No. _____

IN THE

Supreme Court of the United States

MURPHY COMPANY, ET AL.,

Petitioners,

v.

JOSEPH R. BIDEN, JR., IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES OF AMERICA, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Michael E. Haglund
Julie A. Weis
HAGLUND KELLEY LLP
2177 SW Broadway
Portland, OR 97201
(503) 225-0777

Donald B. Verrilli, Jr.
Counsel of Record
Elaine J. Goldenberg
Rachel G. Miller-Ziegler
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave. NW
Suite 500E
Washington, DC 20001
(202) 220-1100
Donald.Verrilli@mto.com

Counsel for Petitioners

QUESTION PRESENTED

The Antiquities Act of 1906 authorizes the President, "in [his] discretion," to declare that "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" found on federal land are "national monuments" and to "reserve parcels of land as a part of the national monuments" so long as those parcels are "confined to the smallest area compatible with the proper care and management of the objects to be protected." 54 U.S.C. 320301. Three decades after that Act's passage, in the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (O&C Act), Congress reserved certain federal lands in Oregon for "permanent forest production," mandating that "the timber thereon shall be sold, cut, and removed in conformity with the princip[le] of sustained yield" timber production. 43 U.S.C. 2601. In 2017, President Obama invoked the Antiquities Act to add O&C Act timberlands to an existing Oregon national monument established to protect biological diversity, see Proclamation 9564, 82 Fed. Reg. 6,145 (Jan. 12, 2017)—despite the fact that lands that are part of that monument may not be used in "provision of a sustained yield of timber," Proclamation 7318, 65 Fed. Reg. 37,249, 37,250 (June 9, 2000).

The question presented is whether the Antiquities Act authorizes the President to declare federal lands part of a national monument where a separate federal statute reserves those specific federal lands for a specific purpose that is incompatible with national-monument status.

PARTIES TO THE PROCEEDINGS

Petitioners Murphy Company and Murphy Timber Investments, LLC were plaintiffs in the district court and appellants in the court of appeals.

Respondents Joseph R. Biden, Jr., in his official capacity as President of the United States of America, Debra A. Haaland, in her official capacity as Secretary of the Interior, and the U.S. Department of the Interior were defendants in the district court and appellees in the court of appeals.

Respondents Soda Mountain Wilderness Council, Klamath-Siskiyou Wildlands Center, Oregon Wild, and Wilderness Society were intervenor-defendants in the district court and appellees in the court of appeals.

RULE 29.6 DISCLOSURE STATEMENT

Petitioners Murphy Company and Murphy Timber Investments, LLC each have no parent corporation and there is no publicly held company that owns 10% or more of either petitioner's stock.

RELATED PROCEEDINGS

The proceedings directly related[*] to this petition are:

- *Murphy Company* v. *Biden*, No. 19-35921 (9th Cir.). Judgment entered April 24, 2023, and rehearing en banc denied August 30, 2023.
- *Murphy Company* v. *Trump*, No. 1:17-cv-00285-CL (D. Or.). Judgment entered September 5, 2019.

[*] Although not a directly related proceeding, *American Forest Resource Council* v. *United States*, 77 F.4th 787 (D.C. Cir. 2023), decided the same issue that the Ninth Circuit addressed in the decision below. Plaintiffs in *American Forest Resource Council* are filing a petition for certiorari on the same day as this petition's filing.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS ii

RULE 29.6 DISCLOSURE STATEMENT................. iii

RELATED PROCEEDINGS...................................... iv

TABLE OF CONTENTS... v

TABLE OF AUTHORITIES vii

OPINIONS BELOW 1

JURISDICTION... 1

STATUTORY PROVISIONS INVOLVED.................. 1

INTRODUCTION 1

STATEMENT OF CASE 3

REASONS FOR GRANTING THE PETITION........ 13

I. The Ninth Circuit's Interpretation Of The Antiquities Act Permits The President To Override A Controlling Federal Statute. 13

II. This Case Presents An Excellent Vehicle To Address The Limits Of The Significant And Recurring Exercise Of Presidential Power Under the Antiquities Act. 24

CONCLUSION 32

TABLE OF CONTENTS
(continued)

Page

APPENDICES

Appendix A: Opinion, *Murphy Co.* v. *Biden*, No. 19-35921 (9th Cir. Apr. 24, 2023) 1a

Appendix B: Order Adopting Report and Recommendation as Modified, *Murphy Co.* v. *Trump*, No. 1:17-cv-00285-CL (D. Or. Sept. 5, 2019) 48a

Appendix C: Report and Recommendation, *Murphy Co.* v. *Trump*, No. 1:17-cv-00285-CL (D. Or. Apr. 2, 2019) 51a

Appendix D: Order Denying Rehearing En Banc, *Murphy Co.* v. *Biden*, No. 19-35921 (9th Cir. Aug. 30, 2023) 61a

Appendix E: Public Law No. 75-405, 50 Stat. 874 (1937) 63a

Appendix F: 43 U.S.C. 2601 .... 69a

Appendix G: 43 U.S.C. 2605 .... 71a

Appendix H: 54 U.S.C. 320301 .... 73a

Appendix I: Proclamation No. 7318, 65 Fed. Reg. 37,249 (June 9, 2000) 74a

Appendix J: Proclamation No. 9564, 82 Fed. Reg. 6,145 (Jan. 12, 2017) 81a

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Am. Forest Res. Council v. *United States*,
77 F.4th 787 (D.C. Cir. 2023) 9, 13, 19

Burns v. *United States*,
501 U.S. 129 (1991) 18

Clackamas Cnty., Or. v. *McKay*,
219 F.2d 479 (D.C. Cir. 1954) 4, 5

Delaware v. *Pennsylvania*,
598 U.S. 115 (2023) 19

FDA v. *Brown & Williamson Tobacco Corp.*,
529 U.S. 120 (2000) 15

Headwaters, Inc. v. *Bureau of Land Mgmt., Medford Dist.*,
914 F.2d 1174 (9th Cir. 1990) 7, 21, 23, 28

Kingdomware Techs., Inc. v. *United States*,
579 U.S. 162 (2016) 14

Luna Perez v. *Sturgis Pub. Schs.*,
598 U.S. 142 (2023) 24

Mass. Lobstermen's Ass'n v. *Raimondo*,
141 S. Ct. 979 (2021) 1, 2, 12, 24, 25, 26, 30

TABLE OF AUTHORITIES
(continued)

Page(s)

Mass. Lobstermen's Ass'n v. *Ross*,
945 F.3d 535 (D.C. Cir. 2019) 30

Oregon & Cal. R.R. Co. v. *United States*,
238 U.S. 393 (1915) 5

PLIVA, Inc. v. *Mensing*,
564 U.S. 604 (2011) 7

Radzanower v. *Touche Ross & Co.*,
426 U.S. 148 (1976) 15

Tulare Cnty. v. *Bush*,
185 F. Supp. 2d 18 (D.D.C. 2001) 29

United States v. *Texas*,
143 S. Ct. 1964 (2023) 17

FEDERAL STATUTES

16 U.S.C. 410hh 32

16 U.S.C. 431 3

16 U.S.C. 1433 25

28 U.S.C. 1254(1) 1

43 U.S.C. 2601 .... 2, 5, 6, 13, 14, 15, 17, 19, 21

43 U.S.C. 2602 6

43 U.S.C. 2603 6

TABLE OF AUTHORITIES
(continued)

Page(s)

43 U.S.C. 2605 2

43 U.S.C. 2605(a) 7, 27

43 U.S.C. 2605(b) 27

43 U.S.C. 2606 7

43 U.S.C. 2621 7

43 U.S.C. 2622 7

43 U.S.C. 2623 7

54 U.S.C. 100101 25

54 U.S.C. 320301 3

54 U.S.C. 320301(a) 2, 3, 14, 15, 25

54 U.S.C. 320301(b) 4, 25, 30

Act of July 25, 1866, Pub. L. No. 39,
Chapter 242, 14 Stat. 239 4

Act of June 9, 1916, Pub. L. No. 64-86,
Chapter 137, 39 Stat. 218 5

An Act for the Preservation of American
Antiquities, Pub. L. No. 59-209,
Chapter 3060, 34 Stat. 225 (1906) 15

TABLE OF AUTHORITIES
(continued)

Page(s)

Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937, Pub. L. No. 75-405, Chapter 876, 50 Stat. 874 .... 8, 15

EXECUTIVE MATERIALS

65 Fed. Reg. 37,249 (June 9, 2000) 8, 13, 21

82 Fed. Reg. 6,145 (Jan. 12, 2017) 8, 14, 17, 20, 22

LEGISLATIVE MATERIALS

H.R. Rep. No. 1119, 75th Cong., 1st Sess. (1937) 7, 23

Hearing on H.R. 5858 Before the Comm. on the Public Lands, 75th Cong., 1st Sess. (1937) 6

S. Rep. 75-1231, 75th Cong., 1st Sess. (1937) 23

OTHER AUTHORITIES

Katie Hoover, Cong. Rsch. Serv., R42951, *The Oregon and California Railroad Lands (O&C Lands): In Brief* (2023), https://crsreports.congress.gov/product/pdf/R/R42951 27

Ronald F. Lee, U.S. Dep't of the Interior, Nat'l Park Serv., *The Antiquities Act of 1906* (1970) 3

TABLE OF AUTHORITIES
(continued)

Page(s)

National Park Serv., *Antiquities Act of 1906*, https://www.nps.gov/subjects/archeology/antiquities-act.htm 3, 4

National Park Serv., *National Monument Facts and Figures*, https://www.nps.gov/subjects/archeology/national-monument-facts-and-figures.htm 25, 31

U.S. Dep't of the Interior, Bureau of Land Management, *O&C Sustained Yield Act: the Land, the Law, the Legacy, 1937-1987* (1987), https://www.blm.gov/or/files/OC_History.pdf 7, 27

Carol Hardy Vincent, Cong. Rsch. Serv., R41330, *National Monuments and the Antiquities Act* (2023), https://sgp.fas.org/crs/misc/R41330.pdf 4

Carol Hardy Vincent & Laura A. Hanson, Cong. Rsch. Serv., R42346, *Federal Land Ownership: Overview and Data* (2020), https://crsreports.congress.gov/product/pdf/R/R42346 25

Webster's New Int'l Dictionary (1930) 19

Winston Simplified Dictionary (1931) 19

TABLE OF AUTHORITIES (continued)

Page(s)

John Yoo & Todd Gaziano, *Presidential Authority to Revoke or Reduce National Monument Designations*, 35 Yale J. on Reg. 617 (2018)......................................3

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (Pet.App.1a) is published at 65 F.4th 1122. The order denying rehearing en banc (Pet.App.61a) is unpublished. The district court's order adopting the report and recommendation of the magistrate judge as modified and granting respondents' motion for summary judgment (Pet.App.48a) is available at 2019 WL 4231217. The report and recommendation (Pet.App.51a) is available at 2019 WL 2070419.

JURISDICTION

The judgment of the court of appeals was entered on April 24, 2023. Pet.App.1a. A timely petition for rehearing en banc was denied on August 30, 2023. Pet.App.61a. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions are reproduced in the appendix to this petition. Pet.App.63a-73a.

INTRODUCTION

In recent years, Presidents have exercised authority under the Antiquities Act of 1906 (Antiquities Act) with increasing frequency and in increasingly aggressive ways. See *Mass. Lobstermen's Ass'n* v. *Raimondo*, 141 S. Ct. 979, 980 (2021) (Roberts, C.J., statement respecting denial of certiorari). In the Antiquities Act proclamation at issue here, the President designated 48,000 acres in southwestern Oregon as part of a national monument. That sweeping designation bears

little if any connection to the bases for designation identified in the statute itself—preservation of "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest." 54 U.S.C. 320301(a). Even worse, the designation countermanded the specific command of a later-enacted statute, the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (O&C Act). In the O&C Act, Congress reserved the land covered by the proclamation at issue for "permanent forest production," mandated that the timberland "shall" be put to that use, and provided that substantial revenue from that forest production be directed to the Oregon counties where the reserved land is located. 43 U.S.C. 2601, 2605.

A divided Ninth Circuit panel upheld the proclamation because the majority embraced the extreme and unjustifiable position that the Antiquities Act "effectively allow[s] the President to repeal any disagreeable statute." Pet.App.31a. And, in doing so, the court of appeals specifically relied on the fact that this Court has never declared an Antiquities Act proclamation unlawful. *Id*. at 23a.

The Court should take up this case and hold the proclamation unlawful. The President, with the blessing of the courts of appeals, has transformed the Antiquities Act's monument-designating authority "into a power without any discernible limit to set aside vast and amorphous expanses of terrain." *Mass. Lobstermen's Ass'n*, 141 S. Ct. at 981 (statement of Roberts, C.J.). And the President's use of the power in this instance to override the specific command of a later-enacted statute raises particularly troubling separation-of-powers concerns. This Court's intervention is needed to make clear that the Antiquities Act is not a

blank check for Presidents' unconstrained use of federal lands, to restore the appropriate balance between executive and congressional power in this area, and to prevent harm to the local timber industry and significant revenue loss by the affected Oregon counties.

STATEMENT OF CASE

1. Congress enacted the Antiquities Act of 1906 in response to vandalism of Native American sites by "curio seekers" who carried off "valuable archaeological material." John Yoo & Todd Gaziano, *Presidential Authority to Revoke or Reduce National Monument Designations*, 35 Yale J. on Reg. 617, 623-624 (2018) (citation omitted); see National Park Serv., *Antiquities Act of 1906*, https://www.nps.gov/subjects/archeology/antiquities-act.htm; Ronald F. Lee, U.S. Dep't of the Interior, Nat'l Park Serv., *The Antiquities Act of 1906*, at 29-39, 47-78 (1970).[1] Consistent with that purpose, the Antiquities Act focuses on "objects" found on land that the federal government owns or controls and gives the President substantial discretion to protect such objects.

The Antiquities Act provides that "[t]he President may, in the President's discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on" such land. 54 U.S.C. 320301(a). The word "other" in the catch-all phrase at the end of that provision indicates that Congress regarded all of the listed subjects of protection—including "landmarks" and "structures"—as particular kinds

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[1] The Act was recodified in 2014 and, as relevant here, any changes to its language made at that time were stylistic and nonsubstantive. Compare 54 U.S.C. 320301 (enacted in 2014), with 16 U.S.C. 431 (enacted in 1906 and now repealed).

of "objects of historic or scientific interest." *Ibid.* The statute also permits the President to "reserve parcels of land as a part of the national monuments," but only insofar as such reservation is necessary for protection of the objects. 54 U.S.C. 320301(b). Thus, the statute provides that "[t]he limits of the parcels [of land] shall be confined to the smallest area compatible with the proper care and management of the objects to be protected." *Ibid.*

Since enactment of the Antiquities Act, presidents have used the Antiquities Act "to set aside land almost 300 times." National Park Serv., *Antiquities Act of 1906*, *supra*. Many of those actions—taken without participation from or direction by the legislature—have been the subject of significant controversy. See Carol Hardy Vincent, Cong. Rsch. Serv., R41330, *National Monuments and the Antiquities Act* (2023), https://sgp.fas.org/crs/misc/R41330.pdf.

2. This case relates to specific lands in Oregon that (quite apart from the Antiquities Act) have been the subject of significant congressional attention.

a. In 1866, seeking "to promote the development of the West," Congress granted nearly four million acres in the then-new state of Oregon to a railroad company in connection with construction of a railroad linking Oregon and California. *Clackamas Cnty., Or.* v. *McKay*, 219 F.2d 479, 483 (D.C. Cir. 1954), *vacated as moot*, 349 U.S. 909 (1955); see Act of July 25, 1866, Pub. L. No. 39, ch. 242, 14 Stat. 239. Three years later, Congress amended the land grant to direct the railroad to sell the land to western settlers in small blocks at low prices. See *Clackamas*, 219 F.2d at 482. But the railroad did not comply with those terms, instead selling large tracts to large purchasers at much higher prices. See *ibid.*; *Oregon & Cal. R.R. Co.* v. *United*

States, 238 U.S. 393, 408 (1915). That incensed Congress, which took various steps in response.

One such step was passage of a statute that revested in the United States certain lands that previously had been granted to the railroad. *Clackamas*, 219 F.2d at 482. That statute required that the timber on the revested land be sold "as rapidly as reasonable prices can be secured." Act of June 9, 1916, Pub. L. No. 64-86, ch. 137, § 4, 39 Stat. 218, 220. A portion of the money resulting from those timber sales would be paid to the counties in which the land was located, in an attempt to ensure that the revesting of the lands—which removed millions of acres from those counties' tax rolls—was not unduly harmful to local communities. *Clackamas*, 219 F.2d at 482-483. And later, when Congress deemed the money flowing to the counties to be insufficient, Congress passed further legislation mandating payment of taxes to the counties "on the revested * * * grant lands." *Id.* at 485. But that attempted solution also ultimately was not sufficient to ensure a flow of funds to the affected counties, and the economic situation in the region became "perilous." Pet.App.11a.

b. Seeking a permanent solution to that problem, Congress enacted the O&C Act, which reserves millions of acres of land in eighteen western Oregon counties for "permanent forest production." 43 U.S.C. 2601. The O&C Act thus "descends from the fraught history of America's westward expansion, punctuated as it was by the exploitation of natural resources and federal money." Pet.App.10a.

That statute covers "such portions of the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands as are or may hereafter come under the jurisdiction of the Department of the

Interior, which have heretofore or may hereafter be classified as timberlands, and power-site lands valuable for timber." 43 U.S.C. 2601. The statute provides that those lands "*shall* be managed," with an exception not relevant here, "for permanent forest production, and the timber thereon *shall* be sold, cut, and removed in conformity with the princip[le] of sustained yield." *Ibid.* (emphasis added); see *Relating to the Revested Oregon & California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands Situated in the State of Oregon: Hearing on H.R. 5858 Before the Comm. on the Public Lands*, 75th Cong., 1st Sess. 11 (1937) (statement of W.B. Greeley, former U.S. Forest Service Chief) (explaining that principle of sustained yield refers to harvesting a volume of timber commensurate with the forest's annual yield). To carry out that requirement, the statute provides that each year the "productive capacity for such lands *shall* be determined and declared" (and specifies a minimum "average annual cut" in the interim). *Ibid.* (emphasis added). The statute further requires that "timber from said lands" in a minimum amount "be sold annually." *Ibid.*; see 43 U.S.C. 2602 (authorizing Interior Secretary to make cooperative agreements as to "time, rate, method of cutting, and sustained yield"); 43 U.S.C. 2603 (authorizing Interior Secretary to lease certain lands for grazing if that does not "interfer[e] with the production of timber").

The statute also specifies certain results that managing the lands for forest production in that manner will yield. 43 U.S.C. 2601. That type of management is intended to "provid[e] a permanent source of timber supply, protect[] watersheds, regulat[e] stream flow, and contribut[e] to the economic stability of local communities and industries, and provid[e] recreational facil[i]ties." *Ibid.*; see *Headwaters, Inc.* v. *Bureau of*

Land Mgmt., Medford Dist., 914 F.2d 1174, 1183-1184 (9th Cir. 1990) (explaining that the O&C Act is a "timber production" dominant-use statute and that "Congress intended to use 'forest production' and 'timber production' synonymously"); H.R. Rep. No. 1119, 75th Cong., 1st Sess., at 2 (1937) (explaining that managing the lands for sustained-yield timber production will have the ancillary benefits specified in the statute).[2]

In particular, the O&C Act provides that timber production on the lands in question will directly benefit local communities. The statute requires that fifty percent of the revenue from O&C Act timber sales be paid to the counties in which the timberlands are located, see 43 U.S.C. 2605(a); see also 43 U.S.C. 2621-2623—and the amounts paid to Oregon counties as a result of that statutory command have been measured in *billions* of dollars, see U.S. Dep't of the Interior, Bureau of Land Management, *O&C Sustained Yield Act: the Land, the Law, the Legacy, 1937-1987*, at 14-15 (1987), https://www.blm.gov/or/files/OC_History.pdf.

The O&C Act also includes a *non obstante* clause, which reflects Congress's effort to ensure a permanent flow of funds to the counties in question regardless of any other legislation that existed in 1937 or might be enacted thereafter. See *PLIVA, Inc.* v. *Mensing*, 564 U.S. 604, 622 (2011) (opinion of Thomas, J.) (citation omitted) (discussing effects of a *non obstante* clause). The clause states that "[a]ll Acts or parts of Acts in conflict with this Act are hereby repealed to the extent necessary to give full force and effect to this Act." O&C

[2] In a subsequent enactment, Congress provided that under certain circumstances the Executive Branch need not engage in any consultation, in managing the lands in question, as to threatened or endangered species or critical habitats. 43 U.S.C. 2606.

Act, Pub. L. No. 75-405, ch. 876, 50 Stat. 874, 876 (1937) (uncodified provision located at end of Title II).

3. In 2000, President Clinton reserved almost 53,000 acres of federal land in Oregon and California as the Cascade-Siskiyou National Monument (Monument), citing that land's "spectacular" biodiversity. Proclamation 7318, 65 Fed. Reg. 37,249 (June 9, 2000). The proclamation stated 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.* at 37,250; see *ibid.* (allowing "[r]emoval of trees from within the monument area" only under extremely limited circumstances and stating that "commercial harvest of timber * * * is prohibited").

In 2017, President Obama issued the proclamation being challenged in this case: Proclamation 9564 (Proclamation). That new proclamation added about 48,000 acres in southwestern Oregon to the Monument, some of which are lands that had been designated as timberlands under the O&C Act. 82 Fed. Reg. 6,145 (Jan. 12, 2017); Pet.App.9a. The purpose of the Proclamation was to "bolster protection of the resources within the original boundaries * * * and the expansion area." 82 Fed. Reg. at 6,145. And, again, the Proclamation prohibited any timber production within the Monument's lands. *Id.* at 6,149 (providing that area would be managed under same regulations as rest of Monument). After it issued, the Executive Branch "halted timber sales within the expanded Monument." Pet.App.10a.[3]

[3] In 2016, prior to the Proclamation, the Bureau of Land Management issued a resource management plan (RMP) making clear (footnote continued)

4. a. Petitioners Murphy Company and Murphy Timber Investments, LLC, which are family-owned Oregon timber businesses, challenged Proclamation 9564 in the District of Oregon on the ground that the President lacked authority to expand the Monument through the inclusion of acreage previously set aside by Congress for a different and wholly incompatible purpose.

