

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.