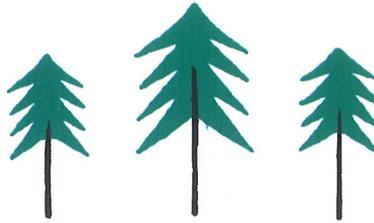


# ASSOCIATION OF O&C COUNTIES

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October 14, 2016

Senator Jeffrey Merkley  
313 Hart Senate Office Building  
Washington, DC 20510

Michael Connor, Deputy Secretary  
Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240

Re: Proposed Expansion of Cascade-Siskiyou National Monument

Dear Senator Merkley and Deputy Secretary Connor:

The Association of O&C Counties (AOCC) represents the interests of 17 Counties in Western Oregon that have a statutory interest in 2.1 million acres managed pursuant to the O&C Act of 1937, 43 USC 1181a-f. The proposed expansion of the Cascade Siskiyou National Monument (CSNM) would encompass and thereafter encumber approximately 53,100 acres, of which 50,900 are O&C lands. AOCC is opposed to the proposed expansion of the CSNM and is particular opposed to inclusion of any O&C lands in any national monument.

According to the Solicitor for the Department of the Interior, the President lacks authority under the Antiquities Act to include O&C lands in a national monument. In Solicitor's Opinion M. 30506, a copy of which is attached to this letter, the Solicitor responded to a question from the Secretary of the Interior regarding a proposal to include O&C lands in an expansion of the Oregon Caves National Monument. The Solicitor advised that the President had no such authority:

"My Dear Mr. Secretary: My opinion has been requested as to whether the President is authorized to set apart certain [O. & C.] lands as an addition to the Oregon Caves National Monument. It is my opinion that the President does not have such authority.

\* \* \*

By the act of August 28, 1937 (50 Stat 874), Congress directed that certain of the lands (those heretofore or hereafter classified as timber lands 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." \* \* \*

While the lands proposed to be added to the Oregon Caves National Monument have not yet been classified formally, I am advised by the Chief Forester, O. & 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. \* \* \* It must be concluded that Congress has set aside the lands for the specified purposes.

\* \* \*

There can be no doubt that the administration of the lands for national monument purposes would be inconsistent with the utilization of the O. & 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." DOI Solicitor's Opinion M. 30506, March 9, 1940.

The lands proposed for inclusion within the CSNM are almost all classified as timberlands and therefore beyond the President's authority under the Antiquities Act. Neither Senator Merkley nor the Department of the Interior has provided any details about the lands that would be added to the CSNM, but AOCC has the expert assistance of a retired BLM forester and resource specialist whose analysis has determined that approximately 88 percent of the proposed 53,100 acre expansion is classified as timberland and therefore is ineligible for inclusion in the CSNM. A copy of the AOCC's expert analysis is attached to this letter.

Even leaving aside the question of Presidential authority under the Antiquities Act, AOCC is opposed to the proposed CSNM expansion. Numerous judicial decisions have made clear that O&C lands are dedicated by the O&C Act to sustained yield timber production to generate revenue for the O&C Counties and to provide an economic base for local industries and communities. Counties depend on shared timber receipts to pay for essential public services of all kinds, from public safety such as sheriff patrols and jails to public health programs and libraries. When O&C lands are withdrawn from sustained yield management, there is a direct financial loss to County governments and a loss of services to local citizens. The proposed CSNM would permanently preclude sustained yield management on 53,100 acres.

In August of this year the BLM adopted a new management plan for the O&C lands. The 2016 plan is currently being litigated. The land use allocations in the 2016 plan are illegal, in that the majority of the O&C lands are allocated to reserves in which sustained yield management is not allowed. AOCC is seeking a judicial declaration that such reserves violate the O&C Act. The

Tony Hyde  
October 14, 2016  
Page 3

2016 plan leaves precious little in the harvest land base (HLB), which is the acreage outside of reserves on which the BLM plans to manage for sustained yield timber production.

The proposed CSNM expansion would cut deeply into the already-too-small HLB in the BLM's Medford District and Klamath Falls resource Area of the Lakeview District. The illegally restricted HLB in the Medford District would be further reduced by 6 percent and in the Klamath Resource Area would be reduced by a whopping 33 percent. This would represent a substantial loss of shared timber receipts for all the O&C Counties but would be a major blow to local economies for communities in Klamath and Jackson Counties, and perhaps as far away as Douglas County, which has mills that are within hauling distance of harvests that would take place on BLM lands in the Medford District and the Klamath Resource Area.

AOCC opposes expansion of the CSNM and requests that consideration of the current proposal be terminated. Any further consideration of such land withdrawals should occur, if at all, only by Congress.

Thank you for the opportunity to comment.

Very truly yours,

  
Commissioner Tony Hyde, President

cc (by email): Oregon Congressional Delegation  
AOCC Member Counties

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Office of the Solicitor  
Washington

M. 30506.

March 9, 1940

The Honorable

The Secretary of the Interior.

My dear Mr. Secretary:

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

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

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

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

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

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

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

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

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

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

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.