On cross-motions for summary judgment, the district court upheld the Proclamation. Focusing on the Antiquities Act action alone, the court concluded that the President had power to issue the Proclamation. Pet.App.50a, 55a-57a. The court also concluded that there was only tension, and not irreconcilable conflict, between use of the Antiquities Act here and the sustained-yield timber production mandate of the O&C Act. *Id*. at 57a-60a. In reaching that conclusion, the

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that certain land covered by the O&C Act was land "managed to 'achieve continual timber production that can be sustained through a balance of growth and harvest.'" *Am. Forest Res. Council* v. *United States*, 77 F.4th 787, 794 n.10 (D.C. Cir. 2023) (citation omitted); see Gov't Br. 7, *Murphy Co.* v. *Biden*, ECF No. 42, No. 19-35921 (9th Cir.) (Apr. 18, 2022), 2022 WL 1415261 (discussing "harvest land base"). Yet the Proclamation had the effect of halting timber production on over 16,000 acres of that very land. See Gov't Br. 7. The question presented here is accordingly independent of any challenge to the RMP's *separate* designation of certain land covered by the O&C Act as "reserves" where timber cannot be harvested—a designation challenged in the second question presented in the *American Forest Resource Council* petition. Regardless of the legality of the RMP "reserves" designation, declaring the Proclamation unlawful would mean that timber production would resume on a significant amount of land covered by the O&C Act where such production is now halted. Declaring the Proclamation unlawful also would mean that timber production could resume on the "reserves" land if the RMP were withdrawn, altered, or struck down in the future.

court never addressed the Proclamation's mandate for zero sustained-yield timber production.

b. The Ninth Circuit affirmed, over a dissent by Judge Tallman.[4]

i. The majority concluded that the O&C Act "did not explicitly or implicitly repeal the Antiquities Act." Pet.App.20a. According to the majority, there was no such repeal because "the two statutes are directed at different officials," because "the Antiquities Act vests authority in the President, while the O&C Act concerns the Secretary," and that the O&C Act does not "make any reference to the preexisting Antiquities Act." *Ibid.* The majority acknowledged the existence of the O&C Act's *non obstante* clause, but asserted that if "Congress has wished to restrict the President's Antiquities Act authority," it would have "done so expressly." *Id*. at 22a. The majority also placed weight on a handful of decisions by this Court affirming the President's Antiquities Act authority in different contexts, asserting that "the fact that the Supreme Court has never overturned an Antiquities Act proclamation underscores the statute's vitality." *Id.* at 23a.

The majority further concluded that "[t]he Proclamation's exercise of Antiquities Act power is consistent with the O&C Act." Pet.App.23a. In the majority's view, despite the mandatory language in the O&C Act relating to timber production, such production "was not the sole purpose that Congress envisioned" and Congress "delegated ample discretion to the Department of the Interior to manage the lands in a flexible manner." *Ibid.* The majority asserted that

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[4] All three judges agreed that the claim that the Antiquities Act proclamation exceeded the President's authority is judicially reviewable. Pet.App.13a-19a; *id*. at 34a (Tallman, J., dissenting).

the text of the O&C Act gives the Executive Branch authority to say that land "heretofore" classified as timberland should no longer have that classification and to manage the land in keeping with modern notions of environmental conservation. *Id*. at 24a-27a. The majority also pointed to legislative history and a supposed 1930s zeitgeist to support the notion that "conservation of the nation's natural resources" was an important consideration in enacting the O&C Act. *Id*. at 29a (citation omitted).

The majority did not deny that its analysis "would effectively allow the President to repeal any disagreeable statute" by means of an Antiquities Act proclamation. Pet.App.31a. That prospect is not of concern, the majority stated, because if Congress disagrees with a particular proclamation it can take action *after the fact* to erase what the President has proclaimed. See *id*. at 31a-32a.

ii. In dissent, Judge Tallman explained that the Proclamation impermissibly authorizes action that is specifically forbidden by the O&C Act—and, in doing so, visits a "devastating economic impact" on areas that depend on "logging and wood product sales to sustain them." Pet.App.34a. He reasoned that the conflict is "obvious": the "O&C Act requires sustained yield calculation for all O&C timberlands," but the Proclamation "removes O&C timberlands from the sustained yield calculation if they fall within the monument." *Id*. at 36a; see *id.* at 37a-39a (O&C Act is more specific and later in time than the Antiquities Act and therefore trumps it); *id.* at 42a-43a (explaining why O&C Act does not give the Executive Branch "unfettered discretion to classify or declassify O&C land as timberland," and would violate non-delegation

principles if it were interpreted to do so). That is impermissible, Judge Tallman stated, because the Antiquities Act does not "remotely purport to grant [the President] authority to suspend the operation of another act of Congress." *Id*. at 37a.

Judge Tallman also noted that the majority had incorrectly "fashioned its own rule that where Congress wishes to restrict the President's Antiquities Act authority, it must do so expressly." Pet.App.39a. But "[t]he Judiciary may not abdicate its duty to curtail unlawful executive action merely because Congress may also act to restrain the President." *Ibid.* Moreover, Judge Tallman explained, the "implications" of such an "interpretive rule" are "sobering" and "far-reaching": under the majority's approach, "every federal land management law that does not expressly shield itself from the Antiquities Act is now subject to executive nullification by proclamation." *Id*. at 40a; see *id*. at 41a-42a ("Suppose * * * President Roosevelt had been opposed to logging and the O&C Act had been adopted over his veto. According to the majority, President Roosevelt could have lawfully obstructed the clear will of Congress by issuing an Antiquities Act proclamation prohibiting sustained yield logging on some or all of the timberland the very next day.").

Judge Tallman concluded that the majority's decision "continues a troubling trend of increased judicial deference to Presidential uses of the Antiquities Act" and represents an "erosion" of separation-of-powers principles. Pet.App.44a-45a, 47a (citing *Mass. Lobstermen's Ass'n*, 141 S. Ct. at 981 (statement of Roberts, C.J.)). The only solution, Judge Tallman explained, is "a return to the textual strictures of the Antiquities Act." *Id*. at 45a.

The Ninth Circuit denied petitioners' request for en banc review. Pet.App.62a.

5. A group of Oregon counties and a trade association that advocates for sustained-yield logging filed separate suits in the District Court for the District of Columbia challenging Proclamation 9564 as contrary to the O&C Act. Although the district court granted those plaintiffs summary judgment, the D.C. Circuit reversed, ruling that the Proclamation's prohibition on logging could be reconciled with the O&C Act's "'permanent forest production' mandate." *Am. Forest Res. Council* v. *United States*, 77 F.4th 787, 798-802 (D.C. Cir. 2023) (quoting 43 U.S.C. 2601). A separate petition for certiorari challenging the decision in *American Forest Resource Council* is being filed simultaneously with this petition.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit's Interpretation Of The Antiquities Act Permits The President To Override A Controlling Federal Statute.

A. The Proclamation represents a particularly expansive and troubling exercise of the amorphous presidential discretion granted by the Antiquities Act—one that tramples the commands of a separate and directly applicable statute in a manner that threatens the separation of powers.

The Proclamation is irreconcilable with the commands of the O&C Act. Land that is part of the Cascade-Siskiyou National Monument cannot be used for logging: the land "shall [not] be considered to be suited for timber production" and "shall [not] be used in a calculation or provision of a sustained yield of timber," and the "commercial harvest of timber" is almost entirely prohibited there. 65 Fed. Reg. at 37,250 (initial

creation of Monument); see 82 Fed. Reg. at 6,149 (Monument expansion subject to "same laws and regulations that apply to the rest of the monument"). O&C Act timberlands, by contrast, *must* be used for logging: the O&C Act provides that timberlands "shall be managed * * * for permanent forest production"; that timber on timberlands "shall be sold, cut, and removed in conformity with the princip[le] of sustained yield"; and that the "annual productive capacity for such lands shall be determined and declared." 43 U.S.C. 2601; see, *e.g.*, *Kingdomware Techs., Inc.* v. *United States*, 579 U.S. 162, 172 (2016) ("shall" generally "imposes a mandatory duty"). In Proclamation 9564, the President relied on the Antiquities Act to add some O&C Act timberlands to the Monument, see Pet.App.9a—that is, he declared that the Antiquities Act allowed him to specify a use for federal lands that is in *direct conflict* with the use dictated by the O&C Act for those very same lands, see *id*. at 36a (Tallman, J., dissenting) (conflict "could not be more self-evident"); see also *id*. at 10a (timber production and sales halted as to those lands as a result of the Proclamation).

But the O&C Act controls here. It is debatable whether the Antiquities Act, even considered in isolation, authorizes the Proclamation, because that Act gives the President discretion only as to "parcels of land * * * confined to the smallest area compatible with the proper care and management" of particular "objects." 54 U.S.C. 320301(a). In all events, there is nothing in the Antiquities Act that "remotely purport[s] to grant [the President] authority to suspend the operation of another act of Congress." Pet.App.37a (Tallman, J., dissenting); see *id.* at 41a (listing statutes that expressly permit President to suspend spec-

ified statutory provisions). Ordinary principles of statutory construction thus apply—and it is well settled that specific statutes control over general ones and that later-enacted statutes take precedence over earlier ones. See *Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148, 153 (1976); *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000). Here, both rules dictate that the Antiquities Act must yield to the O&C Act. The O&C Act is "narrow, precise, and specific," *Radzanower*, 426 U.S. at 153, designating a particular management scheme for specified lands in a particular geographic area, see 43 U.S.C. 2601. The Antiquities Act is far more general, delegating to the President authority to decide what "objects" and accompanying "parcels" on any federal land should be treated as monuments. 54 U.S.C. 320301(a). In addition, the O&C Act was passed in 1937, decades after the Antiquities Act's 1906 enactment, see 50 Stat. 874 (1937); An Act for the Preservation of American Antiquities, Pub. L. No. 59-209, ch. 3060, 34 Stat. 225 (1906); n.1, *supra*—and on top of that, the O&C Act contains a *non obstante* clause that "repeal[s]" preexisting "Acts or parts of Acts in conflict with this Act * * * to the extent necessary to give full force and effect to this Act," 50 Stat. at 876.

Because the O&C Act controls, the President had no authority under the Antiquities Act to override the O&C Act's direction for how O&C timberlands are to be used. But Proclamation 9564 does just that, declaring that there can be no logging on the O&C timberlands that the Proclamation sweeps into the Monument. The Proclamation is therefore an unlawful exercise of presidential authority.

B. The Ninth Circuit's contrary holding rests on a sweeping view of the Antiquities Act that upends basic

separation-of-powers principles, as well as on a strikingly unprincipled reading of the O&C Act.

1. The Ninth Circuit interpreted the Antiquities Act as permitting any and all presidential action unless Congress steps in *after that action to undo it*, asserting that this Court had implicitly endorsed such an extraordinary approach. That impermissibly transforms the Antiquities Act from an ordinary grant of power to the President into a sort of super statute that swallows contrary provisions of the U.S. Code. See Pet.App.42a (Tallman, J., dissenting) (explaining that the majority's decision makes the Antiquities Act "into a coiled timber rattler poised to strike at any land management law that the President dislikes").

In stating that the Antiquities Act gives the President authority "to shift federal land from one federal use to another, with a concurrent shift in the laws and regulations governing its use," Pet.App.30a, the majority *embraced* the notion that the Antiquities Act thereby "effectively allow[s] the President to repeal any disagreeable statute." *Id*. at 31a. The majority said that it was unconcerned with understanding the Antiquities Act to vest the President with that remarkably sweeping power, because "[w]hen Congress has disagreed" with a President's exercise of Antiquities Act power "it has not hesitated to make its disagreement known through legislative action." *Id*. at 31a-32a. In other words, according to the majority, if the President uses his discretion under the Antiquities Act to invade the province of the legislature, there is no need to worry because Congress can pass *another* statute if it wants "to make its disagreement known." *Id*. at 32a.

Here, Congress has not done so—which the Ninth Circuit took as dispositive. Chronicling past congressional responses to monument declarations in Alaska and Wyoming, the Ninth Circuit concluded that there was "every reason to believe that if Congress had intended the restrictions of the O&C Act to apply," Congress would have spoken "clearly and promptly" in response to the Proclamation. Pet.App.22a. In the Ninth Circuit's view, then, it had no role in invalidating the Proclamation because Congress had not done so first. See *ibid.*

But the fact that Congress might be able to correct presidential overreach through a targeted response does not mean that a court, confronted with a case challenging that overreach, can simply abdicate its judicial role. If that were correct, then it could be argued in every APA case challenging agency action as in excess of statutory authority that judicial invalidation is unnecessary because Congress could always step in later and undo the executive overreach. That is plainly not the law. And such abdication of judicial review is particularly improper here where Congress *has* "ma[de] its disagreement known," Pet.App.32a, by means of the O&C Act, under which O&C timberlands must be used for "s[elling], c[utting], and remov[ing]" timber, 43 U.S.C. 2601, and not for "protect[ing] the ecological wonders and biological diversity" of the relevant land, 82 Fed. Reg. at 6,145. The notion that only a direct, after-the-fact congressional response to a proclamation under the Antiquities Act can render that proclamation unlawful offends basic separation-of-powers principles, as the dissenting judge below correctly recognized. Pet.App.39a-40a (Tallman, J., dissenting); see *United States* v. *Texas*, 143 S. Ct. 1964, 2002 (2023) (Alito, J., dissenting) (Constitution does not support view of "executive Power" under

which "a President can disobey statutory commands unless Congress, by flexing its muscles, forces capitulation"); see also *Burns* v. *United States*, 501 U.S. 129, 136 (1991) ("An inference drawn from congressional silence certainly cannot be credited when it is contrary to all other textual and contextual evidence of congressional intent.").

It is also particularly problematic that the Ninth Circuit supported its expansive reading of the Antiquities Act by pointing to "the fact that the Supreme Court has never overturned an Antiquities Act proclamation." Pet.App.23a. That is happenstance, not some direction from this Court to the lower courts. But the fact that the Ninth Circuit understands the situation differently means that this Court's review is necessary to make clear that lower courts must exercise their ordinary judicial role in policing the limits of the Antiquities Act.

2. The Ninth Circuit identified nothing in the Antiquities Act's text, structure, or history to support its sweeping reading of that Act. Instead, where the court did engage in statutory analysis, it focused on the O&C Act to try to explain how the two statutes could be reconciled. That analysis, however, misread the O&C Act's text and relied on an essentially imagined understanding of the congressional purpose underlying that statute. The Ninth Circuit's contorted reading of the O&C Act can be explained only by a going-in commitment that other statutes must be interpreted, by hook or by crook, to make room for exercises of presidential discretion under the Antiquities Act. That approach upsets the balance of powers between the political branches and calls out for this Court's review.

a. The Ninth Circuit's analysis of the text of the O&C Act is badly and objectively wrong.

The Ninth Circuit began its discussion of the O&C Act by noting that the statute specifies that only those lands that "have heretofore or may hereafter be classified as timberlands" are to be managed for timber production. Pet.App.24a (citing 43 U.S.C. 2601). That is a non sequitur given that this "suit pertains only to O&C lands that the Secretary has heretofore classified as timberlands." *Id*. at 43a (Tallman, J., dissenting). In other words, this suit is *only* about lands as to which the O&C Act *requires* that timber "shall be sold, cut, and removed." 43 U.S.C. 2601.

To the extent that the Ninth Circuit was attempting to suggest that the Proclamation somehow implicitly "reclassified" the O&C timberland "added to the Monument as non-timberland," *Am. Forest Res. Council*, 77 F.4th at 800, that too is indefensible. First, although the O&C Act does not define "timberland" or offer express direction as to how the Secretary should determine what to designate as timberland, it cannot—as the Ninth Circuit appeared to suggest—be read to grant the Executive Branch "unfettered discretion." Pet.App.43a (Tallman, J., dissenting) ("[A]n intelligible principle must guide the delegee's exercise of authority."). The term "timberland" in the O&C Act reflects the "ordinary, contemporary, common meaning of the term." *Delaware* v. *Pennsylvania*, 598 U.S. 115, 128 (2023) (citation and internal quotation marks omitted). And, at the time of the O&C Act, that term was defined so as to refer to land with forest growth suitable for timber production. See *Webster's New Int'l Dictionary* 2159 (1930) ("Wooded or forested land, esp. when consisting of marketable timber"); *Winston Simplified Dictionary* 749 (1931) ("land covered with trees

whose wood is suitable for use in building"); see also Pet.App.43a (Tallman, J. dissenting). The statute thus requires the Executive Branch to treat as "timberland" any wooded land on which timber can be produced. The Proclamation, however, carves off land for the Monument not based on a judgment about the land's timber growth but instead based on a determination that the area's biodiversity warrants protection. See 82 Fed. Reg. 6,145. Even if the President had any power to change a timberland designation, the Proclamation would not constitute a valid exercise of such power. The lands at issue here remain timberlands under the O&C Act and they therefore must be managed for timber production.

Second, as the Ninth Circuit itself recognized, "the O&C Act concerns the Secretary and says nothing about presidential authority." Pet.App.20a. Whatever power the O&C Act may vest in the *Secretary* to remove the timberland designation from land revested by the O&C Act, the statute does not give any authority to the President to do so via proclamation—in a manner that end-runs the normal administrative law requirements that would govern the Secretary's actions. Because the Secretary has not exercised any authority to reclassify land at issue here, that land remains designated timberland under the O&C Act. See *id*. at 43a (Tallman, J., dissenting) ("[T]he Secretary's supposed authority remains unexercised and is therefore irrelevant to this appeal.").

The Ninth Circuit separately tried to justify the Proclamation as consistent with the text of the O&C Act by insisting that the statute "authorizes the Department to manage the O&C Lands for uses other than timber production," pointing to the statute's reference to "'protecting watersheds, regulating stream

flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities.'" Pet.App.25a (quoting 43 U.S.C. 2601) (citation omitted). But the statute simply cannot be read to authorize "manage[ment]" for multiple "uses." *Ibid*. The statute directs that timberlands "*shall* be managed" for *one* use—"permanent forest production"—and that the timber on that land "*shall* be sold, cut, and removed" under a "sustained yield" approach. 43 U.S.C. 2601 (emphasis added); see *Headwaters*, 914 F.2d at 1183 (explaining that "forest production" means "timber production"). The statute then explains the "purpose" of requiring management for "permanent forest production": "providing a permanent source of timber supply" as well as "protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities." 43 U.S.C. 2601. The items listed after "timber supply" are thus not freestanding statutory objectives that the agency can pursue as it sees fit. Instead, they are results that Congress said would be reached *by means of* "s[elling], c[utting], and remov[ing]" timber under a "sustained yield" approach. *Ibid*. Declaring that tens of thousands of acres of land "shall [not] be used in a calculation or provision of a sustained yield of timber" or for the "commercial harvest of timber" obviously does not accomplish any of the listed results *by means of* harvesting timber under a sustained-yield method. 65 Fed. Reg. at 37,250.

In any event, the Ninth Circuit made absolutely no effort to analyze whether the Proclamation protects watersheds or regulates stream flow—an analytical gap that can be explained only by a results-driven, "anything goes" attitude toward presidential proclamations under the Antiquities Act. And, in fact, the

Proclamation has a different focus that is listed nowhere in the O&C Act: protecting biodiversity in the expanded and original Monument. See, *e.g.*, 82 Fed. Reg. at 6,145 (explaining the need for "habitat connectivity corridors" and a "range of habitats" to "support[] the biodiversity of the monument"); *id.* at 6,147 (describing watershed as "potential habitat for the threatened coho salmon").

Perhaps the clearest indication that the Proclamation specifies a use for O&C timberlands different from the use for those lands required by the O&C Act is the Ninth Circuit's own statement to that effect *in this case*. In a separate part of its opinion discussing the reach of the Antiquities Act, the Ninth Circuit viewed the Proclamation as an instance of the President "us[ing] Antiquities Act authority to dedicate federal land for one use that Congress had previously appropriated for a different use." Pet.App.31a. That is a correct characterization of what the President did. But the Constitution does not permit the President to use statutory authority to override controlling congressional enactments. That even the Ninth Circuit acknowledged the conflict between the O&C Act and the exercise of Antiquities Act authority demonstrates the irreconcilability of those statutes.

b. The Ninth Circuit next turned to the O&C Act's legislative history and purpose, despite the clarity of the O&C Act's text. Again, the Ninth Circuit's analysis indicates a willingness to trample ordinary principles of judicial review in an effort to save any presidential action that invokes the Antiquities Act as its underlying justification.

Casting aside a prior Ninth Circuit decision that correctly rejected the notion that the O&C Act allows

the Executive Branch to "exempt[] certain timber resources from harvesting to serve as wildlife habitat," *Headwaters*, 914 F.2d at 1183, the majority here concluded on the flimsiest of bases that the O&C Act itself somehow reflects "environmental concern[s]." Pet.App.28a. The majority pointed to a House Report that quite clearly focuses on a *non-environmental* concern: avoiding certain "[c]lean cutting" practices that threatened to deforest the land, thereby stripping it of timber-related "natural resources" and depriving the surrounding communities of income from timber harvesting. H.R. Rep. 1119, at 2; see *ibid.* (noting that practices did not preserve "[s]eed trees" and did not consider "probable effect of such a cutting policy on community industries"); *id.* at 4 (envisioning the statute as "establish[ing] a vast, self-sustaining timber reservoir for the future"); S. Rep. 75-1231, 75th Cong., 1st Sess. (1937) (adopting House Report). In short, consistent with the statute's text, the only "concern for conservation," Pet.App.28a, conveyed in the House Report was a concern about conserving *timber resources*, which had nothing to do with protecting plants or animals.

