management changes. The promise of the O&C Act has not been fully realized in recent decades due to overly restrictive federal policies, but purchasers of Oregon timber nevertheless continue to be heavily reliant on O&C Lands, particularly that segment of the industry that does

not own large private tracts of land. Without continued and adequate supply of timber from O&C Lands, many AFRC members would face substantial financial harm, including lost revenues, lost profits, and in some cases the loss of a business. In November 2016, AFRC member Rough & Ready Lumber was forced to close permanently after 90 years in business in Cave Junction, Oregon. Rough & Ready was one of the few sources of steady family-wage employment in Cave Junction and Josephine County. Rough & Ready is surrounded by federal timberlands administered by BLM. Rough & Ready's closure was due to BLM's failure to sell timber in the quantities required by the O&C Act.

C. The Cascade-Siskiyou National Monument's Repurposing of O&C Land and its 2017 Expansion.

27. On June 9, 2000, President Clinton issued Presidential Proclamation 7318 creating the original Cascade-Siskiyou National Monument, purportedly under authority granted to the President by Antiquities Act of 1906. The original monument was created by repurposing 52,000 acres of federal land. Proclamation 7318 states "[t]he commercial harvest of timber or other vegetative material is prohibited, except when part of an authorized science-based ecological restoration project aimed at meeting protection and old growth enhancement objectives." 65 Fed. Reg. 37249, 37250 (June 9, 2000). The proclamation further states that "[n]o portion of the monument shall be considered to be suited for timber production, and no part of the monument shall be used in a calculation or provision of a sustained yield of timber." *Id.* Proclamation 7318 charged the Secretary of the Interior, through the BLM, to prepare a management plan for the monument. The current management plan for the Monument was issued in 2008 and prohibits commercial timber harvest inside the monument.

28. In October of 2016, the BLM released a plan detailing a proposed expansion to the Cascade-Siskiyou National Monument that included nearly 50,000 acres of O&C lands. The

BLM's release of the proposed expansion was the first the timber industry had heard of the expansion, and industry representatives were largely shutout of any discussions regarding the expansion. The O&C Lands on which the industry relies were essentially pulled out of production with little or no consultation with the affected parties.

29. Eight days before leaving office, on January 12, 2017, President Obama issued Proclamation 9564, titled *Boundary Enlargement of the Cascade-Siskiyou National Monument*. The area covered by President Obama's proclamation was only slightly smaller than BLM's October 2016 proposed expansion, and included over 40,000 acres of O&C lands.

30. Proclamation 9564 states that "[a]ll Federal lands and interests in lands within the boundaries" of the monument "are hereby . . . withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws." 82 Fed. Reg. 6145, 6148-49 (Jan. 12, 2017).

31. Proclamation 9564 also states that the Secretary "shall manage the area being added to the monument through the [BLM] as a unit of the National Landscape Conservation System, under the same laws and regulations that apply to the rest of the monument." 82 Fed. Reg. at 6149. Because Proclamation 7318 prohibits the commercial harvest of timber in the original Cascade-Siskiyou National Monument area, Proclamation 9564 prohibits commercial harvest of timber in the expanded monument area.

32. Proclamation 9564 attempts to unilaterally repurpose tens of thousands acres of O&C Land expressly designated by Congress for commercial harvest of timber. The Proclamation purports to override Congress' mandate that these lands be managed as sustainable forests for the benefit of local industries, and instead mandates that they be managed as untouched wild places.

33. While the Antiquities Act provides the President wide discretion to reserve or withdraw federal lands, it does not allow the President to override Congress' determination that a particular piece of land should be devoted to a particular purpose.

34. In 1940, then-President Roosevelt faced a nearly identical fact pattern when he considered expanding the Oregon Caves National Monument. This illegal action was halted after the Solicitor of the Department of the Interior concluded that "the president does not have such authority," because "Congress has set aside the lands for the specified purpose" of timber production. *See* Department of the Interior Solicitor's Opinion M. 30506 (Mar. 9, 1940). Thus in 1940, shortly after passage of the O&C Act, the executive branch recognized that it lacked authority to take the actions challenged in this case.

D. AFRC Members' Use and Intended Future Use of the O&C Lands Included in the Monument.

35. The Monument designation includes O&C Lands managed by both the BLM's Medford and Lakeview District Offices. AFRC members regularly harvest timber on O&C lands within the Medford and Lakeview Districts. In September 2016, a member of AFRC successfully bid on the rights to harvest timber on an 85 acre tract of O&C Land called "Jigsaw," which is located in the Klamath Falls Resource Area of the Lakeview District. The area known as "Jigsaw" was designated as part of the Monument in 2017. By contract the recipient has until 2018 to finish the harvest. Six different timber companies bid to obtain the rights to Jigsaw, and the winner paid substantially over the minimum bid price. The number of bidders bidding on Jigsaw, and the high price paid, are evidence of the shortage of timber currently facing the region.