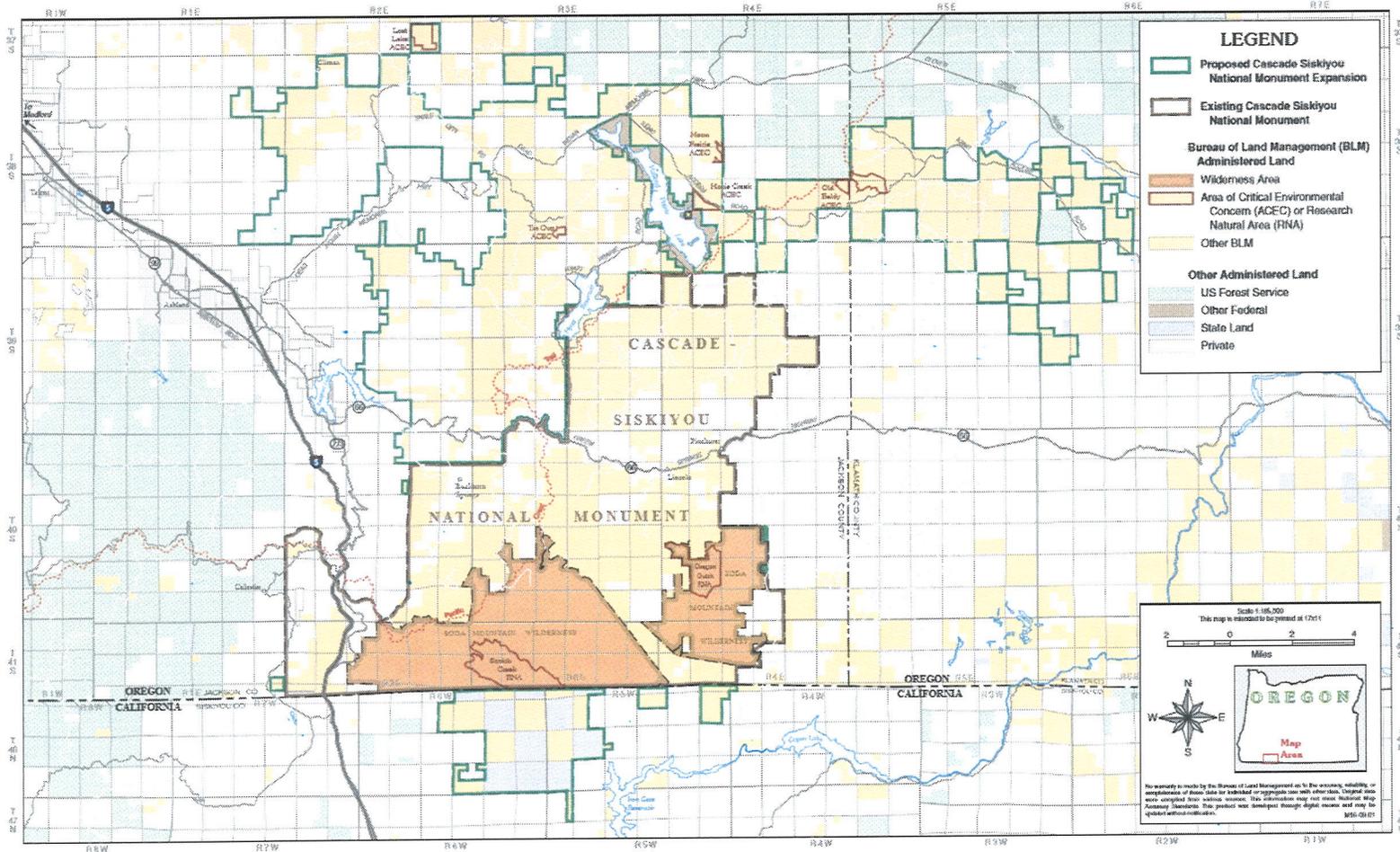
(Sgd) E. K. Burlew,  
First Assistant Secretary.



# PROPOSED CASCADE-SISKIYOU NATIONAL MONUMENT EXPANSION

October 7, 2016

This map prepared at the request of Senator Jeff Merkley and Senator Ron Wyden



### LEGEND

- Proposed Cascade Siskiyou National Monument Expansion
- Existing Cascade Siskiyou National Monument
- Bureau of Land Management (BLM) Administered Land
  - Wilderness Area
  - Area of Critical Environmental Concern (ACEC) or Research Natural Area (RNA)
  - Other BLM
- Other Administered Land
  - US Forest Service
  - Other Federal
  - State Land
  - Private