Worse than the Ninth Circuit's sleight of hand in reading that House Report, however, was its reliance on what the majority deemed to be some kind of amorphous, general public feeling that arose during the decade when the O&C Act was enacted. Relying on a law review article's essentially unsupported assessment that 1930s "Americans had developed an 'increasing concern for the conservation of the nation's natural resources,'" the Ninth Circuit read the O&C Act as attempting to secure "protections for the Lands' flora and fauna." Pet.App.29a-30a. But interpreting a statutory enactment by looking to general hypotheses about public sentiment at the time of enactment

rather than to the public meaning of the statute's text or to specific legislative history is nothing short of nonsensical. A law does not "pursue[] its" *expressed* "purposes at all costs," *Luna Perez* v. *Sturgis Pub. Schs.*, 598 U.S. 142, 150 (2023)—and it certainly does not pursue some kind of imagined public zeitgeist at all costs, particularly where the statute's text says otherwise. Even if there had been increasing concern with environmental protection in the years surrounding the O&C Act's passage, the statute's textual command that land "shall" be used for timber harvesting is binding on the President, regardless of whether the President would rather focus on protecting animals and plants.

3. As the Chief Justice has recognized, the Antiquities Act has of late been "transformed into a power without any discernible limit." *Mass. Lobstermen's Ass'n*, 141 S. Ct. at 981. Under the Ninth Circuit's decision here, even directly controlling and conflicting statutes do not limit the President's Antiquities Act power. That decision fundamentally misunderstands not only the statues at issue, but courts', Congress's, and the President's role in our constitutional system. This Court should grant review to correct that misunderstanding and rein in presidential abuse of the limited authority granted by the Antiquities Act.

II. This Case Presents An Excellent Vehicle To Address The Limits Of The Significant And Recurring Exercise Of Presidential Power Under the Antiquities Act.

A. The reach and limits of the Antiquities Act are critically important for this Court to address—both as a matter of fundamental principles and on practical grounds.

1. The President's exercise of Antiquities Act authority at issue here is part of "a trend of ever-expanding antiquities." *Mass. Lobstermen's Ass'n*, 141 S. Ct. at 980 (statement of Roberts, C.J.). Since the statute's enactment a century ago, the Antiquities Act has been invoked nearly 300 times and, in recent years, Presidents have used the Antiquities Act to reserve millions of acres of federally controlled land as part of national monuments. See National Park Serv., *National Monument Facts and Figures*, https://www.nps.gov/subjects/archeology/national-monument-facts-and-figures.htm.

In addition, the potential for future monument declarations is enormous. Over a quarter of the land in the United States is owned by the federal government and is therefore theoretically subject to a monument designation under the Antiquities Act. See Carol Hardy Vincent & Laura A. Hanson, Cong. Rsch. Serv., R42346, *Federal Land Ownership: Overview and Data* 1 (2020) ("Today, the federal government owns and manages roughly 640 million acres of land in the United States, or roughly 28% of the 2.27 billion total land acres."), https://crsreports.congress.gov/product/pdf/R/R42346. More than *half* of the land in the nine states within the Ninth Circuit is owned or controlled by the federal government. *Id.* at 7-8. And, unlike other conservation schemes that require congressional involvement or significant agency processes, the Antiquities Act allows the President to carve off land unilaterally and through a mere "public proclamation." 54 U.S.C. 320301(a)-(b); compare *ibid.*, with, *e.g.*, 16 U.S.C. 1433 (laying out process, including twelve obligatory factors to consider and required consultation process, before land can be designated as national marine sanctuary), and 54 U.S.C. 100101 *et seq.* (only

Congress can establish a new National Park). The Antiquities Act thus provides an avenue for the President to quickly and easily designate broad swaths of the country as monuments and to make accompanying management decisions for the covered land. See *Mass. Lobstermen's Ass'n*, 141 S. Ct. at 980 (statement of Roberts, C.J.) ("The creation of a national monument is of no small consequence.").

The decision below gives a green light to Presidents to use that already significant power in ever more expansive ways that are inconsistent with the Antiquities Act's text and with bedrock separation-of-powers principles. Under the Ninth Circuit's approach, seconded by the D.C. Circuit in *American Forest Resource Council*, the President can use the Antiquities Act to run roughshod over *other* statutory schemes. See Pet.App.40a (Tallman, J., dissenting) ("[E]very federal land management law that does not expressly shield itself from the Antiquities Act is now subject to executive nullification by proclamation."). Particularly given the Ninth Circuit's reliance on the fact that this Court has never struck down an Antiquities Act proclamation, *id*. at 23a, allowing the decision below to stand will send a message to Presidents that they can continue, unchecked by Congress or the courts, to reserve huge tracts of federal land for preservation purposes heedless of Congress's contrary judgments—including, as here, the contrary judgment that the land must be devoted to some other use.

That is a serious separation-of-powers problem that manifestly warrants this Court's review—particularly given that the decision below is just part of "a troubling trend of increased judicial deference to Presidential use of the Antiquities Act." Pet.App.44a-45a (Tallman, J., dissenting). As a result of the President's

issuance of Proclamation 9564, the lands included in the monument expansion now are subject to both a presidential prohibition on commercial timber harvest and a congressional mandate that the timber be sold, harvested, and removed. And that is so because the President has stepped into the legislative sphere and purported to overrule Congress's clear commands for the use of this particular land—a step that represents a highly problematic "erosion of our constitutional principles." *Id*. at 47a (Tallman, J., dissenting). This case thus presents the Court with the opportunity to articulate a clear limiting principle on the President's Antiquities Act authority while at the same time safeguarding the Constitution by vigorously policing the constitutional boundaries between the Executive and Legislative Branches.

2. Moreover, as this case demonstrates, monument creation through the Antiquities Act is not simply an abstract question of presidential power. The monument's expansion here is deeply harmful because it cuts off receipt of critical funds by affected Oregon counties.

The O&C Act requires that 50 percent of the revenues from timber sales be paid directly to the counties where the timberlands are located. See 43 U.S.C. 2605(a); see also 43 U.S.C. 2605(b) (addressing certain other payments to the counties); Katie Hoover, Cong. Rsch. Serv., R42951, *The Oregon and California Railroad Lands (O&C Lands): In Brief* (2023), https://crsreports.congress.gov/product/pdf/R/R42951. In the first 50 years after the O&C Act's passage, Oregon counties received over $1.4 billion through that funding scheme. *O&C Sustained Yield Act*, *supra*, at 14-15. The counties have used those funds to construct

and renovate public buildings like courthouses, museums, and libraries; to maintain roads and bridges and recreational infrastructure; and to construct dams and reservoirs. *Id.* at 15, 17. O&C timber sales have thus "enriched the lives of Oregonians, contributed to economic stability, and played an important part in the nation's commerce." *Id.* at 15.

But in expanding the Monument to include land covered by the O&C Act, the President prevented timber sales on those lands, depriving the counties of essential revenues they should be receiving under the O&C Act. Predictably, the effects on those counties have been significant, and there is no way for them to replace the now-missing "stream of revenue" that they fought for in obtaining the O&C Act's passage—revenue that "had been promised but not delivered" under prior legislation. *Headwaters*, 914 F.2d at 1183. Moreover, under the Ninth Circuit's reasoning, nothing prevents a president from repurposing *additional* O&C Act timberlands for a preservation purpose under the Antiquities Act in the future, thus further magnifying the economic harm suffered by the affected counties and ultimately rendering the O&C Act an entirely dead letter.

Notably, the fact that an Antiquities Act proclamation has given rise to significant economic consequences for a community reliant on funds from commercial use of the land at issue is not unique to this case. As Judge Tallman explained in dissent, "the unfortunate back-end cost of conservation" as carried out through Antiquities Act proclamations "is that small, local communities reliant on the cultivation of natural resources to generate revenue to sustain them are often left behind." Pet.App.44a. Exercises of Antiquities Act authority often mean that some local industry or

community dependent on the resources in a now-protected area will be disproportionately and significantly impacted. See, *e.g.*, *Mass. Lobstermen's Ass'n* v. *Ross*, ECF No. 1 (Complaint) ¶¶ 7-12, No. 17-cv-406 (D.D.C.) (Mar. 7, 2017) (describing effects of national monument designation on New England fishers and lobstermen); *Tulare Cnty.* v. *Bush*, 185 F. Supp. 2d 18, 23 (D.D.C. 2001), *aff'd*, 306 F.3d 1138 (D.C. Cir. 2002) (noting allegation that monument's management "significantly decreases timber sales, recreational uses, and rights of access"). Although such economic effects may be the inevitable effect of monument designations, they are unwarranted and unlawful where Congress has already made a different judgment about how the land in question should be used. The Court should grant review to make that clear.

B. This case also presents an ideal vehicle for addressing the scope of the President's Antiquities Act power—and such a vehicle will not arise frequently in this important area of the law.

The question presented is outcome-determinative and was fully briefed by the parties and addressed by both the majority and dissent below. The Court also has the benefit of a separate petition challenging the D.C. Circuit's decision addressing the same issue; although that decision reaches the same bottom-line result as the Ninth Circuit, the reasoning of the two courts of appeals is not aligned, thereby providing the Court with alternative approaches to the question before it.

This case is thus a vastly superior vehicle to the last petition challenging an exercise of the President's Antiquities Act power. That case, *Massachusetts Lobstermen's Association*, involved only one opinion hold-

ing that petitioners failed to adequately plead a significant aspect of their challenge to an Antiquities Act proclamation; here, there are multiple opinions directly addressing a fully preserved challenge to such a proclamation on the merits. See *Mass. Lobstermen's Ass'n*, 141 S. Ct. at 981 (statement of Roberts, C.J.) (noting "artificial constraint of the pleadings in this case"); *Mass. Lobstermen's Ass'n* v. *Ross*, 945 F.3d 535, 544 (D.C. Cir. 2019) (noting absence of factual allegations in support of claim that monument was confined to "'smallest area compatible' with management" (quoting 54 U.S.C. 320301(b))).

There is also a pressing need for the Court to weigh in now. In the petition for certiorari in *Massachusetts Lobstermen's Association*, the petitioners noted five other pending cases raising Antiquities Act challenges, Pet. 34, No. 20-97—and the existence of those cases may have provided the Court with comfort that other suitable vehicles to address the scope of presidential power under the statute were in the pipeline. See *Mass. Lobstermen's Ass'n*, 141 S. Ct. at 981 (statement of Roberts, C.J.) (citing those cases as evidence that "[w]e may be presented with other and better opportunities to consider this issue"). Of those cases, the plaintiffs have since voluntarily dismissed one and the district court administratively closed the other two, with no activity beyond monthly status reports for over two years. See *Conservation Law Found.* v. *Trump*, ECF No. 36, No. 20-cv-1589 (D.D.C.) (Nov. 10, 2021) (voluntary dismissal); *Wilderness Society* v. *Trump*, No. 17-cv-2587 (D.D.C.) (Sept. 30, 2021) (administrative closure with direction to file monthly joint status reports); *Utah Diné Bikéyah* v. *Trump*, No. 17-cv-2605 (D.D.C.) (Sept. 30, 2021) (same). This case and *American Forest Resource Council* are the only two that remain.

Yet, at the same time as this Court's immediate opportunities for confronting the Antiquities Act have been dwindling, the President's exercise of that power has been growing. Since the Court's denial of certiorari in *Massachusetts Lobstermen's Association*, the President has established or modified the boundaries of eight national monuments, totaling over 4.5 million acres—about the size of Connecticut and Rhode Island combined. See *National Monument Facts and Figures*, *supra*. And, importantly, some parties are pressing claims in the courts that future Presidents are *bound* by those monument designations and cannot walk them back. See, *e.g.*, *Utah Diné Bikéyah* v. *Trump*, ECF No. 1 (Complaint) ¶¶ 2, 189-220, No. 17-cv-2605 (D.D.C.) (Dec. 6, 2017) (challenging President Trump's proclamation reducing Bears Ears monument size, on the basis that the Antiquities Act does not allow a President to withdraw a monument designation or reduce its size and that only Congress can withdraw monument status). The Court may have to wait many years for another cleanly presented Antiquities Act challenge, during which time Presidents are likely to continue to exercise an increasingly broad and potentially irrevocable view of their power under the Act.

Finally, the absence of a circuit split does not counsel against certiorari given that a split is unlikely to arise on the highly important question of whether the President's Antiquities Act power can be exercised in derogation of other statutes. The particular issue decided by the Ninth Circuit here—the interaction of the O&C Act and the Antiquities Act—has now been decided by the only two courts of appeals with jurisdiction over the issue, given the location of the land in question. Accordingly, absent en banc review in a future case, no split can develop. See Pet.App.61a (denying en banc review). And other Antiquities Act cases

will come up in a similar posture. There are dozens of statutes governing the use of federal land—many of which, like the O&C Act, cover particular tracts that are subject to the jurisdiction of only one regional circuit or, in some cases, one regional circuit and the D.C. Circuit. See, *e.g.*, 16 U.S.C. 410hh (establishing areas in Alaska as part of National Park System and designating certain non-conservation uses—*e.g.*, subsistence use by local residents and reindeer grazing—that agency must continue to permit). That means that every exercise of Antiquities Act authority is likely to implicate a different set of statutes and may be subject to challenge in a very limited number of jurisdictions. Indeed, the fact that there are multiple opinions addressing the precise statutory conflict here makes this the uncommon case that offers more than a single existing judicial approach to the question presented for the Court's consideration. This case is thus an ideal candidate to address an issue on which this Court's review is urgently needed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael E. Haglund
Julie A. Weis
HAGLUND KELLEY LLP
2177 SW Broadway
Portland, OR 97201
(503) 225-0777

Donald B. Verrilli, Jr.
Counsel of Record
Elaine J. Goldenberg
Rachel G. Miller-Ziegler
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave. NW
Suite 500E
Washington, DC 20001
(202) 220-1100
Donald.Verrilli@mto.com

APPENDIX

APPENDIX TABLE OF CONTENTS

Page

Appendix A: Opinion, *Murphy Co.* v. *Biden*, No. 19-35921 (9th Cir. Apr. 24, 2023) 1a

Appendix B: Order Adopting Report and Recommendation as Modified, *Murphy Co.* v. *Trump*, No. 1:17-cv-00285-CL (D. Or. Sept. 5, 2019).. 48a

Appendix C: Report and Recommendation, *Murphy Co.* v. *Trump*, No. 1:17-cv-00285-CL (D. Or. Apr. 2, 2019)..................................... 51a

Appendix D: Order Denying Rehearing En Banc, *Murphy Co.* v. *Biden*, No. 19-35921 (9th Cir. Aug. 30, 2023)............... 61a

Appendix E: Public Law No. 75-405, 50 Stat. 874 (1937) 63a

Appendix F: 43 U.S.C. 2601 .... 69a

Appendix G: 43 U.S.C. 2605.................................. 71a

Appendix H: 54 U.S.C. 320301.............................. 73a

Appendix I: Proclamation No. 7318, 65 Fed. Reg. 37,249 (June 9, 2000).................... 74a

Appendix J: Proclamation No. 9564, 82 Fed. Reg. 6,145 (Jan. 12, 2017)..................... 81a

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19-35921
D.C. No. 1:17-cv-00285-CL

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

Plaintiffs-Appellants,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States of America; DEBRA A. HAALAND, in her official capacity as Secretary of Interior; U.S. DEPARTMENT OF THE INTERIOR,

Defendants-Appellees,

SODA MOUNTAIN WILDERNESS COUNCIL; KLAMATH-SISKIYOU WILDLANDS CENTER; OREGON WILD; WILDERNESS SOCIETY,

Intervenor-Defendants-Appellees.

Appeal from the United States District Court for the District of Oregon
Michael J. McShane, District Judge, Presiding

Argued and Submitted August 30, 2022
Seattle, Washington

Filed April 24, 2023

Before: M. Margaret McKeown and
Richard C. Tallman, Circuit Judges, and
Jed S. Rakoff,* District Judge.

Opinion by Judge McKeown;
Partial Concurrence and Partial Dissent by
Judge Tallman

OPINION

SUMMARY**

Antiquities Act / Presidential Proclamation

The panel affirmed the district court's summary judgment in favor of the United States and intervenor environmental organizations in an action brought by Murphy Timber Company challenging Presidential Proclamation 9564, which was issued under the Antiquities Act, and expanded the Cascade-Siskiyou National Monument in southwestern Oregon.

The Antiquities Act grants the President broad authority to create, by presidential proclamation, national monuments from federal lands to protect sites of historic and scientific interest. The Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act ("O&C Act") addresses the use of timberlands in the southwest corner of Oregon.

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* The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Murphy, an Oregon timber business, sought declaratory and injunctive relief, and claimed that the Proclamation was an invalid exercise of the Antiquities Act because it offended the O&C Act's promise to reserve certain lands for timber production. A collection of environmental organizations intervened to defend the Proclamation.

The panel first considered whether Murphy's claim of *ultra vires* and unconstitutional action with respect to the Proclamation was immune from judicial review. In the absence of a statutory waiver, the Supreme Court has permitted judicial review of presidential actions in two circumstances. First, the Court has recognized constitutional challenges to presidential acts as reviewable. Second, the Court has held that actions by subordinate Executive Branch officials that extend beyond delegated statutory authority—*i.e., ultra vires* actions—are reviewable. Whether characterized as *ultra vires* or constitutional, the panel held that Murphy's claims against the President regarding Proclamation 9564 were justiciable. Here, the core of Murphy's claim—that the President violated separation of powers by directing the Secretary of Interior to act in contravention of a duly enacted law—could be considered constitutional and therefore reviewable. The panel concluded that Murphy's particularized allegations that the O&C Act restricts the President's designation powers under the Antiquities Act satisfied the applicable jurisdictional standard.

Next, the panel evaluated whether the Proclamation's restriction on logging was consistent with the O&C Act. Murphy alleged that the O&C Act's directive of "permanent forest production" circumscribed the scope of presidential authority over these specific lands. First, the panel held that the O&C Act did not

explicitly or impliedly repeal the Antiquities Act. Nothing supports a claim that the Antiquities Act proclamations are broadsides at land-management laws and cannot coexist with preexisting congressional mandates. The panel held that there was no basis to suggest that Congress intended the O&C Act to nullify the Antiquities Act—which was itself an act of Congress. Second, the panel held that the Proclamation's exercise of Antiquities Act power was consistent with the text, history, and purpose of the O&C Act. Timber production was not the sole purpose that Congress envisioned for the more than two million acres of O&C lands. Congress delegated ample discretion to the Department of the Interior to manage the lands in a flexible manner. Third, the panel held that the dissent's concerns that the Proclamation and the O&C Act are in conflict are unsubstantiated. The panel concluded that the Proclamation was a valid exercise of the President's Antiquities Act authority, and the Proclamation was fully consistent with the O&C Act.

Judge Tallman concurred in part because he agreed that the court could review claims that the President's execution of one statute obstructed the operation of another. However, he dissented from the majority's conclusion that Proclamation 9564 did not conflict with the O&C Act. He wrote that the issue of whether the Antiquities Act and the O&C Act can coexist in the abstract is beside the point. Rather, the court must decide whether Proclamation 9564—issued pursuant to the Antiquities Act—conflicts with the O&C Act. A review of the plain text of the Proclamation and the O&C Act reveals an obvious conflict. The O&C Act requires sustained yield calculation for all O&C timberlands. Proclamation 9564 removes O&C timberlands from the sustained yield calculation if they fall within the monument. By expressly singling out sustained

yield calculation for prohibition, the President's proclamation intentionally directs the Secretary to disregard her statutory duties under the O&C Act to make sure that timber is available for harvest to meet economic needs of timber-dependent communities. Judge Tallman wrote that he would give effect to the plain meaning of the O&C Act and declare the Proclamation void as to O&C timberland.

COUNSEL

Julie A. Weis (argued) and Michael E. Haglund, Haglund Kelley LLP, Portland, Oregon, for Plaintiffs-Appellants.

Robert J. Lundman (argued), Coby Howell, Brian C. Toth, and Mark R. Haag, Attorneys; Todd Kim, Assistant Attorney General; Environment and Natural Resources Division, United States Department of Justice; Washington, D.C.; Laura Damm and Brian Perron, Attorneys; United States Department of the Interior; Washington, D.C.; for Defendants-Appellees.

Kristen L. Boyles and Ashley N. Bennett, Earthjustice, Seattle, Washington; Susan Jane M. Brown, Western Environmental Law Center, Portland, Oregon; for Intervenor-Defendants-Appellees.

OPINION

McKEOWN, Circuit Judge:

This case calls on us to consider the intersection of the Antiquities Act, adopted in 1906, and the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act ("O&C Act"), adopted in 1937. The Antiquities Act grants the President broad authority

to create, by presidential proclamation, national monuments from federal lands to protect sites of historic and scientific interest. *See* 54 U.S.C. § 320301(a)–(b). In contrast, the O&C Act is much narrower in scope, addressing the use of timberlands in the southwest corner of Oregon. *See* 43 U.S.C. § 2601 *et seq*.

In January 2017, President Obama issued a Proclamation under the Antiquities Act expanding the Cascade-Siskiyou National Monument ("Monument") in southwestern Oregon. Proclamation 9564 ("Proclamation"), 82 Fed. Reg. 6145 (Jan. 12, 2017). First established in 2000 by President Clinton, the Monument boasts "an incredible variety of species and habitats," which form "a rich mosaic of forests, grasslands, shrublands, and wet meadows." *Id.* The expanded Monument's 101,000 acres, which intersect with the ancestral homes of several Native American peoples, also overlap with timberlands regulated by the O&C Act. With limited exceptions, logging is banned within the Monument.

Murphy Timber Company and Murphy Timber Investments, LLC (collectively, "Murphy") are Oregon timber businesses. Murphy owns woodlands and purchases timber harvested in western Oregon to supply its wood-products manufacturing facilities. Concerned that the Proclamation imposed a new limitation on its timber supply and deleterious effects on its woodlands adjacent to the expanded Monument, Murphy sued the President, the Secretary of the Interior ("Secretary"), and the Bureau of Land Management ("BLM") seeking declaratory and injunctive relief. Although Murphy named the Secretary and BLM as defendants, the suit does not challenge any specific, final agency action. Murphy claims that the Proclamation is an invalid exercise of the Antiquities Act because it offends the O&C Act's promise to reserve certain lands for timber

production. A collection of environmental organizations (together, "Soda Mountain") intervened to defend the Proclamation.