36. Prior to Monument expansion, the BLM Lakeview District had planned out a number of commercial harvests of O&C Lands that were to occur in what is now the Monument.

This included a 2017 sale called “Leek Peak”, 2018 sales called “Summit” and “Sweet Vidalia,” a 2019 sale called “Fourth Leaf,” a 2020 sale called “Stag,” 2021 sales called “Mr. Clean” and “Terminus,” and a 2022 sale called “LBJ.” These sales can no longer legally proceed given the Monument expansion. AFRC members would have bid on these O&C timber sales, and likely would have been awarded contracts to remove timber from areas now within the monument. The BLM estimated these sales would have resulted in the production of approximately 40 million board feet of timber. These sales would support approximately 720 direct and indirect jobs. Without the proceeds of these sales, it is likely that the Lakeview District’s Klamath Falls Resource Area will not produce enough timber sale revenue to cover area operating expenses, resulting in a possible shut down of the Klamath Falls office.

37. The BLM’s Medford District has also been substantially impacted by the Monument designation. It is currently estimated that 10 percent of timber lands in the Medford District have been pulled from production as a result of the Monument designation. Given the timber industry’s reliance on access to federal lands, this lost production has and will have major financial impacts on timber companies operating in the Medford District.

38. AFRC members rely upon O&C Lands timber sales in the Medford and Lakeview BLM districts. Several AFRC members have a long history of bidding on and being awarded federal timber contracts in the area. All of these companies face significant financial harm as a result of the Monument expansion.

39. The Monument has and will continue to directly impact the bottom lines of AFRC’s members, threatens their ability to remain in business, poses a significant risk to the timber industry of Southern Oregon, and thereby risks the continued decimation of the economy of Southern Oregon.

CLAIM FOR RELIEF**Proclamation 9564 Violates the O&C Act, is *Ultra Vires*, Constitutes an Illegal Overreach of the Powers of the President of the United States, and Exceeds the Powers delegated to the President by the Antiquities Act.**

40. Plaintiff re-alleges and incorporates paragraphs 1-39.

41. Congress mandated that O&C Lands be managed for the permanent production of timber. It requires that O&C Lands be managed for permanent forest production. 43 U.S.C. § 1181a.

42. The President of the United States has unilaterally violated the O&C Act on tens of thousands of acres of O&C Land by unilaterally issuing Proclamation 9564, which requires that these lands be managed as a national monument without of any commercial timber production.

43. Under the Property Clause of United States Constitution, Art. IV, § 3, cl. 2, Congress' power over federal lands is paramount. If Congress sets aside land for a particular purpose, the President does not have the power to override Congress' judgment by issuing a presidential proclamation that repurposes that land, even where the President exercises the powers granted him under the Antiquities Act. Where, as in this case, a presidential proclamation and act of congress directly conflict on a matter of federal land management, the Constitutional doctrine of separation of powers requires that the president's unilateral action give way to an Act of Congress.

44. To the extent the Antiquities Act and the O&C Act conflict, the O&C Act was passed at a later date and deals with more specific subject matter, so the O&C Act supersedes and nullifies the Antiquities Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Declare that Proclamation 9564 violates the O&C Act and the Antiquities Act by mandating that O&C Lands be managed for a purpose other than sustained yield timber production;
- B. Declare Proclamation 9564 is void as it is Presidential action taken *ultra vires*;
- C. Declare that the O&C Act requires the O&C Lands to be managed for permanent forest production, notwithstanding any other provision of law;
- B. Vacate and enjoin Proclamation 9564 and any actions to enforce Proclamation 9564;
- C. Award Plaintiff its reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- D. Grant Plaintiff such further relief as may be just, proper, and equitable.

DATED: 3/10/17

By: /s/Diane M. Meyers

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COPY FOR MR. STRAUS

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON

M. 30506.

Synopsis of
Solicitor's Opinion

Re: Authority of the President to include certain revested Oregon and California Railroad Company lands in the Rogue River and Siskiyou National Forests.

Held: Since Congress has set aside the lands for a specific purpose which is inconsistent with an administration of the lands for national monument purpose, the President is without such authority.

W. H. H. H.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Solicitor
Washington

H. 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

M. 30506.

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

M. 30506.

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.