



August 18, 2017

The Honorable Ryan Zinke  
Secretary  
United States Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

**Re: Review of the Cascade-Siskiyou National Monument Expansion**

Dear Secretary Zinke:

On behalf of the American Forest Resource Council and other Oregon stakeholders, thank you for taking the time to come to Oregon earlier this month to inspect the Cascade-Siskiyou National Monument. We hope that your meetings and tours were informative.

As you continue your review of the Cascade-Siskiyou National Monument under Executive Order 13792,<sup>1</sup> we wanted to bring to your attention a 1990 law reaffirming that the O&C lands have been reserved by Congress for timber production. The reservation of the O&C lands for “permanent forest production,” under which “the timber thereon shall be sold, cut, and removed in conformity with the princip[le] of sustained yield,”<sup>2</sup> precludes the President from including O&C lands in any National Monument. The Antiquities Act permits the President to “reserve parcels of land as a part of the national monuments.”<sup>3</sup> O&C lands do not fall within this authority because they have already been reserved.

In 1990, Congress passed, and President George H.W. Bush signed, Public Law No. 101-419.<sup>4</sup> The Act transferred about 40 acres of O&C lands from the federal government to the Rogue Community College District in Josephine County.<sup>5</sup> The Act contained a reversion, providing that the land would revert to the United States and to O&C land status if it ceased to be used for educational purposes.<sup>6</sup> The Act passed both Houses of Congress by voice vote and was signed by President Bush on October 12, 1990.<sup>7</sup>

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<sup>1</sup> Executive Order 13792 of April 26, 2017, “Review of Designations Under the Antiquities Act.” 82 Fed. Reg. 20,429 (May 1, 2017).

<sup>2</sup> Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (“O&C Act”), 43 U.S.C. § 2601 (formerly codified at 43 U.S.C. § 1181a).

<sup>3</sup> Antiquities Act of 1906, 54 U.S.C. § 320301(b).

<sup>4</sup> Pub. L. No. 101-419, *An Act to Convey certain Oregon and California Railroad Grant Lands in Josephine County, Oregon, to the Rogue Community College District, and for other purposes*, 104 Stat. 907 (Oct. 12, 1990).

<sup>5</sup> *Id.* § 1(b).

<sup>6</sup> *Id.* § 2(d).

<sup>7</sup> 104 Stat. at 907.

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By passing the 1990 Act, Congress necessarily affirmed that the subject lands – O&C lands – had been withdrawn from the public domain.

Earlier, BLM attempted to transfer the land under the Federal Property and Administrative Service Act (FPASA).<sup>8</sup> FPASA permits the General Services Administration (GSA) to dispose of surplus federal “property,” including real property, for educational and other purposes.<sup>9</sup> However, “property” subject to FPASA excludes “land *withdrawn or reserved* from the public domain.”<sup>10</sup>

As the 1990 legislation’s sponsor, Sen. Mark Hatfield, stated, “the GSA [w]as unable to implement the transfer and sale due to the property’s special designation as O&C land.”<sup>11</sup> Congress therefore concluded “conveying title to the land occupied by the college requires the legislative solution” contained in the 1990 Act.<sup>12</sup> In doing so, it necessarily endorsed the conclusion that the O&C lands were withdrawn or reserved from the public domain.

Senator Hatfield’s remarks quote and adopt a memorandum from the Regional Solicitor of the Interior further underlining that O&C lands are already reserved for timber production:

The recognition which Congress gave to the fact that upon revestment the O&C lands could be disposed of as any other public domain lands unless certain reservations were enacted has already been described with reference to the Forgiveness Act of 1912 and the Revestment Act of June 9, 1916. This taken together with the above description of the terms contained in the FPASA, makes it clear that the O&C lands are reacquired public domain lands which have been reserved for those special purposes described in such statutes as the 1916 Revestment Act and the August 28, 1937 O&C Act (43 U.S.C. § 1181a et seq.) ***Because of their special reserved status they can only be disposed of in accordance with the mandate of Congress.***<sup>13</sup>

The context of the 1990 Act makes clear that the only reason to pass the legislation was to lift the reservation, for timber purposes, of the 40 acres at issue. In sum, in 1990 Congress reaffirmed the preeminence of the timber mandate of the O&C lands. Such lands may not be repurposed without express Congressional direction.

The 1990 legislation was enacted 14 years after FLPMA and decades after other land management statutes which some claim undercut the reserved status of the O&C lands.

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<sup>8</sup> Federal Property and Administrative Service Act (FPASA) of 1949, as amended, 40 U.S.C. §§ 401 *et. seq.* (formerly 40 U.S.C. §§ 471 *et seq.*).

<sup>9</sup> *See* 40 U.S.C. § 550(c).

<sup>10</sup> 40 U.S.C. § 102(9)(A)(iv) (formerly 40 U.S.C. § 472(d))(emphasis added).

<sup>11</sup> 135 Cong. Rec. S12912-03, at S12914 (Oct. 6, 1989) (statement of Sen. Hatfield); *accord* 135 Cong. Rec. E3390-02, at E3390 (Oct. 11, 1989) (statement of Rep. Robert (Bob) F. Smith of Oregon). Rep. Smith represented the Second Congressional District, currently represented by Rep. Walden.

<sup>12</sup> *Id.*

<sup>13</sup> 135 Cong. Rec. at S12916 (Oct. 6, 1989).

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Congress expressed its view, and its intent, that the timber mandate continues without change, from 1937 to today. That is the essence of permanent forest production.

We hope this information is useful to you as you undertake your review of the Cascade-Siskiyou National Monument and determine whether the expansion is consistent with the clear congressional mandate of the O&C Act. If you or your staff have any questions, please feel free to contact us.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Travis Joseph".

Travis Joseph  
President