The dispute poses two questions for our review. We first consider whether Murphy's claim of *ultra vires* and unconstitutional action with respect to the Proclamation is immune from judicial review. Because we conclude that we have jurisdiction to hear Murphy's challenge, we next evaluate whether the Proclamation's restriction on logging is consistent with the O&C Act. Admittedly, the validity of the Proclamation—an Antiquities Act order that implicates the O&C Act—presents a statutory thicket. But, ultimately, Murphy's claim of irreconcilability misses the forest for the trees. The Antiquities Act and the later-enacted O&C Act are not irreconcilable, nor did the O&C Act repeal the Antiquities Act. The Proclamation is consistent with the O&C Act's flexible land-management directives, which incorporate conservation uses. And, notably, only a tiny percentage of the several million acres covered by the O&C Act ("O&C Lands") fall within the expanded Monument's territory. The Secretary retains broad discretion over the millions of acres remaining. The Proclamation does not usurp congressional intent or the Secretary's authority to regulate the O&C Lands as a whole. We affirm the district court's grant of summary judgment in favor of the United States and Soda Mountain.

I. BACKGROUND

A. THE ANTIQUITIES ACT AND PROCLAMATION 9564

The Antiquities Act delegates to Presidents, in their "discretion," the power to designate "historic landmarks, historic and prehistoric structures, and other objects of

historic or scientific interest" as national monuments and to "reserve parcels of land" for protection. 54 U.S.C. § 320301(a)–(b). The meaning of "monument" under the statute encompasses mountains and deserts, as much as it does physical statues or icons. *See* Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 Ga. L. Rev. 473, 477–86 (2003). Indeed, Theodore Roosevelt, the President at the time of the Act's passage and a noted conservationist, designated eighteen monuments spanning approximately 1.5 million acres under this new law. *See id.* at 474 n.6. In the years since, all but three Presidents have exercised their Antiquities Act authority. *National Monument Facts and Figures*, Nat'l Park Serv., https://www.nps.gov/subjects/archeology/national-monument-facts-and-figures.htm (last updated Mar. 27, 2023). Proclamations by Presidents Obama, Trump, and Biden have brought the total number of national monument enactments to 161. *Id.* President Biden recently announced two new monuments: the Avi Kwa Ame National Monument in Nevada and the Castner Range National Monument in Texas. White House Statements and Releases (Mar. 21, 2023).

This case concerns one such set of designations. In June 2000, President Clinton reserved nearly 53,000 acres of federal land as the Cascade-Siskiyou National Monument for its "spectacular" biodiversity. Proclamation 7318, 65 Fed. Reg. 37249, 37249 (June 9, 2000). The President proclaimed, "[w]ith towering fir forests, sunlit oak groves, wildflower-strewn meadows, and steep canyons, the Cascade-Siskiyou National Monument is an ecological wonder, with biological diversity unmatched in the Cascade Range." *Id.* Logging was banned within the Monument except in limited circumstances:

> The 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. Any such project must be consistent with the purposes of this proclamation. No 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. Removal of trees from within the monument area may take place only if clearly needed for ecological restoration and maintenance or public safety.

Id. at 37250.

In 2011, a group of scientists issued a report finding that expanding the Monument was "required to fully protect the unique biological diversity of the area." Many local Oregonians expressed their support for the scientists' expansion plan. Heeding their call, President Obama in 2017 issued Proclamation 9564, expanding the Monument by approximately 48,000 acres. 82 Fed. Reg. at 6145, 6148. The expansion provided "habitat connectivity corridors for species migration and dispersal" to better permit the Monument's diverse species to be "resilient to large-scale disturbance such as fire, insects and disease, invasive species, drought, or floods." *Id.* at 6145. Further, the Proclamation prohibited logging within the expanded area. *Id.* at 6148–49. Both the original Monument and its expansion overlap in part with the land managed under the O&C Act. Though the parties offer competing calculations about what constitutes "timberland," the precise degree of overlap is not consequential to our

decision. Following the Proclamation, BLM—the agency within the Department of the Interior ("Department") responsible for administering federal lands—halted timber sales within the expanded Monument.

B. THE O&C ACT

The O&C Act descends from the fraught history of America's westward expansion, punctuated as it was by the exploitation of natural resources and federal money. In 1866, the United States made a grant of purportedly "public lands" to private railroad companies to facilitate the construction of a rail line between Oregon and California. *Clackamas County v. McKay*, 219 F.2d 479, 481, 484 (D.C. Cir. 1954) (citing Act of July 25, 1866, ch. 242, 14 Stat. 239), *judgment vacated as moot*, 349 U.S. 909 (1955). Congress in 1869 directed the railroads to sell the granted land to "actual settlers only." Act of Apr. 10, 1869, ch. 27, 16 Stat. 47. But the railroads violated the terms of the grant and, by 1893, had failed to dispose of the vast majority of the parcels. *See Clackamas*, 219 F.2d at 482; Richard White, *Railroaded: The Transcontinentals and the Making of Modern America* 459 (2011).

Consequently, in 1916, Congress revested much of the land and directed the Secretary to sell the timber "as rapidly as reasonable prices can be secured." Act of June 9, 1916, Pub. L. No. 86, ch. 137, 39 Stat. 218, 220. But the 1916 Act was "more a triumph of expediency than a statesmanlike solution," and its convoluted timber-for-taxes funding scheme left many Oregon counties in "dire financial straits." David Maldwyn Ellis, *The Oregon and California Railroad Land Grant, 1866-1945*, 39 Pac. N.W. Q. 253, 273, 275 (1948). In 1926, Congress's next attempt at alleviating the financial burden also failed, merely shifting the debts from the counties onto the U.S. Treasury. Act of July

13, 1926, Pub. L. No. 523, ch. 897, 44 Stat. 915; Ellis, *supra*, at 275.

Finally, in 1937, Congress passed the O&C Act to remedy in part the region's perilous economic and environmental situation. *Clackamas*, 219 F.2d at 485–86. The O&C Act provided "for the management of the timber on a conservation basis," and accorded significant discretion to the Secretary of the Interior when it came to "classification of land" and "sale of timber." *Id.* at 487. The statute reads, in part:

> [S]uch portions of the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands as are or may hereafter come under the jurisdiction of the Department of the Interior, 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 [*sic*] 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 facilties [*sic*].

43 U.S.C. § 2601. The statute's remaining sections detail the Secretary's duties and discretion to limit the Lands' annual timber capacity in compliance with the principle of sustained yield. *Id.*

In the decades since, BLM has managed the more than two million acres of O&C Lands in keeping with changing conditions. For instance, the annual amount

of timber that BLM allows to be sold has fluctuated, starting at 500 million board feet per year in 1937, peaking at more than 1 billion board feet in 1972, and hitting a low of 13 million board feet in 1994. Katie Hoover, Cong. Rsch. Serv. R42951, *The Oregon and California Railroad Lands (O&C Lands): Issues for Congress* 3, 5 fig. 3 (2015). The contested lands are but a small fraction of the vast acreage managed by BLM. In addition to timber management, BLM has guided conservation activities on the O&C Lands. BLM regulations, adopted to implement the O&C Act, have authorized the agency to "preserve, protect, and enhance areas of scenic splendor, natural wonder, scientific interest, primitive environment, and other natural values for the enjoyment and use of present and future generations." *Portland Audubon Soc'y v. Lujan*, 795 F. Supp. 1489, 1506 (D. Or. 1992) (quoting 43 C.F.R. § 6220.0-1), *modified*, 1992 WL 176353 (D. Or.), *and aff'd sub nom. Portland Audubon Soc'y v. Babbitt*, 998 F.2d 705 (9th Cir. 1993). Following the Monument's designation and expansion, BLM removed Monument lands from its analyses of annual sustained yield and halted logging on those lands. To date, BLM has offered one timber sale within the original Monument in accordance with Proclamation 7318's provision for such harvest if it is "clearly needed for ecological restoration and maintenance or public safety." *See* 65 Fed. Reg. at 37250.

C. THIS LITIGATION

In February 2017, Murphy brought suit in the District of Oregon seeking declaratory and injunctive relief against the President, the Secretary, and BLM. Murphy alleged that President Obama's Proclamation 9564 designation of O&C Lands as Monument land violated the "timber production purpose" of the O&C

Act and the President therefore lacked authority under the Antiquities Act to do so. Murphy also claimed that the Proclamation's restrictions on logging also pose increased risks of wildfire and insect infestation. For relief, Murphy requested vacatur of the Proclamation as to the O&C Lands in the expansion, an injunction requiring the government to manage O&C Lands exclusively pursuant to the O&C Act, and a declaration as to the Proclamation's invalidity. Soda Mountain Wilderness Council and other environmental organizations intervened.

In June 2017, the district court stayed the litigation after President Trump directed the Secretary of the Interior to review certain prior Antiquities Act designations, including the Monument expansion. The Secretary recommended reducing the size of the Monument, but President Trump did not act on the recommendations. No final agency action emerged from this review. Eventually, the district court lifted the stay in February 2018, and all parties moved for summary judgment. The government argued that sovereign immunity bars Murphy's claim against the President and that the Proclamation and the O&C Act do not irreconcilably conflict. Granting summary judgment for the United States and Soda Mountain, the district court concluded that it had jurisdiction to review whether the President had acted *ultra vires* and held that the Proclamation was consistent both with the President's Antiquities Act authority and with the O&C Act's land-management directives.

II. ANALYSIS

A. JUSTICIABILITY

Before addressing the merits of Murphy's statutory claims, we first consider whether we have authority to

do so. Sovereign immunity generally bars suits against the United States and its officials sued in their official capacity unless Congress has expressly waived immunity by statute. *Lane v. Pena*, 518 U.S. 187, 192 (1996). Where Congress has not waived sovereign immunity, judicial review is never available "when the statute in question commits the decision to the discretion of the President." *Dalton v. Specter*, 511 U.S. 462, 474 (1994). In the absence of a statutory waiver, the Supreme Court has permitted judicial review of presidential actions in two circumstances.

First, the Court has recognized constitutional challenges to presidential acts as reviewable. In *Franklin v. Massachusetts*, the state of Massachusetts and two of its registered voters sued the President, the Secretary of Commerce, Census Bureau officials, and the Clerk of the House of Representatives over reapportionment policy, particularly regarding the method used for counting federal employees serving overseas. 505 U.S. 788, 790–91 (1992). The Court held that the President's actions could "be reviewed for constitutionality," even though they were "not reviewable for abuse of discretion" under the Administrative Procedure Act. *Id.* at 801; *see also Dalton*, 511 U.S. at 467–72 (reaffirming the *Franklin* principle that "Presidential decisions are reviewable for constitutionality" but clarifying that not all claims alleging action in excess of statutory authority are "*ipso facto* in violation of the Constitution").

Second, the Court has held that actions by subordinate Executive Branch officials that extend beyond delegated statutory authority—*i.e.*, *ultra vires* actions—are reviewable. *See Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 689–90 (1949). In *Larson*, the case in which this theory was first articulated, a corporate

plaintiff sued the head of the War Assets Administration in the wake of World War II, alleging the government breached a contract to sell the corporation its surplus coal. *Id.* at 684. Although the plaintiff's suit was "nominally addressed to" the Administrator, the Court affirmed dismissal on sovereign immunity grounds because it was "in substance, a suit against the Government." *Id.* at 687–90. But in reaching this conclusion, the Court articulated an important exception: sovereign immunity does not shield an executive officer from suit for actions in "conflict with the terms of his valid statutory authority." *Id.* at 695; *see also Dalton*, 511 U.S. at 472 (underscoring that "sovereign immunity [does] not shield an executive officer from suit if the officer acted either 'unconstitutionally *or* beyond his statutory powers.'" (quoting *Larson*, 337 U.S. at 691 n.11)).

Here, as a threshold matter, the United States urges that Proclamation 9564 is immune from judicial review. The government argues that because no statute waives sovereign immunity or provides a cause of action for Murphy's claims, statutory judicial review is unavailable. Next, the government contends that even *ultra vires* review of Murphy's statutory claim is unavailable because the President acted pursuant to authority delegated by Congress under the Antiquities Act, and the O&C Act does not regulate the President's discretion, only that of the Secretary of the Interior. Murphy does not dispute that the Antiquities Act grants the President the authority to designate national monuments; instead, Murphy contends that Proclamation 9564, in particular, is reviewable as an *ultra vires* act. Because the O&C Act places a "reviewable limit" on the President's authority to designate monuments under the Antiquities Act, Murphy argues, *Larson*

creates an exception to sovereign immunity that allows jurisdiction.

Although neither the Supreme Court nor the Ninth Circuit has directly addressed whether the *Larson* exception applies to actions by the President, apart from the actions of subordinate Executive Branch officials, precedent and principle point in favor of jurisdiction here. The reviewability of Murphy's claim that the Secretary cannot manage O&C Lands contrary to the O&C Act is a simpler question. Yet, because Murphy's claims against the Secretary and against the President are thoroughly interwoven, the justiciability of each demands a judicial answer. Murphy's complaint is not pristinely clear about the appropriate avenue to jurisdiction. In addition to Murphy's arguments under *Larson*, Murphy's challenge implicates separation of powers concerns that resonate with the constitutional claims recognized in *Franklin*. Yet, whether characterized as *ultra vires* or constitutional, the result is the same: we resolve that Murphy's claims against the President regarding Proclamation 9564 are justiciable.

When faced with such a "difficult question" of the reviewability of certain executive actions, the Supreme Court has in recent years adopted the practice of "assum[ing] without deciding" justiciability. *See Trump v. Hawaii*, 138 S. Ct. 2392, 2407 (2018); *see also id.* at 2407 (noting that the Court in *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155 (1993), "went on to consider on the merits a statutory claim like the one before us without addressing the issue of reviewability"). But relying only on "hypothetical jurisdiction" risks rendering the disposition "nothing more than a hypothetical judgment" and thereby diluting the separation of powers. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998). Here, Murphy does not allege that

Proclamation 9564 constituted an abuse of discretion beyond the Antiquities Act guidelines; rather, Murphy maintains that the President's exercise of discretion under the Antiquities Act independently violates the O&C Act. In other words, Murphy's claim asks only that we apply our familiar tools of statutory construction and fulfill our enduring "duty . . . to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). Longstanding judicial practice, therefore, urges that we explicitly decide the issue of justiciability in this case.

Contemporary Ninth Circuit jurisprudence weighs in favor of justiciability by taking an expansive view of the constitutional category of claims highlighted in *Dalton*. In *Sierra Club v. Trump*, for example, we held that a challenge to presidential action will be considered constitutional, and therefore justiciable under *Franklin*, so long as a plaintiff claims that the President has "violat[ed] . . . constitutional separation of powers principles" because the President's action lacked both "statutory authority" and "background constitutional authority." 929 F.3d 670, 696–97 (9th Cir. 2019); *see also Sierra Club v. Trump*, 963 F.3d 874, 889–90 (9th Cir. 2020) (reiterating that claims alleging the President violated the Constitution by exceeding statutory authority are justiciable as constitutional claims), *vacated and remanded on other grounds sub nom. Biden v. Sierra Club*, 142 S. Ct. 46 (2021). While "an action taken by the President in excess of his statutory authority [does not] necessarily violate[] the Constitution," *Dalton*, 511 U.S. at 473, specific allegations regarding separation of powers may suffice. Here, the core of Murphy's claim—that the President violated separation of powers by directing the Secretary to act in contravention of a duly enacted law—could be considered constitutional and therefore reviewable.

The D.C. Circuit has had occasion to review analogous cases concerning the reviewability of claims against the President. In *Chamber of Commerce v. Reich*, plaintiffs challenged President Clinton's executive order, issued pursuant to his Procurement Act authority, that barred the federal government from contracting with employees replacing striking workers. 74 F.3d 1322, 1324 (D.C. Cir. 1996). The court determined that it had jurisdiction to review plaintiffs' claims that the order constituted "a palpable violation" of the National Labor Relations Act. *Id.*

In two other cases, the D.C. Circuit acknowledged jurisdiction over *ultra vires* allegations but ultimately concluded that the claims failed because of insufficient factual allegations. Plaintiffs in *Mountain States Legal Foundation v. Bush* challenged the creation of six national monuments, alleging the President acted *ultra vires* under the Antiquities Act and contrary to other federal statutes. 306 F.3d 1132, 1133–34 (D.C. Cir. 2002). The D.C. Circuit explained that *Dalton*'s restriction on reviewing presidential acts for abuse of discretion "'is inapposite' . . . 'where the claim instead is that the presidential action . . . independently violates' another statute." *Id.* at 1136 (quoting *Reich*, 74 F.3d at 1332). The court proceeded to review and reject plaintiffs' argument that the presidential action did indeed independently violate another statute, thus affirming dismissal on the merits for failure to state a claim. *Id.* at 1138. Applying this standard, the D.C. Circuit in *Massachusetts Lobstermen's Association v. Ross* concluded that plaintiffs' claims "that interpreting the Antiquities Act to permit ocean-based monuments would render the Sanctuaries Act a practical nullity" were justiciable but without merit. 945 F.3d 535, 541, 544 (D.C. Cir. 2019) (internal quotation marks omitted),

cert. denied sub nom. Mass. Lobstermen's Ass'n v. Raimondo, 141 S. Ct. 979 (2021).

Against this backdrop, Murphy's allegations are sufficient to establish jurisdiction. Our resolution should not be read to empower future objectors to frame any unpopular presidential action as "*ultra vires*" and thus open the floodgates to frivolous judicial challenges that hinder the President's power to respond to pressing issues. The Supreme Court has emphasized that dismissal for lack of jurisdiction is warranted if the alleged claim of statutory excess is made "solely for the purpose of obtaining jurisdiction or is wholly insubstantial and frivolous." *See Larson*, 337 U.S. at 690 n.10. And, again, the Court has stipulated that not every *ultra vires* claim will necessarily implicate constitutional concerns. *See Dalton*, 511 U.S. at 472. As the D.C. Circuit held in *Mountain States Legal Foundation*, plaintiffs advancing *ultra vires* claims must plead "plausible factual allegations identifying an aspect of the designation that exceeds the President's statutory authority." 306 F.3d at 1136–37. Far from providing "only the bald assertion that the President acted outside the bounds of his . . . statutory authority," *id.* at 1137, Murphy's particularized allegations that the O&C Act restricts the President's designation powers under the Antiquities Act satisfies the jurisdictional standard set forth here and elsewhere.[1]

[1] Our conclusion that Murphy has credibly alleged a statutory conflict does not dictate our determination on the merits. The pleading burdens with respect to jurisdiction and the merits are not coterminous when the claim is that the challenged action violates a separate statute conferring no authority on the President. *See Reich*, 74 F.3d at 1330–31 (stressing that "it is important carefully to distinguish between the government's

B. THE ANTIQUITIES ACT'S CONSISTENCY WITH THE O&C ACT

No party challenges President Obama's general authority to expand the Monument under the Antiquities Act. And for good reason—that authority is not inconsistent with the scope of the O&C Act. Murphy urges that the O&C Act's directive of "permanent forest production" circumscribed the scope of presidential authority over these specific lands. But Murphy overreads the extent of congressional commitment to timber production in the O&C Act and improperly discounts the considerable discretion that the statute grants the Department in managing O&C Lands for uses other than timber. After reviewing the O&C Act's plain text and legislative history, we hold that the Proclamation is a valid exercise of the President's Antiquities Act authority.

1. The O&C Act did not repeal the Antiquities Act.

The O&C Act did not explicitly or implicitly repeal the Antiquities Act. To begin, the two statutes are directed at different officials: the Antiquities Act vests authority in the President, while the O&C Act concerns the Secretary and says nothing about presidential authority. *See Sale*, 509 U.S. at 171–79 (considering statutes' direction at different officials as a persuasive factor in reconciling a statute and an executive order). Nor does the O&C Act make any

argument on the merits and its non-reviewability claim" in *ultra vires* suits involving two or more statutes because the fact that a statute affords the President "broad authority"—though weighing heavily on the merits—does not "preclude[] judicial review of executive action for conformity with that statute—let alone review to determine whether that action violates another statute.").

reference to the preexisting Antiquities Act. The Supreme Court has counseled, "when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton v. Mancari*, 417 U.S. 535, 551 (1974). The Antiquities Act and the O&C Act are easily "capable of co-existence."

Lacking any evidence of an explicit repeal, Murphy contends that the Antiquities Act and the O&C Act are irreconcilable because the latter act's *non-obstante* clause implicitly repealed the President's power under the Antiquities Act. By its terms, that *non-obstante* clause applies only if there is a statutory conflict: "All Acts or parts of Acts in conflict with this Act are hereby repealed to the extent necessary to give full force and effect to this Act." *See* Act of Aug. 28, 1937, ch. 876, 50 Stat. 876. Murphy "faces a stout uphill climb" against the "strong presumption that repeals by implication are disfavored." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624 (2018) (internal quotation marks omitted). In urging that the Antiquities Act and the O&C Act "cannot be harmonized," Murphy "bears the heavy burden of showing a clearly expressed congressional intention that such a result should follow." *Id.* (internal quotation marks omitted). Murphy points to no such evidence of congressional intent to repeal the Antiquities Act. In fact, the O&C Act's legislative history does not contain any reference to the Antiquities Act, even though the 1906 law was hardly itself an antiquity by 1937, when the O&C Act came into existence. President Franklin Delano Roosevelt exercised his monument-making power eight times that year alone. *National Monument Facts and Figures*, *supra*. Rather, the legislative record supports that Congress likely included the *non-obstante* clause as a fail-safe to ensure that the 1937 O&C Act superseded the tangle of statutes that

had previously regulated the O&C Lands. *See* H.R. Rep. No. 75-1119, at 2–4 (1937).