This map is intended to be printed at 17x11

Scale: 1:50,000

0 2 4 Miles

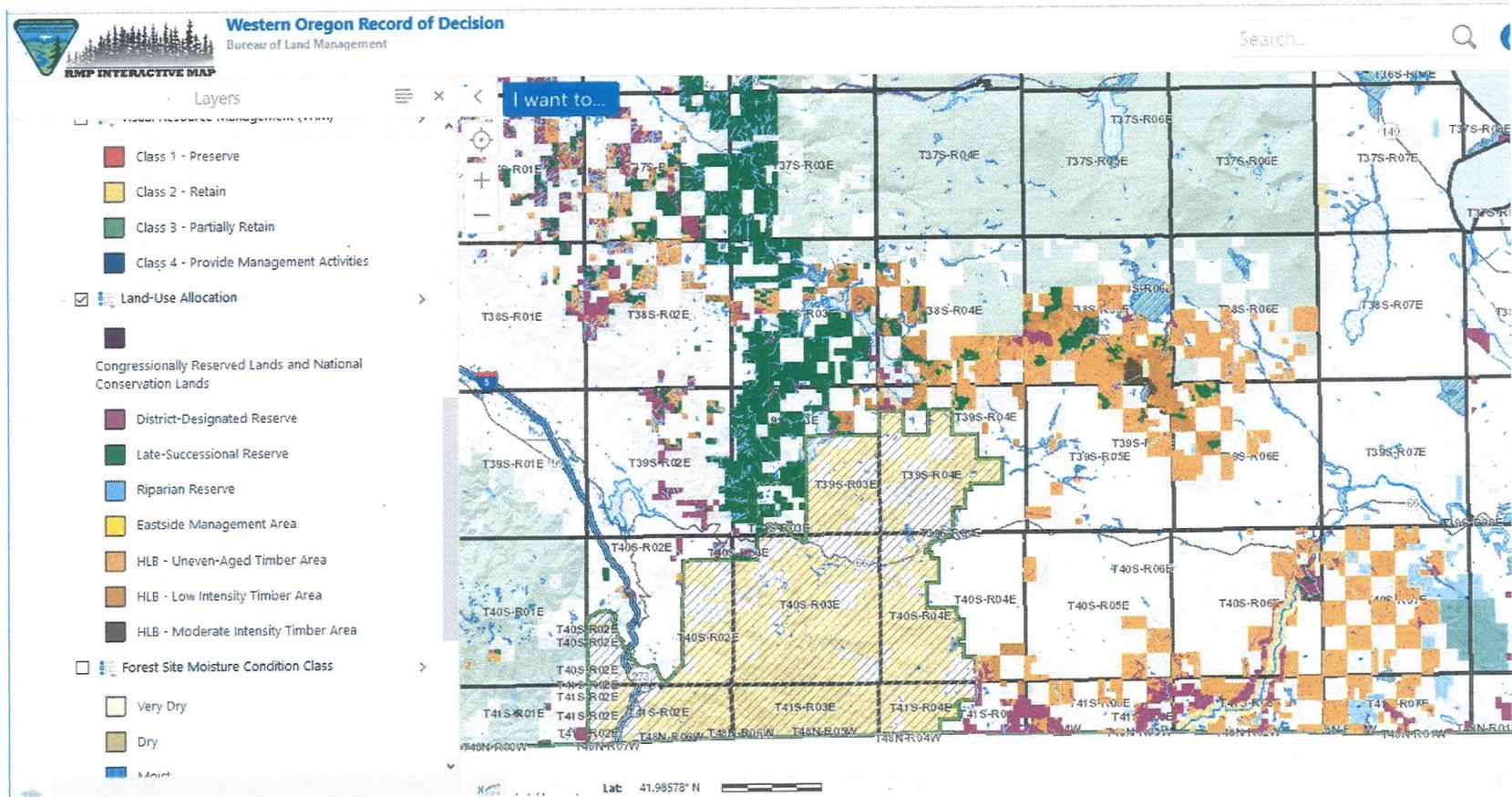
Map Area

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Digital data were converted from vector sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.

BLM-08101

# 2016 RMP Allocations – Surrounding the Cascade-Siskiyou National Monument

Dark Green, Purple, & Blue – Reserves    Orange – Harvest Land Base



## Estimated Acreage Summary

V2 - 10/11/2016

Other than Merkley's office reporting the expansion involves approximately 50,000 acres no data was provided.  
AOCC staff made these estimates based on the map and BLM's RMP data.

### 1) District Acreage Summary

Note: The existing Monument is not included in the Medford District total.

District	Klamath Falls Resource Area	Medford District	Total
Total Gross Acres	52,300	806,700	858,900
Monument Expansion Acres	15,600	37,500	53,100
Percent of Total Acres	30%	5%	6%

Proposed Expansion Forested Acres (Excludes Roads, Non-Forest)	Klamath Falls Resource Area	Medford District	Total
Monument Expansion Gross Acres	15,600	37,500	53,100
Monument Expansion Forested Acres	14,900	32,000	46,900
Percent Forested	96%	85%	88%

## 2) County and Land Status Acreage Summary of the Expansion Area

County / Land Status	Klamath	Jackson	Total
O&C	15,500	35,400	50,900
Public Domain	200	2,100	2,300
Monument Expansion Acres	15,700	37,500	53,200

## 3) 2016 RMP District Harvest Land Base

District/Harvest Land Base	Klamath Falls Resource Area	Medford District	Total
Outside Monument Expansion	24,800	174,100	198,900
Inside Monument Expansion	12,000	10,300	22,300
Total Harvest Land Base	36,800	184,400	221,200
Expansion Percent of HLB	33%	6%	11%