When Congress has wished to restrict the President's Antiquities Act authority, it has done so expressly. Consider, for instance, the highly public dispute between Congress and President Roosevelt over the establishment of the Jackson Hole National Monument in 1943. That year, President Roosevelt proclaimed 221,610 acres of federal land in Wyoming as a national monument of historic significance under the Antiquities Act, brushing aside strong indications from Congress that they would disapprove of such a move. *See* Robert W. Righter, *Crucible for Conservation: The Creation of Grand Teton National Park* 109–10 (1982). Opposition to the monument was fierce, and Congress reacted almost immediately: it appointed a joint congressional committee to investigate the issue, and, a few years later, it passed legislation that prohibited "further extension or establishment of national parks or monuments in Wyoming" without "express authorization" from Congress. *See* Act of Sept. 14, 1950, Pub. L. No. 787, § 1, 64 Stat. 849, 849; *see also* Righter, *supra*, 110–19, 123–25. To take another example, in response to President Carter in 1978 establishing more than 50 million acres across Alaska as national monuments, Congress passed a law requiring that the President seek congressional approval for land withdrawals larger than 5,000 acres throughout the *entire* state. *See* Act of Dec. 2, 1980, Pub. L. No. 96-487, § 1326(a), 94 Stat. 2371, 2488. Here, there is every reason to believe that if Congress had intended the restrictions of the O&C Act to apply when the President shifted the land use in question, Congress would speak as clearly and promptly here as it did in the cases of Alaska and Wyoming. But no such action was here taken.

More broadly, the fact that the Supreme Court has never overturned an Antiquities Act proclamation underscores the statute's vitality. *See United States v. California*, 436 U.S. 32, 35–36 (1978) (confirming the President's Antiquities Act power to add federally controlled lands to an existing monument); *Cameron v. United States*, 252 U.S. 450, 455 (1920) (affirming the President's authority under the Antiquities Act to create a Grand Canyon National Monument); *see also Cappaert v. United States*, 426 U.S. 128, 141–42 (1976) (holding that the "language of the [Antiquities] Act . . . is not so limited" and includes the authority to reserve rights to unappropriated water within a national monument). In one such historical case, the Court noted that the scope of President Truman's enlargement of a national monument in California was "a question only of Presidential intent, not of Presidential power." *United States v. California*, 436 U.S. at 36.

Thus, nothing supports a claim that the Antiquities Act proclamations are broadsides at land-management laws and cannot coexist with preexisting congressional mandates. There is no basis to suggest that Congress intended the O&C Act to nullify the Antiquities Act—which was, after all, itself an act of Congress.

2. The Proclamation's Exercise of Antiquities Act Power is Consistent with the Text, History, and Purpose of the O&C Act.

The Proclamation's exercise of Antiquities Act power is consistent with the O&C Act. The O&C Act's text, history, and purpose are clear that timber production was not the sole purpose that Congress envisioned for the more than two million acres of O&C Lands. Congress delegated ample discretion to the Department of the Interior to manage the lands in a flexible manner.

a. Text

When "the meaning of the statute's terms is plain," the court's job "is at an end." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1749 (2020). Here, the O&C Act's plain language empowers the Department to classify and manage the revested and reconveyed lands for several purposes—predominantly, but not exclusively, timber production. We cannot ignore the conservation provisions of the Act. As the D.C. Circuit long ago recognized, the O&C Act "conferred upon the Secretary of the Interior many duties requiring the exercise of his discretion and judgment." *Clackamas*, 219 F.2d at 487. The opening paragraph of the O&C Act reveals the breadth of congressional purpose:

> [S]uch portions of the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands as are or may hereafter come under the jurisdiction of the Department of the Interior, *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 [*sic*] 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 facilties* [*sic*].

43 U.S.C. § 2601 (emphasis added).

The first italicized provision indicates that not *all* O&C Lands were to be operated as timberlands.

Instead, the statute directs the Department to determine *which portions* of the land should be set aside for logging and which should be reserved. The Department's duty to oversee the lands is obligatory ("shall be managed"), but treating *every* parcel as timberland is not. Reading the statute differently would render the "heretofore" phrase mere surplusage and "run[] afoul of the 'cardinal principle' of interpretation that courts 'must give effect, if possible, to every clause and word of a statute.'" *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (quoting *Williams v. Taylor*, 529 U.S. 362, 404 (2000)). Murphy concedes as much in acknowledging that "[s]ome O&C Act lands are not subject to the statutes' sustained-yield timber production mandates." Obviously, Murphy can't pick and choose which parcels should be classified as protected timberlands. Otherwise, Murphy's argument would place the court or the timber company in the driver's seat and divest the Department of authority to make dynamic, scientific decisions about which parcels should or should not be logged.

Importantly, the statute authorizes the Department to manage the O&C Lands for uses other than timber production. While "providing a permanent source of timber supply" is certainly primary, the Act delineates a number of purposes for the Lands: "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. § 2601. Our earlier decision in *Headwaters, Inc. v. BLM, Medford District*, 914 F.2d 1174 (9th Cir. 1990), which dealt specifically with the O&C Act, does not counsel a different conclusion. To be sure, *Headwaters* held that "the O & C Act envisions timber production as a dominant use," and rejected an environmental group's proposal to exempt "certain timber resources

from harvesting to serve as wildlife habitat" because it was "inconsistent with the principle of sustained yield." *Id.* at 1183–84. But in *Headwaters* we never held that the O&C Act required timber production to be the *exclusive* use of O&C Land. Although saving the spotted owl might have been beyond Congress's vision of "forest production," *id.* at 1183, the statute's specific reference to "watersheds" and "recreational facil[i]ties" underscores that Congress contemplated alternative, secondary uses for the lands. Of note, *Headwaters* did not evaluate the O&C Act in the context, at issue here, of reconciling its statutory demands with the Antiquities Act. Ultimately, we affirmed BLM's exercise of discretion to manage the tract of O&C Land at issue as it saw fit—in that case, for logging. *Id.* at 1183–84.

Our reading of the O&C Act does not diverge from *Headwaters*'s recognition of the discretion vested in the Department and BLM, a principle we apply here. We have repeatedly reinforced that the O&C Act grants the Department broad discretion to manage the lands in a flexible manner. For instance, in *Portland Audubon Society v. Babbitt*, we considered an analogous clash between the O&C Act and the National Environmental Policy Act ("NEPA"). 998 F.2d 705 (9th Cir. 1993). Environmental groups sued BLM for failing to prepare a Supplemental Environmental Impact Statement under NEPA in light of the presence of northern spotted owls on O&C Land used for logging. *Id.* at 707. Affirming the district court, we underscored BLM's discretion to manage O&C Land for multiple purposes, holding that "the plain language of the [O&C] Act supports the . . . conclusion that the Act has not deprived the BLM of all discretion with regard to either the [timber] volume requirements of the Act or the management of the lands entrusted to its care." *Id.*

at 709. In the absence of a "clear and unavoidable conflict" between the two statutes, BLM could not use "an excessively narrow construction of its existing statutory authorizations" under the O&C Act to avoid compliance with NEPA. *Id.* (citation omitted). *Portland Audubon Society* thus reinforces the notion that BLM has latitude to reserve O&C Act land from logging in light of competing directives.

Just a few years later, in *Seattle Audubon Society v. Moseley*, we considered a logging-industry challenge to BLM's designation of certain O&C Lands as a spotted-owl habitat. 80 F.3d 1401 (9th Cir. 1996) (per curiam). The district court concluded that BLM's "management decision made here in regard to the [O&C] lands was a lawful exercise of the Secretary's discretion." *Seattle Audubon Soc'y v. Lyons*, 871 F. Supp. 1291, 1314 (W.D. Wash. 1994). We affirmed. *Moseley*, 80 F.3d at 1406.

Together, these decisions reinforce our conclusion that the O&C Act's plain text envisions economic, recreational, and environmental uses for the O&C Lands beyond logging and grants the Department significant discretion in how to achieve statutory compliance.

b. History and Purpose

The O&C Act's legislative history confirms our reading of the statute's plain language. Congress drafted the O&C Act to address "two basic criticisms" of its 1916 and 1926 statutory predecessors: "they required the timber to be sold as rapidly as possible and the cut-over lands disposed of," and they created a financial deficit due from the federal Treasury to Oregon counties. *Clackamas*, 219 F.2d at 487. Accordingly, "[t]he purposes of the [1937] O & C act were twofold": provide a "stream of revenue" to the affected counties and "halt [the] previous practices of

clear-cutting without reforestation." *Headwaters*, 914 F.2d at 1183. Although in *Headwaters* we rather cursorily addressed the possibility of conservationist intent behind Congress's rejection of clear-cutting, *id.* at 1184, the historical record contains ample evidence of the government's growing environmental concern. Without doubt, Congress intended to bestow significant discretion to the Department to manage the lands for posterity.

The O&C Act Committee Reports from the House and the Senate convey a concern for conservation and an intent to vest discretionary authority in the Department. H.R. Rep. 75-1119 (1937); S. Rep. No. 75-1231 (1937) (adopting the House Report in full). The Reports frame the Act as a course correction for the economic and environmental damage wrought by the 1916 and 1926 Acts. These earlier statutes "called for outright liquidation" of timber without making any provision "for the administration of the land on a conservation basis looking toward the orderly use and preservation of its natural resources." H.R. Rep. 75-1119 at 2. By 1937, times had changed: such a policy of deforestation was "now believed to be wasteful and destructive of the best social interests of the State and Nation." *Id.* at 2. Thus, Congress intended to set a *maximum*, not a minimum, quota for timber production, so that the O&C Lands' natural assets could be "conserved and perpetuated." *Id.* at 2, 4. Such forward thinking drove the statute's innovative adoption of "sustained yield" forestry, *see id.*, and deference to the Department's implementation of that strategy. Heeding the concerns of the Department's Acting Secretary, Congress sought to "provide conservation and scientific management for this vast Federal property which now receives no planned management." *Id.* at 2; *see also id.* at 4–6 (reprinting in full a letter from the Acting Secretary of the Interior).

Placing the Committee Reports in their historical context makes Congress's intent even clearer. The New Deal was an era of agency expansion and pragmatic conservationism. At the turn of the twentieth century, "[q]uick exploitation of the natural resources" was the dominant ideology in the West, and the federal government struggled to intervene. Roy E. Appleman, *Timber Empire from the Public Domain*, 26 Miss. Valley Hist. Rev. 193, 196 (1939). By the 1930s, however, Americans had developed an "increasing concern for the conservation of the nation's natural resources." Paul G. Dodds, *The Oregon and California Lands: A Peculiar History Produces Environmental Problems*, 17 Env't L. 739, 754 (1987).

In an era of scarcity like the Great Depression, economic and environmental preservation took on new urgency. President Roosevelt preached a "gospel of conservation," Remarks at the Celebration of the Fiftieth Anniversary of State Conservation at Lake Placid (Sept. 14, 1935), which pressed the need to "to conserve soil, conserve water and conserve life," Fireside Chat (Sept. 6, 1936). Meanwhile, Secretary of the Interior Harold Ickes sought to rename his agency as the "Department of Conservation" and double its efforts to preserve natural resources and expand national parks. *Ickes Pushes New Department Unifying Federal Conservation*, N.Y. Times, Nov. 22, 1937, at 1, 7. Such a shift in thinking resonated at the local level as well: the northwest regional head of the U.S. Forest Service warned in 1934 that Oregon and Washington were facing a "day of social and economic reckoning" if they did not change their timber practices. William G. Robbins, *Timber Town: Market Economics in Coos Bay, Oregon, 1850 to the Present*, 75 Pac. N.W. Q. 146, 152–53 (1984). The O&C Act was designed to confront these

contemporary challenges and empower the Department to create a roadmap for the future.

Accordingly, in the decades to follow, the Department implemented an ever-evolving multiple use strategy for the O&C Lands. Especially since the expansion of environmental legislation in the 1970s, the Department has increased protections for the Lands' flora and fauna while continuing to give credence to local communities' reliance on timber production. *See, e.g.*, *Lyons*, 871 F. Supp. at 1301–06, 1313–15 (summarizing the development and legislative backdrop of BLM resource management plans affecting O&C Lands in the 1980s and 1990s).

3. The Dissent Sidesteps the Fundamental Questions of Repeal and Inconsistency.

The dissent's concerns that Proclamation 9564 and the O&C Act are in conflict are unsubstantiated. To begin, the dissent misunderstands the powers granted to the President when issuing proclamations pursuant to the Antiquities Act. As the Supreme Court has noted, "[t]he Antiquities Act of 1906 permits the President . . . to create a national monument and reserve for its use simply by issuing a proclamation with respect to land *owned or controlled* by the Government of the United States." *United States v. California*, 436 U.S. 32, 40 (1978) (emphasis added and internal citation omitted). This authority includes the power to shift federal land from one federal use to another, *id.*, with a concurrent shift in the laws and regulations governing its use. "Without such reservation, the federal lands would remain subject to . . . continued federal management for [the previously] designated purposes." *Id.* Put another way, context is everything, and laws passed by Congress as to how

federal lands should be treated in one context may not fairly apply when the land is shifted to a different use having its own set of rules.

Applied here, this means that President Obama, through his expansion of the Cascade-Siskiyou National Monument, did no more and no less than take a small portion of the O&C Lands and direct the Secretary to manage the area for a new use. This would hardly be the first time a President has used Antiquities Act authority to dedicate federal land for one use that Congress had previously appropriated for a different use. To take a recent example, President Obama in 2011 established the Fort Monroe National Monument, Proclamation 8750, 76 Fed. Reg. 68625 (Nov. 1, 2011), notwithstanding Congress's delegation to the Secretary of Defense of the exclusive authority to "utilize [and dispose of] excess property . . . located" at the base after it was decommissioned as a military installation that same year, *see* 10 U.S.C. § 2687 note § 2905(b) (Defense Base Closure and Realignment Act of 1990). Though it is plain that the President's designation made it impossible for the Secretary of Defense to exercise this delegated authority, no one viewed the President's proclamation as somehow violative of Congress's previous authorization to the Secretary.

Second, in the dissent's view, such a reading of the Antiquities Act would effectively allow the President to repeal any disagreeable statute. This, however, reduces Congress to a bit player in federal land-management policy, erasing the long history of vigorous action it has taken in response to what it perceived to be presidential overreach. When Congress has disagreed with a President's decision to expand a monument or wanted to prevent the President from exercising Antiquities Act powers in the first instance, it has not

hesitated to make its disagreement known through legislative action. The earlier-discussed examples from Wyoming and Alaska affirmatively demonstrate congressional interplay with presidential authority under the Antiquities Act. *See* Act of Sept. 14, 1950, Pub. L. No. 787, § 1, 64 Stat. 849, 849 (amending the Antiquities Act to prohibit "further extension or establishment of national parks or monuments in Wyoming" without congressional authorization following a dispute over the Jackson Hole National Monument); Act of Dec. 2, 1980, Pub. L. No. 96–487, § 1326(a), 94 Stat. 2371, 2488 (prohibiting future Executive Branch withdrawals of more than 5,000 acres of public lands within Alaska).

We do not suggest that congressional silence is the bellwether for interpretation. The important point is that the designation here is not contrary to the text of the O&C Act, nor does it represent any effort to modify or nullify the Act.

Finally, the dissent's claim of executive nullification is hyperbole. This is not a case where the executive's action eviscerates Congress's land-management scheme, nor is it a case that concerns "vast and amorphous expanses of terrain." *Mass. Lobstermen's Ass'n*, 141 S. Ct. at 981 (Roberts, C.J., statement respecting the denial of certiorari). Of the more than two million acres of O&C Lands, only some 40,000 acres—less than two percent—fall within the expanded Monument's territory, and the Secretary retains broad discretion over the millions of acres remaining. The Proclamation does not usurp congressional intent or the Secretary's broad authority to regulate the O&C Lands as a whole. If the dissent had its way, a President's Antiquities Act proclamation would be *ultra vires* whenever it arguably implicates some provision of a statute, no

matter how minor the provision or how minimal the monument. Not only would such a rule be without precedent, but it could potentially implicate many of the detailed land-management statutes throughout the United States Code. *See, e.g.*, 43 U.S.C. §§ 1711–23, 1751–52, 1761–87 (sections featuring specific regulations on federal land). Most importantly, the dissent's theory sidesteps the foundational question of whether the O&C Act repealed the Antiquities Act in the first place—it did not. Whatever the dissent's concerns with the Antiquities Act writ large, this is not a case that tests the bounds of the Act.

III. CONCLUSION

In short, the Proclamation is fully consistent with the O&C Act, which governs a much larger swath of timberlands in Oregon and gives the Secretary discretion in administering those lands within the Act's directives. We affirm the district court's grant of summary judgment in favor of the United States and Soda Mountain.

AFFIRMED.

TALLMAN, Circuit Judge, concurring in part and dissenting in part:

I

I agree that we may review claims that the President's execution of one statute obstructs the operation of another. However, I must respectfully dissent from the majority's conclusion that Proclamation 9564 does not conflict with the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (O&C Act).

II

This case arises from the protracted history of controversial land use decisions that have decimated Pacific Northwest timber communities long dependent on logging and wood product sales to sustain them. The management of these vast swaths of federal land, removed from state and local tax rolls, has had a checkered history to say the least, but also a devastating economic impact on these towns. The President's unilateral action here favoring environmental conservation interests is the latest skirmish.

Two small Oregon timber companies, Murphy Timber Company and Murphy Timber Investments, LLC (collectively Murphy Co.) own land that is impacted by adjacent federal timberland. In 1937 Congress enacted the O&C Act and directed the Secretary of the Interior (Secretary) to manage those federal timberlands primarily for "permanent forest production . . . in conformity with the principal [sic] of sustained yield." 43 U.S.C. § 2601. In 2017 President Obama issued a proclamation pursuant to the Antiquities Act which doubled the size of a preexisting national monument, created by President Clinton, to cover O&C timberlands. Proclamation 9564, 82 Fed. Reg. 6145 (Jan. 12, 2017).

The Proclamation directs the Secretary to manage lands "under the same laws and regulations that apply to the rest of the monument," 82 Fed. Reg. at 6149, which absolutely prohibit sustained yield calculation and "[t]he commercial harvest of timber" within the monument. Proclamation 7318, 65 Fed. Reg. 37249, 37250 (June 9, 2000).

The question we face is whether the President, through an Antiquities Act proclamation, may direct a subordinate to disregard duties prescribed by another act of Congress. We should hold that "[t]he President cannot authorize a secretary . . . to omit the performance of those duties which are enjoined by law." *Marbury v. Madison*, 5 U.S. 137, 138-39, 154, 158 (1803) (summarizing and endorsing arguments of counsel).

III

The majority opens with a sterile analysis of whether the O&C Act repealed the Antiquities Act. But whether the Antiquities Act and the O&C Act can coexist in the abstract is quite beside the point. Rather, we must decide whether Proclamation 9564—issued pursuant to the Antiquities Act—conflicts with the O&C Act. Even a perfunctory review of the plain text of the Proclamation and the O&C Act reveals an obvious conflict.

The Antiquities Act permits the President, in his "discretion, [to] declare by public proclamation historic landmarks . . . situated on land owned or controlled by the Federal Government to be national monuments." 54 U.S.C. § 320301. The parcels of the monument that the President may reserve must "be confined to the smallest area compatible with the proper care and management of the objects to be protected." *Id.*

Enacted three decades after the Antiquities Act, the O&C Act mandates that O&C timberlands "*shall* be managed" by the Secretary "for permanent forest production, and the timber thereon *shall* be sold, cut, and removed in conformity with the principal [sic] of sustained yield." 43 U.S.C. § 2601 (emphasis added). In calculating sustained yield, the Secretary must consider the following statutory goals: "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 facilties [sic]." *Id.* The O&C Act's *non-obstante* clause, which the majority dismisses as too vague to mean anything here, expressly provides: "All Acts or parts of Acts in conflict with this Act are hereby repealed to the extent necessary to give full force and effect to this Act." O&C Act, Pub. L. No. 75-405, § 5, 50 Stat. 874, 875 (1937).

Proclamation 9564 doubles the existing Cascade-Siskiyou National Monument to cover O&C timberlands, and it directs the Secretary to manage those lands under "laws and regulations," 82 Fed. Reg. at 6149, that outright prohibit "the commercial harvest of timber" and the "calculation or provision of a sustained yield of timber" on all lands falling within the monument. 65 Fed. Reg. at 37250. This removes the land entirely from inclusion as available timberlands to meet statutory commands.

The conflict between the O&C Act and Proclamation 9564 could not be more self-evident. The O&C Act requires sustained yield calculation for all O&C timberlands. Proclamation 9564 removes O&C timberlands from the sustained yield calculation if they fall within the monument. Although the Antiquities Act does grant the President broad authority to establish

national monuments, nowhere does it remotely purport to grant him authority to suspend the operation of another act of Congress. By expressly singling out sustained yield calculation for prohibition, the President's proclamation intentionally directs the Secretary to disregard her statutory duties under the O&C Act to make sure that timber is available for harvest to meet the economic needs of timber-dependent communities.

The Secretary's duty to conduct a sustained yield analysis for all O&C timberland "is not a proceeding which may be varied, if the judgment of the executive shall suggest one more eligible; but is a precise course accurately marked out by law, and is to be strictly pursued." *Marbury*, 5 U.S. at 158. The Secretary must "conform to the law, and in this [s]he is an officer of the United States, bound to obey the laws." *Id.* She acts "under the authority of law, and not by the instructions of the President. It is a ministerial act which the law enjoins on a particular officer for a particular purpose." *Id.* And the President must "take Care that the Laws be *faithfully* executed." U.S. CONST. art II, § 3 (emphasis added).

Accordingly, the "judicial inquiry is complete" and "our job is at an end." *Connecticut Nat.'l Bank v. Germain*, 503 U.S. 249, 254 (1992) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)); *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020). We may not rewrite statutes or executive orders to avoid clear conflict, and the only task that remains is to give effect to the plain meaning of the O&C Act and declare the Proclamation void as to O&C timberland.

Other principles of construction require us to give effect to the O&C Act over Proclamation 9564. Under the canon of *generalia specialibus non derogant*,

"a 'narrow, precise, and specific' statutory provision is not overridden by another provision 'covering a more generalized spectrum' of issues." *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1075 (9th Cir. 2016) (quoting *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153-54 (1976)). We "assume Congress intended specific provisions to prevail over more general ones." *Id.* As Judge Richard Leon correctly observed in *American Forest Resource Council v. Hammond*, "[t]he Antiquities Act says nothing specific about managing O&C timberland. As such, it cannot be understood to nullify the timber harvest mandates imposed by Congress in the O&C Act." 422 F. Supp. 3d 184, 193 (D.D.C. 2019) (citations omitted). An executive proclamation issued pursuant to a general grant of authority cannot supersede a specific act of Congress.

Furthermore, later-in-time statutes generally take priority over earlier-enacted laws. *See Bell v. United States*, 366 U.S. 393, 407-08 (1961). The Antiquities Act, and any execution of it, must yield to the O&C Act because Congress enacted the O&C Act intending that it have "full force and effect" notwithstanding the existence of the Antiquities Act. O&C Act, § 5, 50 Stat. 875. But where an act is *both* later in time *and* more specific, the "specific policy embodied in a later federal statute should control our construction of the [earlier] statute." *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) (quoting *United States v. Estate of Romani*, 523 U.S. 517, 530 (1998)).[1] As the later-in-time statute specifically

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[1] For similar reasons, the majority's reference to Congress's vague delegation of authority to the Secretary of Defense to "utilize excess property" at closed military bases is inapposite. 10 U.S.C. § 2687 note § 2905(b)(1)(A) (Defense Base Closure and Realignment Act of 1990). *See also id.* at § 2905(b)(1)(D) (also

addressing the management of O&C lands to provide sustainable timber, the O&C Act supersedes the Antiquities Act and any ensuing proclamation.

The majority appears to have fashioned its own rule that where Congress wishes to restrict the President's Antiquities Act authority, it must do so expressly. The majority cites instances where Congress has enacted legislation rebuking exercises of the Antiquities Act in Wyoming and Alaska, concluding that "Congress would speak as clearly and promptly here" if it felt the President had overstepped his authority. This argument belies foundational principles of constitutional law and misconstrues the role of courts in our tripartite system of government.

The Judiciary may not abdicate its duty to curtail unlawful executive action merely because Congress may also act to restrain the President, THE FEDERALIST NO. 78 (Alexander Hamilton) (explaining constitutional limits "can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void"), and citizens need not await congressional action before seeking relief from unlawful executive action in the courts. *Id.* ("There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. . . . To deny this, would be to affirm . . . that the representatives of the people are superior to the people themselves . . . .").

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delegating authority to the Secretary of Defense to "determine the availability of excess or surplus real property for wildlife conservation purposes").

"The danger of imputing to Congress, as a result of its failure to take positive or affirmative action through normal legislative processes, ideas entertained by the [majority] concerning Congress' will" is well known to courts. *Cleveland v. United States*, 329 U.S. 14, 23 (1946) (Rutledge, J., concurring). "Congress cannot anticipate and legislate with regard to every possible action the President may find it necessary to take or every possible situation in which he might act." *Dames & Moore v. Regan*, 453 U.S. 654, 678 (1981). For those reasons, "[o]rdinarily, and quite appropriately, courts are slow to attribute significance to the failure of Congress to act on particular legislation." *Bob Jones Univ. v. United States*, 461 U.S. 574, 600 (1983). And "[u]nder the *Youngstown* tripartite framework, congressional acquiescence is pertinent when the President's action falls within the second category—that is, when he 'acts in absence of either a congressional grant or denial of authority.'" *Medellin v. Texas*, 552 U.S. 491, 528 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring)). In other words, "[a]n inference drawn from congressional silence certainly cannot be credited when it is contrary to" the text of the O&C Act. *Burns v. United States*, 501 U.S. 129, 136 (1991). Moreover, even an affirmative act of Congress cannot grant the President the power to indefinitely modify or nullify duly enacted law. *See Clinton v. City of New York*, 524 U.S. 417, 436-47 (1998). The majority's deference to the political branches of government in this case is contrary to our commitment to the rule of law.

Indeed, the far-reaching implications of the majority's interpretive rule are sobering: every federal land management law that does not expressly shield itself from the Antiquities Act is now subject to executive nullification by proclamation. I can find no limiting

principle within the majority opinion that counsels otherwise. I think it manifestly more sensible to apply a different presumption: I would not construe a statute to grant the President unfettered authority to indefinitely suspend or cancel the operation of federal law, *see id.* at 443-44 (distinguishing between constitutional delegations of authority to suspend statutes and unconstitutional delegations of authority to cancel statutes), particularly where Congress has not expressly done so nor conditioned the suspension authority upon some intelligible changed circumstance. *See, e.g.*, 46 U.S.C. § 3101 ("When the President decides that the needs of foreign commerce require, *the President may suspend* a provision of this part . . . ." (emphasis added)); 46 U.S.C. § 60304 ("If the President is satisfied that the government of a foreign country does not impose discriminating or countervailing duties to the disadvantage of the United States, *the President shall suspend* the imposition of special tonnage taxes and light money . . . ." (emphasis added)); 22 U.S.C. § 4103 ("The President *may by Executive order suspend* any provision of this subchapter . . . if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency." (emphasis added)).

A few simple counterfactuals illustrate the infirmity of the majority's position. As the majority notes, the year the O&C Act was enacted, President Franklin Delano Roosevelt exercised his Antiquities Act authority several times. Suppose, for the sake of argument, President Roosevelt had been opposed to logging and the O&C Act had been adopted over his veto. According to the majority, President Roosevelt could have lawfully obstructed the clear will of Congress by issuing an Antiquities Act proclamation prohibiting sustained

yield logging on some or all of the timberland the very next day.

Suppose a President wishes to protect Crater Lake National Park from the harmful effects of park visitors. Under federal law, the "National Park shall be open, under such regulations as the Secretary of the Interior may prescribe, to all scientists, excursionists, and pleasure seekers." 16 U.S.C. § 123. According to the majority, however, the President can prohibit visitors by issuing an Antiquities Act proclamation reclassifying the park as a national monument. I cannot agree that Congress intended to cede this unbridled power to the President when it enacted the Antiquities Act.

By permitting Proclamation 9564 to supplant the O&C Act, the majority has transmuted the Antiquities Act into a coiled timber rattler poised to strike at any land management law that the President dislikes.

IV

Notwithstanding the undeniable conflict between Proclamation 9564 and the O&C Act, the majority concludes they can be reconciled because the O&C Act "delegated ample discretion to the Department of the Interior to manage the lands in a flexible manner." But it is unclear how the mere grant of discretion as to how a sustained yield analysis should be conducted can justify the President's total prohibition on even engaging in a sustained yield analysis in the first place by removing O&C timberlands from the calculation.

The majority first argues that the O&C Act and the Proclamation are reconcilable because the Secretary has unfettered discretion to classify or declassify O&C land as timberland. This proposition is dubious at best. First, interpreting the O&C Act to vest the Secretary with unfettered discretion to declassify O&C timberland

runs afoul of the Constitution's requirement that "an 'intelligible principle' [must] guide the delegee's exercise of authority." *Gundy v. United States*, 139 S. Ct. 2116, 2129 (2019). Given the O&C Act incorporated O&C lands "heretofore" and "hereafter" classified as timberlands, rather than grant the Secretary unbounded discretion, it seems more likely that Congress intended for the Secretary to classify O&C land consistent with past practice, meaning "lands bearing a growth of timber not less than three hundred thousand" board feet per 40 acres. Chamberlain-Ferris Act, Pub. L. No. 86, ch. 137, § 2, 39 Stat. 218, 219 (1916); *see also Bilski v. Kappos*, 561 U.S. 593, 647 (2010) (explaining "an ambiguity in a later-in-time statute must be understood in light of the earlier-in-time framework against which the ambiguous statute was passed").

Second, even assuming the Secretary possesses fiat authority to declassify the O&C timberlands at issue, the government has not directed us to a rulemaking by the Secretary actually doing so. Since Murphy Co. has made clear that its suit pertains only to O&C lands that the Secretary has heretofore classified as timberlands, the Secretary's supposed authority remains unexercised and is therefore irrelevant to this appeal.

Although conceding that the dominant use for O&C timberlands is timber production to sustain struggling timber communities, the majority next argues that the Proclamation is justified because the Secretary has discretion to consider the additional goals of "protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facil[i]ties" when conducting a sustained yield analysis. 43 U.S.C. § 2601. But Proclamation 9564 is not an exercise of the Secretary's discretion; it is a presidential command.

The command does not itself direct the Secretary to exercise her discretion in a certain manner, but rather it restricts her from exercising any discretion at all by prohibiting sustained yield analysis within the monument. It preordains a result and directs the Secretary, for all time, to prohibit commercial logging on the relevant O&C timberlands regardless of changing conditions on the ground. The mere fact that the Secretary could effectuate a similar outcome if given the freedom to exercise her statutorily mandated O&C Act discretion is insufficient to rescue the President's unlawful command.

V

Conservation is a noble goal, and national monuments have undoubtedly preserved and proliferated the richness of the American landscape. But the unfortunate back-end cost of conservation is that small, local communities reliant on the cultivation of natural resources to generate revenue to sustain them are often left behind. Congress sought to strike a balance with the O&C Act by granting the Secretary the authority and ability to consider both the interests of conservation and the interests of local communities.[2]

I am troubled by the President's overt attempt to circumvent the balance struck by Congress and the majority's haste in labeling that attempt with the imprimatur of law. The decision today continues a

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[2] Indeed, the Clinton Administration, which first established the Cascade-Siskiyou National Monument, once boasted that the administration had "stepped up to the challenge to get a sustainable timber supply pipeline flowing again." The Clinton White House, *The President's Forest Plan*, National Archives, https://clintonwhitehouse4.archives.gov/WH/EOP/OP/html/forest.html (last visited Apr. 7, 2023).

troubling trend of increased judicial deference to Presidential uses of the Antiquities Act. As the Chief Justice has observed, this trend cannot continue indefinitely:

> Somewhere along the line, [the Antiquities Act's textual limits have] ceased to pose any meaningful restraint. A statute permitting the President in his sole discretion to designate as monuments "landmarks," "structures," and "objects"—along with the smallest area of land compatible with their management—has been transformed into a power without any discernible limit to set aside vast and amorphous expanses of terrain above and below the sea.

Massachusetts Lobstermen's Ass'n v. Raimondo, 141 S. Ct. 979, 981 (2021) (Roberts, C.J., statement respecting the denial of certiorari). These issues are not going away. Just recently, President Biden designated two new national monuments spanning over half a million acres. *See FACT SHEET: President Biden Designates Castner Range National Monument*, The White House (Mar. 21, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/21/fact-sheet-president-biden-designates-castner-range-national-monument/; *FACT SHEET: President Biden Designates Avi Kwa Ame National Monument*, The White House (Mar. 21, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/21/fact-sheet-president-biden-designates-avi-kwa-ame-national-monument/. I agree with the Chief Justice that this trend is unsustainable and likewise urge a return to the textual strictures of the Antiquities Act.

At oral argument, the government conceded that if Proclamation 9564 had expanded the monument to

cover all 2.4 million acres of O&C land, it would have violated the O&C Act. But the government insisted that the Proclamation was lawful because the adverse effect on the O&C Act was minimal. By accepting that argument, the majority engages in a brand of incrementalism perilous to constitutional principles that are absolute.

It may be expedient to delegate unfettered control over the destiny of public lands to the President. But the Constitution enshrines our fundamental understanding that the separation of powers is an "essential precaution in favor of liberty." THE FEDERALIST NO. 47 (James Madison). Each branch of government has an obligation to police the boundaries of power and guard against delegations of, and encroachments on, their constitutionally vested power. THE FEDERALIST NO. 51. When called upon to adjudicate a case or controversy, the Judiciary, as the apolitical expositor of the Constitution, must decline to acquiesce in undertakings by the political branches that would sacrifice constitutional safeguards on the altar of political expediency. *See United States v. Nixon*, 418 U.S. 683, 703 (1974).

Although the Constitution does not "absolutely separate" the three forms of governmental power, it absolutely prohibits the President from making law, even concerning the most inconsequential of matters. THE FEDERALIST NO. 47. Proclamation 9564 violates this prohibition because it directs the Secretary of the Interior to disregard her obligations under the O&C Act. Only Congress may do this.

Proclamations and executive orders of this reach are often responsive to criticisms by advocates that Congress is too formalistic and inflexible in performing its legislative function as originally envisioned by the

Framers in today's dynamic world. The legislative process can sometimes be slow and frustrating, but the procedural strictures enshrined in our Constitution are unyielding because they exist to maintain our Republic's status as a government of laws and not of men. *See Bond v. United States*, 564 U.S. 211, 222–23 (2011); *Horne v. Dep't of Agric.*, 576 U.S. 350, 362 (2015) ("The Constitution . . . is concerned with means as well as ends."). As Justice Holmes once noted, "We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922). The majority seems unbothered by today's erosion of our constitutional principles. I am not so sanguine and must respectfully dissent.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

No. 1:17-cv-00285-CL

MURPHY COMPANY;
MURPHY TIMBER INVESTMENTS LLC,

Plaintiffs,

v.

DONALD J. TRUMP; KEVIN HAUGRUD;
BUREAU OF LAND MANAGEMENT;
UNITED STATES DEPARTMENT OF THE INTERIOR,

Defendants,

v.

SODA MOUNTAIN WILDERNESS COUNCIL;
KLAMATH-SISKIYOU WILDLANDS CENTER;
OREGON WILD; WILDERNESS SOCIETY,

Intervenor-Defendants

ORDER

McSHANE, District Judge.

Magistrate Judge Mark D. Clarke has filed a Report and Recommendation, ECF No. 65, concerning cross motions for summary judgment filed in this case, ECF Nos. 39, 42, 44. Plaintiffs have filed Objections to the Report and Recommendation, ECF No. 71, and Defendants and Intervenor-Defendants have filed Responses, ECF Nos. 77, 78. The Court has reviewed the file of this case *de novo*. 28 U.S.C. § 636(b)(1);

McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981).

The Court has given this matter *de novo* review and finds no error with respect to Plaintiffs' Objections.

Intervenor-Defendants have also filed a partial Objection, ECF No. 73, in which Defendants join, ECF No. 78, and Plaintiffs have filed a Response. ECF No. 76. In this Objection, Intervenor-Defendants and Defendants seek to clarify a factual issue. At several points in the Report and Recommendation, Judge Clarke noted that Proclamation 7318, which established the Cascade-Siskiyou National Monument and whose standards concerning timber harvest were subsequently adopted by Proclamation 9564, "prohibits" commercial timber harvest. Intervenor-Defendants object that this language is overbroad.[1] The Court has reviewed the record in this case and concurs. Proclamation 7318 severely curtails, but does not entirely prohibit the commercial harvest of timber in the Cascade-Siskiyou National Monument, providing:

> The 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. Any such project must be consistent with the purposes of this proclamation.* No 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.

[1] Intervenor-Defendants do not otherwise object to the Report and Recommendation and urge the Court to adopt Judge Clarke's legal analysis and conclusions.

> Removal of trees from within the monument area may take place only if clearly needed for ecological restoration and maintenance or public safety.

Proclamation 7318, 65 Fed. Reg. 37249, 37250 (June 9, 2000) (emphasis added).

Any reference in the Report and Recommendation to a prohibition on commercial timber harvests in the Cascade-Siskiyou National Monument pursuant to Proclamation 7318 or Proclamation 9564 should therefore be understood to mean a "prohibition subject to the limited exception described in the text of Proclamation 7318." This clarification does not affect Judge Clarke's legal analysis, nor does it alter the Report and Recommendation's substantive conclusion.

Accordingly, the Court ADOPTS the Report and Recommendation as modified. Plaintiffs' Motion for Summary Judgment, ECF No. 39, is DENIED. Defendants' and Intervenor-Defendants' Cross-Motions for Summary Judgment, ECF Nos. 42, 44, are GRANTED. Final judgment shall be entered accordingly.

It is so ORDERED and DATED this 5th day of September, 2019.

s/Michael J. McShane
MICHAEL McSHANE
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

Case No. 1:17-cv-00285-CL

MURPHY COMPANY, *et al.,*

Plaintiffs,

v.

DONALD J. TRUMP, *et al.,*

Defendants,

and

SODA MOUNTAIN WILDERNESS COUNCIL, *et al.,*

Defendant-Intervenors.

REPORT AND RECOMMENDATION

CLARKE, Magistrate Judge.

Plaintiffs Murphy Company and Murphy Timber Investments, LLC (collectively "Plaintiff") bring this case challenging the authority of the President of the United States to include lands covered under the Oregon & California Revested Lands Act ("O&C Act") in the expansion of the Cascade-Siskiyou National Monument. This case comes before the Court on Plaintiff's Motion for Summary Judgment (#39), Federal Defendant's Cross-Motion for Summary Judgment (#42), and Defendant-Intervenor's Cross-Motion for Summary Judgment (#44). For the reasons discussed

below, Plaintiff's motion should be DENIED, and Defendants' motions should be GRANTED.

BACKGROUND

Congress passed the Antiquities Act in 1906, authorizing the President of the United States, in his discretion, to declare by public proclamation landmarks, structures, and objects of historic and scientific interest that are situated upon lands owned or controlled by the federal government to be national monuments. 54 U.S.C. § 320301. The only limitation that Congress placed on the President's authority to reserve federal land for the creation of national monuments by the Antiquities Act is that the "parcels of land" reserved must "be confined to the smallest area compatible with the proper care and management of the objects to be protected." *Id.; see generally Mt. States Legal Found v. Bush,* 306 F.3d 1132, 1135-37 (D.C. Cir. 2002).

On June 9, 2000, President Clinton exercised authority under the Antiquities Act to designate the Cascade-Siskiyou National Monument ("Monument") in Southern Oregon. Proclamation No. 7318, 65 Fed. Reg. 37249 (June 9, 2000). The Monument was created to protect the unique ecosystem and biodiversity of the area. In designating the Monument, President Clinton prohibited commercial timber harvest within the Monument boundaries. Included in the Monument were lands subject to the O&C Act, which states that such lands

> 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. § 2601.

The O&C Act covers roughly 2.1 million acres and requires the Bureau of Land Management ("BLM") to determine and declare the "annual productive capacity" of these lands. *Id.* Several courts have held that the O&C Act is a "dominant" or "primary" use statute for sustained yield timber production. *Headwaters, Inc. v. Bureau of Land Mgmt.,* 914 F.2d 1174, 1183-84 (9th Cir. 1990); *Soda Mt. Wilderness Council v. Bureau of Land Mgmt.,* 2013 WL 12120098, *1 (D. Or. May 29, 2013), *adopted in part,* 2013 WL 4786242 (D. Or. Sept. 6, 2013). The BLM is tasked with managing these lands and retains considerable discretion in implementing the Act's principles of sustained yield, which has included establishing and maintaining reserves within O&C lands, *i.e.,* areas which no or very little timber production occurs. 43 U.S.C. § 2601; *Portland Audubon Society v. Babbitt,* 998 F.2d 705, 709 (9th Cir. 1993) (finding that the O&C Act did not deprive the "BLM of all discretion with regard to either the volume requirements of the Act or the management of the lands entrusted to its care"). For example, out of the approximately 950,827 acres of O&C lands covered by the BLM's Southwest Oregon Resource Management Plan, 191,300 acres have been withdrawn from timber harvest for various reasons. Federal Def.'s Br. at 24-25 (#42). Although President Clinton's designation of the Monument and prohibition of commercial timber harvest within the Monument's boundaries affected O&C Act lands, no challenge was brought to dispute President Clinton's exercise of authority.

In 2011, fifteen independent scientists issued a report calling for the Monument to be expanded. Seventy other scientists and two local town governments close to the Monument joined in support of the expansion. *See* Declaration of Dave Willis, Ex. B and Ex. C (##5-3 to 5-7). A series of four public meetings on the proposed expansion were held in 2016, with more than 500 people attending the public meeting held in Ashland, Oregon, the closest town to the Monument. Oregon Senator Merkley's office reported an almost 4:1 ratio of public support for the Monument's expansion. Declaration of Susan Brown, Ex. I at 1-2 (#44-10).

On January 12, 2017, seemingly in response to this public support, President Obama exercised his authority under the Antiquities Act to modify and enlarge the boundary of the Monument to include approximately 48,000 additional acres, of which approximately 39,841 acres are also subject to the O&C Act. Proclamation No. 9564, 82 Fed. Reg. 6145 (Jan. 12, 2017). Proclamation No. 9564 identified objects of biological, scientific, and historical interest within the Monument expansion area. *Id.* Because the provisions set by the initial Monument proclamation prohibited commercial timber harvest, those same restrictions applied to the expanded Monument area.

Plaintiff now challenges President Obama's authority to expand the Monument, claiming that Proclamation 9564 is void and must be set aside because the lands covered in the expansion were subject to the O&C Act and therefore were not available for inclusion as national monument lands. Plaintiff's Br. at 11 (#39). Both the Federal Defendants and the Defendant-Intervenors move this Court to find that the President lawfully exercised his discretion in accordance with his congressionally delegated authority.

DISCUSSION

I. The President did not exceed his congressionally delegated statutory authority.

Plaintiff has asked this Court to review both the O&C Act and the Antiquities Act to determine whether Proclamation 9564 exceeded the President's statutory authority. Plaintiff's Br. at 17 (#39). Plaintiff devotes the majority of their brief comparing Proclamation 9564 to the O&C Act to support their argument that the President exceeded his statutory authority. However, this is an irrelevant comparison when discussing the President's statutory authority because the President was acting under the statutory authority of the Antiquities Act when declaring Proclamation 9564, not the O&C Act. The O&C Act designates authority to the BLM, not the President. Therefore, the appropriate legal question here is whether the President had the statutory authority under the Antiquities Act to add these federal lands to the existing Monument. This Court concludes that he did.

Courts are very limited in their review of congressionally authorized presidential actions. It has long been held that where Congress has authorized a public officer to take some specified legislative action, when in his judgment that action is necessary or appropriate to carry out the policy of Congress, the judgment of the officer as to the existence of facts calling for that action is not subject to review. *United States v. George S. Bush & Co.,* 310 U.S. 371 (1940) (internal citations omitted). Thus, where the President acts in accordance with a delegation of authority from Congress, such as with the Antiquities Act, judicial review of the presidential decision making is limited to (1) ensuring that the actions by the President are consistent with constitutional principles, and (2) ensuring that the President

has not exceeded his statutory authority. *United States v. California,* 436 U.S. 32, 35-36 (1978) (holding that whether federal lands are included within a national monument raises "a question only of Presidential intent, not of Presidential power"); *see also Mt. 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.").

The Supreme Court has confirmed that the Antiquities Act delegates "broad power" to the President to designate national monuments and reserve lands for those monuments. *Mt. States Legal Found.,* 306 F.3d at 1135. The statute grants the President substantial flexibility, expressly leaving the definition of a monument and its boundaries to the President's discretion, and only requiring that the reserved parcels "be confined to the smallest area compatible with the proper care and management of the objects to be protected." 54 U.S.C. § 320301. When declaring Proclamation 9564, the President invoked the correct statutory standards under the Antiquities Act and made explicit findings consistent with those standards. *See* 82 Fed. Reg. at 6145-48 (describing the unique, scientific biodiversity of the parcel); *id.* at 6148 ("This enlargement of the [Monument] will maintain its diverse array of natural and scientific resources and preserve its cultural and historic legacy, ensuring that the scientific resources and historic values of this area remain for the benefit of all Americans."); *id.* ("The boundaries described on the accompanying map are confined to the smallest area compatible with the proper care and management of the objects to be protected."). Plaintiff never contends that the President abused his statutory

authority in making these findings. Therefore, there is no dispute that the President acted within his congressionally delegated authority under the Antiquities Act when declaring Proclamation 9564.

II. There is no irreconcilable conflict between the O&C Act and the Antiquities Act.

Plaintiff further argues that the Antiquities Act simply cannot be invoked to override the O&C Act's mandate for the use of public lands. Plaintiff points to the *non obstinate* clause included in the O&C Act as evidence that Congress intended for the O&C Act to repeal the Antiquities Act to the extent the latter was in conflict with the former. Plaintiff's Br. at 20 (#39). The *non obstante* clause in the O&C Act provides that "[a]ll Acts or parts of Acts in conflict with this Act are hereby repealed to the extent necessary to give full force and effect to this Act." 50 Stat. 874, 876. This *non obstante* clause is a general repealing clause and does not explicitly repeal the Antiquities Act. *See Miccosukee Tribe of Indians of Fla. v. U.S. Army Corps of Engr's,* 619 F.3d 1289, 1299 (11th Cir. 2010) ("A general repealing clause is explicit only in the sense that it is announcing a real of 'all law' or 'any law' or 'federal laws'—its actual reach depends on an analysis of the statutory language relevant to it."). Courts do not infer a statutory repeal "unless the later statute 'expressly contradicts the original act" or unless such a construction "is absolutely necessary . . . in order that [the] words [of the later statute] shall have any meaning at all. *Traynor v. Turnage* 485 U.S. at 548 (1988). To warrant a finding that the Antiquities Act has been impliedly repealed by the O&C Act there must be an irreconcilable conflict—not simply tension—between the two acts. *See Radzanower v. Touche Ross & Co.,* 426 U.S. 148, 155 (1976) ("It is not enough to

show that the two statutes produce differing results when applied to the same factual situation, for that no more than state the problem."); *Morton,* 417 U.S. at 545-46 (statute prohibiting discrimination in employment on the basis of "race, color, sex, or national origin" did not repeal employment preference for qualified Indians at Bureau of Indian Affairs).

Although there may be tension between the dominant purpose of the O&C Act and the conservationist purpose of the Antiquities Act, there is no irreconcilable conflict between the two Acts. Several courts have found sustained yield timber production to be the dominant purpose of the O&C Act, but no court has held that the Act sets aside federal public land exclusively for timber production or that the Act invalidates other federal environmental laws such as NEPA or the ESA. *See Headwaters, Inc, v. Bureau of Land Mgmt.,* 914 F.2d 1174, 1183-84 (9th Cir. 1990); *Soda Mt. Wilderness Council v. Bureau of Land Mgmt.,* 2013 WL 12120098, *1 (D. Or. May 29, 2013), *adopted in part,* 2013 WL 4786242 (D. Or. Sept. 6, 2013). Federal public lands can, and do, have overlapping statutory mandates without presenting an irreconcilable statutory conflict. The O&C Act is not in irreconcilable conflict with the Antiquities Act because the principle of sustained yield under the O&C Act does not mean maximum sustained yield—the principle merely ensures that the timber resource is managed in perpetuity while providing the BLM with discretion in how to achieve that objective. *See sustained yield,* Merriam-Webster (defining "sustained yield" as "production of a biological resource (such as timber or fish) under management procedures which ensure replacement of the part harvested by regrowth or reproduction before another harvest occurs."). The plain text of the O&C Act does not mandate that the

BLM's land use plans devote all classified timberlands exclusively to maximum sustained yield timber production, thus allowing the BLM to designate land as reserved from harvest.

Even before the Monument was designated by President Clinton, the BLM removed portions of O&C lands from commercial timber harvest and courts have found reserves on O&C lands legally permissible. *See Portland Audubon Society v. Babbitt,* 998 F.2d 705 (9th Cir. 1993); *Swanson Grp. V. Salazar,* 951 F. Supp. 2d 75, 79 (D.D.C. 2013), *overruled on other grounds,* 790 F.3d 235 (D.C. Cir. 2015); *Seattle Audubon Society v. Lyons,* 871 F. Supp. 1291, 1314 (W.D. Wash 1994), *aff'd,* 80 F.3d 1401 (9th Cir. 1996) (per curiam). Out of roughly 950,827 acres of O&C lands covered by the BLM's 2016 Southwest Oregon Resource Management Plan, 191,300 acres were reserved from commercial timber harvest. *See e.g.,* Def's. Br. at 24-25 (#42) (providing reserve numbers from the 2016 RMP). Specifically, within the Monument boundary expansion, of the 39,841 acres classified as O&C lands, only 16,448 acres were previously subject to harvest in the BLM's 2016 RMP. If the BLM has the authority under the O&C Act to reserve lands from harvest, then the President reserving lands within the confines of the smallest area permitted under the Antiquities Act presents no irreconcilable conflict with the O&C Act. Land can be reserved from timber harvest under both Acts; the O&C Act just gives discretion to the BLM to reserve land and the Antiquities Act gives discretion to the President to reserve land. Therefore, Plaintiff has not shown that Congress intended for the O&C Act to

substitute or repeal the Antiquities Act[1] or that an irreconcilable conflict exists between the two Acts.

RECOMMENDATION

For the reasons stated above, Plaintiff's Motion for Summary Judgment (#39) should be DENIED and Defendants' Cross-Motions for Summary Judgment (##42, 44) should be GRANTED.

This Report and Recommendation will be referred to a district judge. Objections, if any, are due no later than fourteen (14) days after the date this recommendation is filed. If objections are filed, any response is due within fourteen (14) days after the date the objections are filed. *See* Fed. R. Civ. P. 72, 6. Parties are advised that the failure to file objections within the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst,* 951 F.2d 1153 (9th Cir. 1991).

DATED this 2 day of April, 2019.

/s/ Mark D. Clarke
MARK D. CLARKE
United States Magistrate Judge

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[1] When considering the intent of Congress in regard to O&C lands, it may be worth noting that Congress has not failed to appropriate funds for conservation on O&C lands. Most recently, on March 12, 2019, President Trump signed into law S. 47, the *John D. Dingell, Jr. Conservation, Management, and Recreation Act.* S. 47 designated 171 miles of rivers that flow through O&C lands and created a protective corridor of 1/4 mile on either side of the waterway, where management actions, including timber harvest, are limited or prohibited. At the very least, S. 47 demonstrates that Congress is aware of and has approved the designation of O&C lands for protective purposes beyond those identified in the O&C Act itself.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed: Aug. 30, 2023]

No. 19-35921

D.C. No. 1:17-cv-00285-CL
District of Oregon, Medford

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

Plaintiffs-Appellants,

v.

JOSEPH R. BIDEN, in his official capacity as
President of the United States of America;
DEB HAALAND, in her official capacity as Secretary
of Interior; U.S. DEPARTMENT OF THE INTERIOR,

Defendants-Appellees,

SODA MOUNTAIN WILDERNESS COUNCIL;
KLAMATH-SISKIYOU WILDLANDS CENTER;
OREGON WILD; WILDERNESS SOCIETY,

Intervenor-Defendants-Appellees.

ORDER

Before: McKEOWN and TALLMAN, Circuit Judges, and RAKOFF,* District Judge.

Judges McKeown and Rakoff recommended denying the petition for rehearing en banc. Judge Tallman recommended granting the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellants' petition for rehearing en banc, Dkt. No. 70, is **DENIED**.

* The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

APPENDIX E

Public Law No. 75-405, 50 Stat. 874

75th CONGRESS, 1ST SESSION— CH. 876—AUGUST 28, 1937

[CHAPTER 876]

AN ACT

Relating to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands situated in the State of Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provisions in the Acts of June 9, 1916 (39 Stat. 218), and February 26, 1919 (40 Stat. 1179), as amended, such portions of the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands as are or may hereafter come under the jurisdiction of the Department of the Interior, which have heretofore or may hereafter be classified as timberlands, and power-site lands valuable for timber, shall be managed, except as provided in section 3 hereof, for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal[1] 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 facilties[1]: *Provided,* That nothing herein shall be construed to interfere with the use and development of power sites as may be authorized by law.

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[1] So in original.

The annual productive capacity for such lands shall be determined and declared as promptly as possible after the passage of this Act, 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.

If the Secretary of the Interior determines that such action will facilitate sustained-yield management, he may subdivide such revested lands into sustained-yield forest units, the boundary lines of which shall be so established that 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; but until such subdivision is made the land shall be treated as a single unit in applying the principle of sustained yield: *Provided,* That before the boundary lines of such forest units are established, the Department, after published notice thereof, shall hold a hearing thereon in the vicinity of such lands open to the attendance of State and local officers, representatives of dependent industries, residents, and other persons interested in the use of such lands. Due consideration shall be given to established lumbering operations in subdividing such lands when necessary to protect the economic stability of dependent communities. Timber sales from a forest unit shall be limited to the productive capacity of such unit and the Secretary is authorized, in his discretion, to reject any bids which may interfere with the sustained-yield management plan of any unit.

SEC. 2. The Secretary of the Interior is authorized, in his discretion, to make cooperative agreements with other Federal or State forest administrative agencies or with private forest owners or operators for the coordinated administration, with respect to time, rate, method of cutting, and sustained yield, of forest units comprising parts of revested or reconveyed lands, together with lands in private ownership or under the administration of other public agencies, when by such agreements he may be aided in accomplishing the purposes hereinbefore mentioned.

SEC. 3. The Secretary of the Interior is authorized to classify, either on application or otherwise, and restore to homestead entry, or purchase under the provisions of section 14 of the Act of June 28, 1934 (48 Stat. 1269), any of such revested or reconveyed land which, in his judgment, is more suitable for agricultural use than for afforestation, reforestation, stream-flow protection, recreation, or other public purposes.

Any of said lands heretofore classified as agricultural may be reclassified as timber lands, if found, upon examination, to be more suitable for the production of trees than agricultural use, such reclassified timber lands to be managed for permanent forest production as herein provided.

SEC. 4. The Secretary of the Interior is authorized, in his discretion, to lease for grazing any of said revested or reconveyed lands which may be so used without interfering with the production of timber or other purposes of this Act as stated in section 1: *Provided,* That all the moneys received on account of grazing leases shall be covered either into the “Oregon and California land-grant fund” or the “Coos Bay Wagon Road grant fund” in the Treasury as the location of the leased lands shall determine, and be subject to distribution

as other moneys in such funds: *Provided further*, That the Secretary is also authorized to formulate rules and regulations for the use, protection, improvement, and rehabilitation of such grazing lands.

SEC. 5. The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect. The Secretary of the Interior is further authorized, in formulating forest-practice rules and regulations, to consult with the Oregon State Board of Forestry, representatives of timber owners and operators on or contiguous to said revested and reconveyed lands, and other persons or agencies interested in the use of such lands.

In formulating regulations for the protection of such timberlands against fire, the Secretary is authorized, in his discretion, to consult and advise with Federal, State, and county agencies engaged in forest-fire-protection work, and to make agreements with such agencies for the cooperative administration of fire regulations therein: *Provided,* That rules and regulations for the protection of the revested lands from fire shall conform with the requirements and practices of the State of Oregon insofar as the same are consistent with the interests of the United States.

TITLE II

That on and after March 1, 1938, all moneys deposited in the Treasury of the United States in the special fund designated the "Oregon and California land-grant fund" shall be distributed annually as follows:

(a) Fifty per centum to the counties in which the lands revested under the Act of June 9, 1916 (39 Stat.

218), are situated, to be payable on or after June 30, 1938, and each year thereafter to each of said counties in the proportion that the total assessed value of the Oregon and California grant lands in each of said counties for the year 1915 bears to the total assessed value of all of said lands in the State of Oregon for said year, such moneys to be used as other county funds.

(b) Twenty-fire per centum to said counties as money in lieu of taxes accrued or which shall accrue to them prior to March 1, 1938, under the provisions of the Act of July 13, 1926 (44 Stat. 915), and which taxes are unpaid on said date, such moneys to be paid to said counties severally by the Secretary of the Treasury of the United States, upon certification by the Secretary of the Interior, until such tax indebtedness as shall have accrued prior to March 1, 1938, is extinguished.

From and after payment of the above accrued taxes said 25 per centum shall be accredited annually to the general fund in the Treasury of the United States until all reimbursable charges against the Oregon and California land-grant fund owing to the general fund in the Treasury have been paid: *Provided,* That if for any year after the extinguishment of the tax indebtedness accruing to the counties prior to March 1, 1938, under the provisions of Forty-fourth Statutes, page 915, the total amount payable under subsection (a) of this title is less than 78 per centum of the aggregate amount of tax claims which accrued to said counties under said Act for the year 1934, there shall be additionally payable for such year such portion of said 25 per centum (but not in excess of three-fifths of said 25 per centum), as may be necessary to make up the deficiency. When the general fund in the Treasury has been fully reimbursed for the expenditures which were made charges against the Oregon and California land-

grant fund said 25 per centum shall be paid annually, on or after June 30, to the several counties in the manner provided in subsection (a) hereof.

(c) Twenty-five per centum to be available for the administration of this Act, in such annual amounts as the Congress shall from time to time determine. Any part of such per centum not used for administrative purposes shall be covered into the general fund of the Treasury of the United States: *Provided,* That moneys covered into the Treasury in such manner shall be used to satisfy the reimbursable charges against the Oregon and California land-grant fund mentioned in subsection (b) so long as any such charges shall exist.

All Acts or parts of Acts in conflict with this Act are hereby repealed to the extent necessary to give full force and effect to this Act.

Approved, August 28, 1937.

APPENDIX F

43 U.S.C. § 2601

§ 2601. Conservation management by Department of the Interior; permanent forest production; sale of timber; subdivision

Notwithstanding any provisions in the Acts of June 9, 1916 (39 Stat. 218), and February 26, 1919 (40 Stat. 1179), as amended, such portions of the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands as are or may hereafter come under the jurisdiction of the Department of the Interior, which have heretofore or may hereafter be classified as timberlands, and power-site lands valuable for timber, shall be managed, except as provided in section 3 hereof, for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal[1] 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 facilties[2]: *Provided,* That nothing in this section shall be construed to interfere with the use and development of power sites as may be authorized by law.

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

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[1] So in original. Probably should be "principle".

[2] So in original. Probably should be "facilities".

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.

If the Secretary of the Interior determines that such action will facilitate sustained-yield management, he may subdivide such revested lands into sustained-yield forest units, the boundary lines of which shall be so established that 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; but until such subdivision is made the land shall be treated as a single unit in applying the principle of sustained yield: *Provided,* That before the boundary lines of such forest units are established, the Department, after published notice thereof, shall hold a hearing thereon in the vicinity of such lands open to the attendance of State and local officers, representatives of dependent industries, residents, and other persons interested in the use of such lands. Due consideration shall be given to established lumbering operations in subdividing such lands when necessary to protect the economic stability of dependent communities. Timber sales from a forest unit shall be limited to the productive capacity of such unit and the Secretary is authorized, in his discretion, to reject any bids which may interfere with the sustained-yield management plan of any unit.

APPENDIX G

43 U.S.C. § 2605

§ 2605. Oregon and California land-grant fund; annual distribution of moneys

On and after March 1, 1938, all moneys deposited in the Treasury of the United States in the special fund designated the "Oregon and California land-grant fund" shall be distributed annually as follows:

(a) Fifty per centum to the counties in which the lands revested under the Act of June 9, 1916 (39 Stat. 218), are situated, to be payable on or after June 30, 1938, and each year thereafter to each of said counties in the proportion that the total assessed value of the Oregon and California grant lands in each of said counties for the year 1915 bears to the total assessed value of all of said lands in the State of Oregon for said year, such moneys to be used as other county funds: *Provided, however*, That for the purposes of this subsection the portion of the said revested Oregon and California railroad grant lands in each of said counties which was not assessed for the year 1915 shall be deemed to have been assessed at the average assessed value of the grant lands in said county.

(b) Twenty-five per centum to said counties as money in lieu of taxes accrued or which shall accrue to them prior to March 1, 1938, under the provisions of the Act of July 13, 1926 (44 Stat. 915), and which taxes are unpaid on said date, such moneys to be paid to said counties severally by the Secretary of the Treasury of the United States, upon certification by the Secretary of the Interior, until such tax indebtedness as shall have accrued prior to March 1, 1938, is extinguished.

From and after payment of the above accrued taxes said 25 per centum shall be accredited annually to the general fund in the Treasury of the United States until all reimbursable charges against the Oregon and California land-grant fund owing to the general fund in the Treasury have been paid: *Provided*, That if for any year after the extinguishment of the tax indebtedness accruing to the counties prior to March 1, 1938, under the provisions of Forty-fourth Statutes, page 915, the total amount payable under subsection (a) of this section is less than 78 per centum of the aggregate amount of tax claims which accrued to said counties under said Act for the year 1934, there shall be additionally payable for such year such portion of said 25 per centum (but not in excess of three-fifths of said 25 per centum), as may be necessary to make up the deficiency. When the general fund in the Treasury has been fully reimbursed for the expenditures which were made charges against the Oregon and California land-grant fund said 25 per centum shall be paid annually, on or after September 30, to the several counties in the manner provided in subsection (a) hereof.

(c) Twenty-five per centum to be available for the administration of this subchapter, in such annual amounts as the Congress shall from time to time determine. Any part of such per centum not used for administrative purposes shall be covered into the general fund of the Treasury of the United States: *Provided*, That moneys covered into the Treasury in such manner shall be used to satisfy the reimbursable charges against the Oregon and California land-grant fund mentioned in subsection (b) so long as any such charges shall exist.

APPENDIX H

54 U.S.C. § 320301

§ 320301. National Monuments

(a) Presidential declaration.--The President may, in the President's discretion, 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.

(b) Reservation of land.--The President may reserve parcels of land as a part of the national monuments. The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

(c) Relinquishment to Federal Government.--When an object is situated on a parcel covered by a bona fide unperfected claim or held in private ownership, the parcel, or so much of the parcel as may be necessary for the proper care and management of the object, may be relinquished to the Federal Government and the Secretary may accept the relinquishment of the parcel on behalf of the Federal Government.

(d) Limitation on extension or establishment of national monuments in Wyoming.--No extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress.

APPENDIX I

65 Fed. Reg. 37,249, Pres. Proc. No. 7318
Proclamation 7318

Establishment of the Cascade-Siskiyou National Monument

June 9, 2000

By the President of the United States of America

A Proclamation

With towering fir forests, sunlit oak groves, wildflower-strewn meadows, and steep canyons, the Cascade-Siskiyou National Monument is an ecological wonder, with biological diversity unmatched in the Cascade Range. This rich enclave of natural resources is a biological crossroads—the interface of the Cascade, Klamath, and Siskiyou ecoregions, in an area of unique geology, biology, climate, and topography.

The monument is home to a spectacular variety of rare and beautiful species of plants and animals, whose survival in this region depends upon its continued ecological integrity. Plant communities present a rich mosaic of grass and shrublands, Garry and California black oak woodlands, juniper scablands, mixed conifer and white fir forests, and wet meadows. Stream bottoms support broad-leaf deciduous riparian trees and shrubs. Special plant communities include rosaceous chaparral and oak-juniper woodlands. The monument also contains many rare and endemic plants, such as Greene's Mariposa lily, Gentner's fritillary, and Bellinger's meadowfoam.

The monument supports an exceptional range of fauna, including one of the highest diversities of butterfly species in the United States. The Jenny Creek portion of the monument is a significant center of fresh water

snail diversity, and is home to three endemic fish species, including a long-isolated stock of redband trout. The monument contains important populations of small mammals, reptile and amphibian species, and ungulates, including important winter habitat for deer. It also contains old growth habitat crucial to the threatened Northern spotted owl and numerous other bird species such as the western bluebird, the western meadowlark, the pileated woodpecker, the flammulated owl, and the pygmy nuthatch.

The monument's geology contributes substantially to its spectacular biological diversity. The majority of the monument is within the Cascade Mountain Range. The western edge of the monument lies within the older Klamath Mountain geologic province. The dynamic plate tectonics of the area, and the mixing of igneous, metamorphic, and sedimentary geological formations, have resulted in diverse lithologies and soils. Along with periods of geological isolation and a range of environmental conditions, the complex geologic history of the area has been instrumental in producing the diverse vegetative and biological richness seen today.

One of the most striking features of the Western Cascades in this area is Pilot Rock, located near the southern boundary of the monument. The rock is a volcanic plug, a remnant of a feeder vent left after a volcano eroded away, leaving an outstanding example of the inside of a volcano. Pilot Rock has sheer, vertical basalt faces up to 400 feet above the talus slope at its base, with classic columnar jointing created by the cooling of its andesite composition.

The Siskiyou Pass in the southwest corner of the monument contains portions of the Oregon/California Trail, the region's main north/south travel route first established by Native Americans in prehistoric times,

and used by Peter Skene Ogden in his 1827 exploration for the Hudson's Bay Company.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Cascade-Siskiyou National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Cascade-Siskiyou National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled "Cascade-Siskiyou National Monument" attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 52,000 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated

and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument.

There is hereby reserved, as of the date of this proclamation and subject to valid existing rights, a quantity of water sufficient to fulfill the purposes for which this monument is established. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation.

The 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. Any such project must be consistent with the purposes of this proclamation. No 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. Removal of trees from within the monument area may take place only if clearly needed for ecological restoration and maintenance or public safety.

For the purpose of protecting the objects identified above, the Secretary of the Interior shall prohibit all motorized and mechanized vehicle use off road and shall close the Schoheim Road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities (including, where applicable, the Act of August 28, 1937, as amended (43 U.S.C. 1181a-1181j)), to implement the purposes of this proclamation.

The Secretary of the Interior shall prepare, within 3 years of this date, a management plan for this monument, and shall promulgate such regulations for its management as he deems appropriate. The monument plan shall include appropriate transportation planning that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

The Secretary of the Interior shall study the impacts of livestock grazing on the objects of biological interest in the monument with specific attention to sustaining the natural ecosystem dynamics. Existing authorized permits or leases may continue with appropriate terms and conditions under existing laws and regulations. Should grazing be found incompatible with protecting the objects of biological interests, the Secretary shall retire the grazing allotments pursuant to the processes of applicable law. Should grazing permits or leases be relinquished by existing holders, the Secretary shall not reallocate the forage available under such permits or for livestock grazing purposes unless the Secretary specifically finds, pending the outcome of the study, that such reallocation will advance the purposes of the proclamation.

The establishment of this momument is subject to valid existing rights.

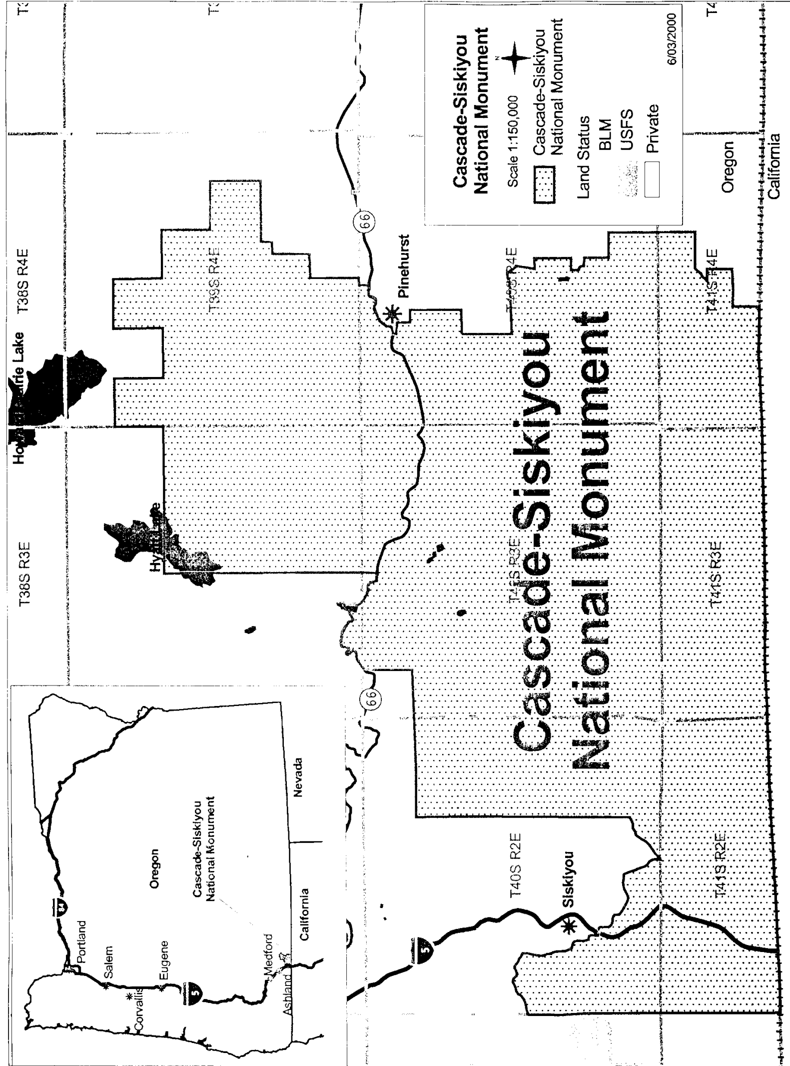
Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State or Oregon with respect to fish and wildlife management.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands therof.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of June, in the year of our Lord two thousand, and the Independence of the United States of America the two hundred and twenty-fourth.

WILLIAM J. CLINTON


Cascade-Siskiyou
National Monument
Scale 1:150,000
Cascade-Siskiyou National Monument
Land Status
BLM
USFS
Private
6/03/2000
Oregon
California
T38S R3E
T38S R4E
Hyatt Lake
Pinehurst
66
T40S R2E
T41S R2E
T41S R3E
Siskiyou
5
Cascade-Siskiyou
National Monument
Portland
Salem
Corvallis
Eugene
Medford
Ashland
Oregon
Cascade-Siskiyou
National Monument
Nevada
California

APPENDIX J

82 Fed. Reg. 6145, Pres. Proc. No. 9564
Proclamation 9564

Boundary Enlargement of the Cascade-Siskiyou National Monument

January 12, 2017

By the President of the United States of America

A Proclamation

Through Proclamation 7318 of June 9, 2000, President Bill Clinton established the Cascade-Siskiyou National Monument (monument) to protect the ecological wonders and biological diversity at the interface of the Cascade, Klamath, and Siskiyou ecoregions. The area, home to an incredible variety of species and habitats, represents a rich mosaic of forests, grasslands, shrublands, and wet meadows. The many rare and endemic plant and animal species found here are a testament to Cascade-Siskiyou's unique ecosystems and biotic communities.

As President Clinton noted in Proclamation 7318, the ecological integrity of the ecosystems that harbor this diverse array of species is vital to their continued existence. Since 2000, scientific studies of the area have reinforced that the environmental processes supporting the biodiversity of the monument require habitat connectivity corridors for species migration and dispersal. Additionally, they require a range of habitats that can be resistant and resilient to large-scale disturbance such as fire, insects and disease, invasive species, drought, or floods, events likely to be exacerbated by climate change. Expanding the monument to include Horseshoe Ranch, the Jenny Creek watershed, the Grizzly Peak area, Lost Lake, the

Rogue Valley foothills, the Southern Cascades area, and the area surrounding Surveyor Mountain will create a Cascade-Siskiyou landscape that provides vital habitat connectivity, watershed protection, and landscape-scale resilience for the area's critically important natural resources. Such an expansion will bolster protection of the resources within the original boundaries of the monument and will also protect the important biological and historic resources within the expansion area.

The ancient Siskiyou and Klamath Mountains meet the volcanic Cascade Mountains near the border of California and Oregon, creating an intersection of three ecoregions in Jackson and Klamath Counties in Oregon and Siskiyou County in California. Towering rock peaks covered in alpine forests rise above mixed woodlands, open glades, dense chaparral, meadows filled with stunning wildflowers, and swiftly-flowing streams.

Native American occupancy of this remarkably diverse landscape dates back thousands of years, and Euro-American settlers also passed through the expansion area. The Applegate Trail, a branch of the California National Historic Trail, passes through both the existing monument and the expansion area following old routes used by trappers and miners, who themselves made use of trails developed by Native Americans. Today, visitors to the Applegate Trail can walk paths worn by wagon trains of settlers seeking a new life in the west. The trail, a less hazardous alternative to the Oregon Trail, began to see regular wagon traffic in 1846 and helped thousands of settlers traverse the area more safely on their way north to the Willamette Valley or south to California in search of gold—one of the largest mass migrations in American history. Soon

thereafter, early ranchers, loggers, and homesteaders began to occupy the area, leaving traces of their presence, which provide potential for future research into the era of westward expansion in southwestern Oregon. A historic ranch can be seen in the Horseshoe Ranch Wildlife Area, in the northernmost reaches of California.

The Cascade-Siskiyou landscape is formed by the convergence of the Klamath, the Siskiyou, and the Cascade mountain ranges. The Siskiyou Mountains, which contain Oregon's oldest rocks dating to 425 million years, have an east-west orientation that connects the newer Cascade Mountains with the ancient Klamath Mountains. The tectonic action that formed the Klamath and Siskiyou Mountains occurred over 130 million years ago, while the Cascades were formed by more recent volcanism. The Rogue Valley foothills contain Eocene and Miocene formations of black andesite lava along with younger High Cascade olivine basalt. In the Grizzly Peak area, the 25 million-year geologic history includes basaltic lava flows known as the Roxy Formation, along with the formation of a large strato-volcano, Mount Grizzly. Old Baldy, another extinct volcanic cone, rises above the surrounding forest in the far northeast of the expansion area.

Cascade-Siskiyou's biodiversity, which provides habitat for a dazzling array of species, is internationally recognized and has been studied extensively by ecologists, evolutionary biologists, botanists, entomologists, and wildlife biologists. Ranging from high slopes of Shasta red fir to lower elevations with Douglas fir, ponderosa pine, incense cedar, and oak savannas, the topography and elevation gradient of the area has helped create stunningly diverse ecosystems. From ancient and mixed-aged conifer and hardwood forests to chaparral,

oak woodlands, wet meadows, shrublands, fens, and open native perennial grasslands, the landscape harbors extraordinarily varied and diverse plant communities. Among these are threatened and endangered plant species and habitat for numerous other rare and endemic species.

Grizzly Peak and the surrounding Rogue Valley foothills in the northwest part of the expansion area are home to rare populations of plant species such as rock buckwheat, Baker's globemallow, and tall bugbane. More than 275 species of flowering plants, including Siberian spring beauty, bluehead gilia, Detling's silverpuffs, bushy blazingstar, southern Oregon buttercup, Oregon geranium, mountain lady slipper, Egg Lake monkeyflower, green-flowered ginger, and Coronis fritillary can be found here. Ferns such as the fragile fern, lace fern, and western sword fern contribute to the lush green landscape.

Ancient sugar pine and ponderosa pine thrive in the Lost Lake Research Natural Area in the north, along with white fir and Douglas fir, with patches of Oregon white oak and California black oak. Occasional giant chinquapin, Pacific yew, and bigleaf maple contribute to the diversity of tree species here. Shrubs such as western serviceberry, oceanspray, Cascade barberry, and birchleaf mountain mahogany grow throughout the area, along with herbaceous species including pale bellflower, broadleaf starflower, pipsissewa, and Alaska oniongrass. Creamy stonecrop, a flowering succulent, thrives on rocky hillsides. Patches of abundant ferns include coffee cliffbrake and arrowleaf sword fern. Moon Prairie contains a late successional stand of Douglas fir and white fir with Pacific yew, ponderosa pine, and sugar pine.

Old Baldy's high-elevation forests in the northeast include Shasta red fir, mountain hemlock, Pacific silver fir, and western white pine along with Southern Oregon Cascades chaparral. Nearby, Tunnel Creek is a high-altitude lodgepole pine swamp with bog blueberry and numerous sensitive sedge species such as capitate sedge, lesser bladderwort, slender sedge, tomentypnum moss, and Newberry's gentian.

The eastern portion of the expansion, in the area surrounding Surveyor Mountain, is home to high desert species such as bitterbrush and sagebrush, along with late successional dry coniferous forests containing lodgepole pine, dry currant, and western white pine.

The Horseshoe Ranch Wildlife Area in Siskiyou County, California, offers particularly significant ecological connectivity and integrity. The area contains a broad meadow ecosystem punctuated by Oregon white oak and western juniper woodlands alongside high desert species such as gray rabbitbrush and antelope bitterbrush. The area is also home to the scarlet fritillary, Greene's mariposa lily, Bellinger's meadowfoam, and California's only population of the endangered Gentner's fritillary.

The incredible biodiversity of plant communities in the expansion is mirrored by equally stunning animal diversity, supported by the wide variety of intact habitats and undisturbed corridors allowing animal migration and movement. Perhaps most notably, the Cascade-Siskiyou landscape, including the Upper Jenny Creek Watershed and the Southern Cascades, provides vitally important habitat connectivity for the threatened northern spotted owl. Other raptors, including the bald eagle, golden eagle, white-tailed kite, peregrine falcon, merlin, great gray owl, sharp-

shinned hawk, Cooper's hawk, osprey, American kestrel, northern goshawk, flammulated owl, and prairie falcon, soar above the meadows, mountains, and forests as they seek their prey.

Ornithologists and birdwatchers alike come to the Cascade-Siskiyou landscape for the variety of birds found here. Tricolored blackbird, grasshopper sparrow, bufflehead, black swift, Lewis's woodpecker, purple martin, blue grouse, common nighthawk, dusky flycatcher, lazuli bunting, mountain quail, olive-sided flycatcher, Pacific-slope flycatcher, pileated woodpecker, ruffed grouse, rufous hummingbird, varied thrush, Vaux's swift, western meadowlark, western tanager, white-headed woodpecker, and Wilson's warbler are among the many species of terrestrial birds that make their homes in the expansion area. The Oregon vesper sparrow, among the most imperiled bird species in the region, has been documented in the meadows of the upper Jenny Creek Watershed.

Shore and marsh birds, including the Tule goose, yellow rail, snowy egret, harlequin duck, Franklin's gull, red-necked grebe, sandhill crane, pintail, common goldeneye, bufflehead, greater yellowlegs, and least sandpiper, also inhabit the expansion area's lakes, ponds, and streams.

Diverse species of mammals, including the black-tailed deer, elk, pygmy rabbit, American pika, and northern flying squirrel, depend upon the extraordinary ecosystems found in the area. Beavers and river otters inhabit the landscape's streams and rivers, while Horseshoe Ranch Wildlife Area has been identified as a critical big game winter range. Bat species including the pallid bat, Townsend's big-eared bat, and fringed myotis hunt insects beginning at dusk. The expansion area encompasses known habitat

for endangered gray wolves, including a portion of the area of known activity for the Keno wolves. Other carnivores such as the Pacific fisher, cougar, American badger, black bear, coyote, and American marten can be seen and studied in the expansion area.

The landscape also contains many hydrologic features that capture the interest of visitors. Rivers and streams cascade through the mountains, and waterfalls such as Jenny Creek Falls provide aquatic habitat along with scenic beauty. The upper headwaters of the Jenny Creek watershed are vital to the ecological integrity of the watershed as a whole, creating clear cold water that provides essential habitat for fish living at the margin of their environmental tolerances. Fens and wetlands, along with riparian wetlands and wet montane meadows, can be found in the eastern portion of the expansion area. Lost Lake, in the northernmost portion of the expansion area, contains a large lake that serves as Western pond turtle habitat, along with another upstream waterfall.

The expansion area includes habitat for populations of the endemic Jenny Creek sucker and Jenny Creek redband trout, as well as habitat for the Klamath largescale sucker, the endangered shortnose sucker, and the endangered Lost River sucker. The watershed also contains potential habitat for the threatened coho salmon. Numerous species of aquatic plants grow in the area's streams, lakes, and ponds.

Amphibians such as black salamander, Pacific giant salamander, foothill yellow-legged frog, Cascade frog, the threatened Oregon spotted frog, and the endemic Siskiyou Mountains salamander thrive here thanks to the connectivity between terrestrial and aquatic habitats. Reptiles found in the expansion area include

the western pond turtle, northern alligator lizard, desert striped whipsnake, and northern Pacific rattlesnake.

The Cascade-Siskiyou landscape's remarkable biodiversity includes the astounding diversity of invertebrates found in the expansion, including freshwater mollusks like the Oregon shoulderband, travelling sideband, modoc rim sideband, Klamath taildropper, chase sideband, Fall Creek pebblesnail, Keene Creek pebblesnail, and Siskiyou hesperian. The area has been identified by evolutionary biologists as a center of endemism and diversity for springsnails, and researchers have discovered four new species of mygalomorph spiders in the expansion. Pollinators such as Franklin's bumblebee, western bumblebee, and butterflies including Johnson's hairstreak, gray blue butterfly, mardon skipper, and Oregon branded skipper are critical to the ecosystems' success. Other insects found here include the Siskiyou short-horned grasshopper and numerous species of caddisfly.

The Cascade-Siskiyou landscape has long been a focus for scientific studies of ecology, evolutionary biology, wildlife biology, entomology, and botany. The expansion area provides an invaluable resource to scientists and conservationists wishing to research and sustain the functioning of the landscape's ecosystems into the future.

The expansion area includes numerous objects of scientific or historic interest. This enlargement of the Cascade-Siskiyou National Monument will maintain its diverse array of natural and scientific resources and preserve its cultural and historic legacy, ensuring that the scientific and historic values of this area remain for the benefit of all Americans.

WHEREAS, section 320301 of title 54, United States Code (known as the "Antiquities Act"), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Federal Government to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS, it is in the public interest to preserve the objects of scientific and historic interest on these public lands as an enlargement of the boundary of the Cascade-Siskiyou National Monument;

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim the objects identified above that are situated upon lands and interests in lands owned or controlled by the Federal Government to be part of the Cascade Siskiyou National Monument and, for the purpose of protecting those objects, reserve as part thereof all lands and interests in lands owned or controlled by the Federal Government within the boundaries described on the accompanying map, which is attached hereto and forms a part of this proclamation. These reserved Federal lands and interests in lands encompass approximately 48,000 acres. The boundaries described on the accompanying map are confined to the smallest area compatible with the proper care and management of the objects to be protected.

Nothing in this proclamation shall change the management of the areas protected under Proclamation

7318. Terms used in this proclamation shall have the same meaning as those defined in Proclamation 7318.

All Federal lands and interests in lands within the boundaries described on the accompanying map are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws, from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument.

The enlargement of the boundary is subject to valid existing rights. If the Federal Government subsequently acquires any lands or interests in lands not owned or controlled by the Federal Government within the boundaries described on the accompanying map, such lands and interests in lands shall be reserved as a part of the monument, and objects identified above that are situated upon those lands and interests in lands shall be part of the monument, upon acquisition of ownership or control by the Federal Government.

The Secretary of the Interior (Secretary) shall manage the area being added to the monument 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, except that the Secretary may issue a travel management plan that authorizes snowmobile and non-motorized mechanized use off of roads in the area being added by this proclamation, so long as such use is consistent with the care and management of the objects identified above.

Nothing in this proclamation shall preclude low-level overflights of military aircraft, the designation of new

units of special use airspace, or the use or establishment of military flight training routes over the lands reserved by this proclamation consistent with the care and management of the objects identified above.

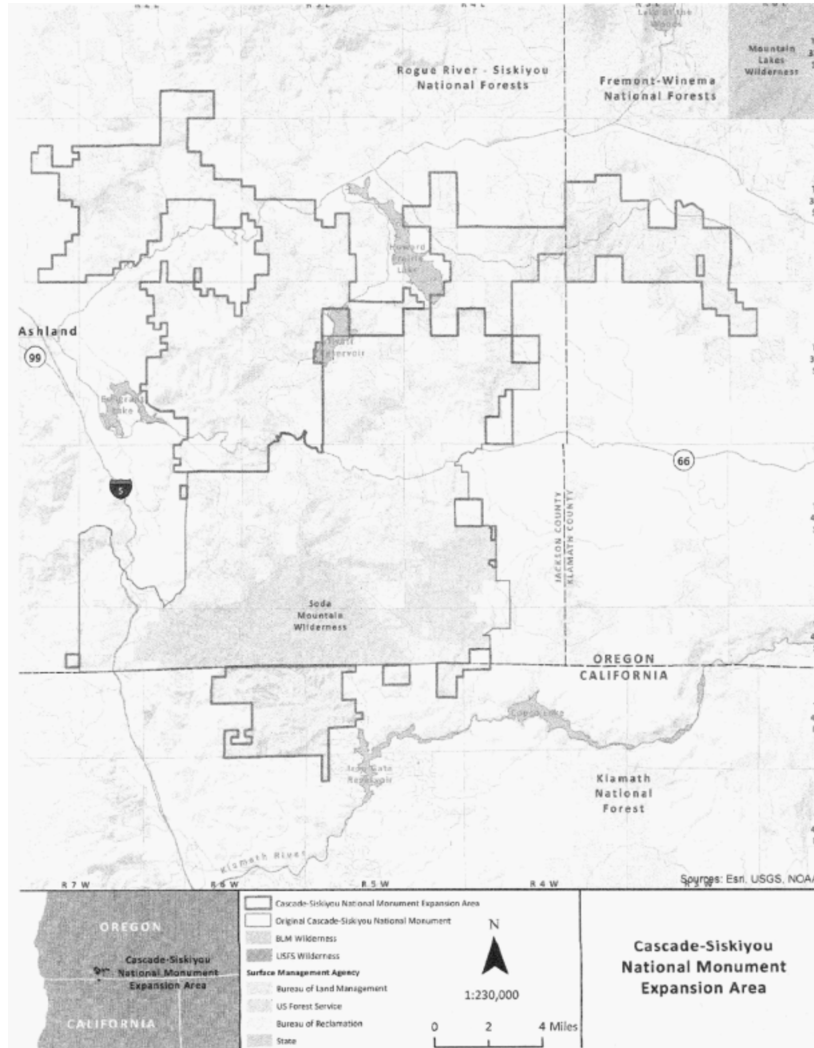
Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Oregon or the State of California with respect to fish and wildlife management.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of January, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.

BARACK OBAMA


Rogue River - Siskiyou
National Forests
Fremont-Winema
National Forests
Mountain
Lakes
Wilderness
Ashland
99
66
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JACKSON COUNTY
KLAMATH COUNTY
Soda
Mountain
Wilderness
OREGON
CALIFORNIA
Klamath
National
Forest
Klamath River
R 7 W
R 6 W
R 5 W
R 4 W
Sources: Esri, USGS, NOAA
OREGON
Cascade-Siskiyou
National Monument
Expansion Area
CALIFORNIA
Cascade-Siskiyou National Monument Expansion Area
Original Cascade-Siskiyou National Monument
BLM Wilderness
USFS Wilderness
Surface Management Agency
Bureau of Land Management
US Forest Service
Bureau of Reclamation
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Cascade-Siskiyou
National Monument
Expansion Area