

January 9, 2018

Zinke Monument Report Omits/Distorts Facts; Proposes Illegal Actions

Misstatements and Proposed Illegal Actions Related to the Cascade-Siskiyou National Monument

This document responds to the “*Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act*,” a “*Memorandum for the President*” from Department of the Interior (DOI) Secretary Ryan Zinke, released to the public on December 5, 2017 < https://www.doi.gov/sites/doi.gov/files/uploads/revised_final_report.pdf > (hereafter the Zinke report).

While at times referencing the Zinke report’s general introductory pages (pp. 1-10a), this response primarily addresses the report’s Cascade-Siskiyou National Monument section (pp. 11, 12). *Excerpts from the Zinke report are in italics beginning on page 3 further below*, followed by our specific responses to each erroneous statement, which are not in italics.

A “Summary” of concerns about misleading statements and proposed illegal actions in the Zinke report **begins below and ends on page 2**, with elaboration on pages 3 and following.

CONTACTS

Primary authors of this document are **Evan Frost, M.S.**, Wildwood Consulting (efrost2@gmail.com; 541/840-9815) and **Dave Willis**, Soda Mountain Wilderness Council (sodamtn@mind.net; 541/482-0526). Frost, as ecologist, and Willis, as Monument resident and long-time advocate, have over 50 years of combined experience in the Monument area.

Scientists: For further context/clarification regarding scientific/related issues, you can also contact **Michael Parker, Ph.D.**, Southern Oregon University Biology Program (parker@sou.edu; 541/941-4947), **Pepper Trail, Ph.D.**, Rogue Valley Audubon (ptrail@ashlandnet.net; 541/821-2925), and **Jack Williams, Ph.D.**, Trout Unlimited (jwilliams@tu.org; 541/261-3960). Southern Oregon scientists Drs. Parker, Trail, and Williams have many decades of combined experience researching biological aspects of the Monument and living near it. With Frost (above), they were part of the team that articulated the scientific basis for the January 12, 2017, Monument expansion.

Attorneys defending the Monument in current and potentially future litigation are: **Kristen Boyles, J.D.**, Earthjustice (kboyles@earthjustice.org; 206/930-6660) and **Susan Jane Brown, J.D.**, Western Environmental Law Center (brown@westernlaw.org; 503/680-5513). Ms. Boyles and Ms. Brown can best respond to legal questions regarding the Zinke report, especially regarding the O&C Act and the Antiquities Act.

SUMMARY

The Zinke report followed a review of 27 national monuments ranging from 87,564 acres to 372,848,572 acres. Comprising less than 114,000 acres of federal public land, the Cascade-Siskiyou National Monument was the second smallest monument reviewed.

By recommending that the president illegally diminish the Monument’s boundaries and protections, the Zinke report’s “Recommendations” would result in a Cascade-Siskiyou National Monument (hereafter CSNM or Monument) incapable of protecting this area’s outstanding diversity of native species, natural features, and other scientific objects of interest. The Zinke report ignores input from 220 scientists – and the vast majority of public citizens responding to Zinke’s “Monuments Review” – all collectively urging that the Cascade-Siskiyou National Monument should remain unchanged.

The original (2000) and expanded (2017) Monument proclamations prioritize protection of the Monument’s unique natural values. In contrast, Zinke’s report prioritizes boundary reduction, commercial logging, commercial livestock grazing, and a heavily roaded landscape. These have been shown to negatively impact the many native species and natural communities that the Monument was established to protect. **In addition to Zinke’s recommendations being illegal, their adoption would leave a severely compromised Monument that is a “protected area” in name only.**

Regarding the Cascade-Siskiyou National Monument, the Zinke report:

- Ignores the biological basis for establishing and expanding the Monument, and distorts the well-developed scientific foundation upon which the Monument was established and expanded.
- Incorrectly implies that introduced legislation for an area prevents presidents from protecting a similar area via the congressionally-vested Antiquities Act (pp. 1b, 2a, 7).
- Notes that previous presidents have reduced national monuments “at least 18 times” (p. 4), but fails to mention that such actions: 1) have never been legally challenged in what have usually been minor, site-specific cases over the Act’s 111-year history, 2) have not occurred since the 1976 Federal Land Policy and Management Act (FLPMA), and 3) have never reduced national monuments in such an unprecedented and wholesale fashion as his report recommends.
- Inaccurately asserts that private land (even though it remains private) may not be included inside the outer boundary of a national monument. Cites only “perceptions” of harm by Monument opponents, while completely ignoring the many Monument landowners and residents who are on record in support of the CSNM.
- Erroneously states that BLM land administered under the “O&C” Act of 1937 may not be managed for protection under the Antiquities Act of 1906.
- Ignores and/or minimizes the many BLM-documented adverse environmental impacts of commercial livestock grazing on the Monument’s native species and natural values.
- Falsely implies that motorized travel in the Monument is restricted, and ignores the harmful environmental impacts associated with the Monument’s hundreds of miles of existing roads.
- Recommends that the president illegally revise the Monument proclamation to subvert the Monument’s original conservation/protection purpose.
- Recommends that the president illegally reduce the Monument boundary based on false claims about impacts on private lands and a legally inaccurate interpretation of the O&C Act as prohibiting Antiquities Act protections.
- Recommends that the CSNM management plan be revised to subvert the Monument proclamation’s protection purpose – while erroneously implying that the Monument in some way reduces “hunting and fishing rights” (which it does not).

Cascade-Siskiyou National Monument (Excerpts from Zinke report, pages 11-12)

Below we present a more detailed analysis of inaccuracies in the Cascade-Siskiyou National Monument section of the Zinke report. Statements from the Zinke report are *in italics*, followed sequentially by our numbered responses.

- *The original 2000 designation was the first monument to protect biodiversity. [1] The expansion purported to create a necessary "buffer" to support the biodiversity objects outlined in the original CSNM. [2]*

[1] FACT - The CSNM is not the first national monument to protect biodiversity, since many presidents have identified a variety of biological values [e.g., flora and fauna] as “Objects of Interest” in other monument proclamations. However, Cascade-Siskiyou is the first national monument to explicitly identify outstanding levels of biodiversity as the primary overarching value warranting protection under the Antiquities Act.

[2] FACT - The Monument's January 2017 boundary enlargement was never identified or described as a "buffer" in either its proclamation or any of the background analysis that led to Monument expansion. Rather, a variety of scientific evidence underscored the need to protect the BLM lands in the Monument expansion area in order to achieve the primary goals for which the original monument was created. Because of increasing local human population, deleterious land uses on adjacent and nearby lands, and the increasing impacts of climate change, scientists determined that the original 2000 Monument boundaries were insufficient to protect the biological objects of interest the original Monument proclamation intended to protect. A greater area and wider elevational range of habitats were determined to be ecologically necessary in order to successfully achieve the Monument’s stated long-term conservation goals.

- *In 2015, legislation was introduced that would have protected most of the areas in the monument expansion through conservation and recreation designations. [3]*

[3] FACT - While previous proposed legislation (e.g., S.132, most recently introduced January 2015, with various prior iterations) would have protected a subset of Monument expansion lands to varying degrees and for various goals, these piecemeal actions were unlikely to achieve needed conservation goals because they lacked an integrated, science-based approach to planning that was made possible under the Antiquities Act.

Further, the Zinke report’s preamble implies that the Antiquities Act cannot or should not be used in place of legislation (pp. 1, 2a, 7). Despite Zinke’s erroneous implication, no such prohibition for presidential use of the congressionally vested Antiquities Act exists. In fact, the Antiquities Act has repeatedly served the national interest by authorizing presidents to protect national treasures like the Grand Canyon, the Olympic Mountains, the Grand Tetons, Joshua Tree, and other national parks that were first presidentially proclaimed as national monuments when Congress initially refused adequate or any protection at all.

- *Encompassed within the exterior boundary of the original CSNM is 19,818 acres of private land (23.2%), and within the boundary of the expansion is 32,677 private acres (38.3%), for a total of approximately 52,485 acres of privately owned lands. This is 30% of the total area within the external boundaries of the CSNM. [4]*

[4] FACT - The “private land issue” is a red herring. The existence of private lands within the outer boundary of the Monument is a non-issue.

Provided the acreage breakdowns presented in the above section are accurate, it is important to note the following:

A. The outer boundary of the original 52,947-acre Monument encompassed 85,141 acres across all ownerships – meaning that 37.8% of the original Monument footprint was private land (before BLM acquired 13,360 acres of this private land from willing sellers by late 2015). If, as the report states above, “30 percent of the total area within the external boundaries of the CSNM” is in fact private land, then this is ~8% less than the percentage of private land inside external boundaries when the Monument was originally established in 2000. (Note: The proportion of private land within the outer Monument boundary at the time of expansion is less than at the time of the original).

B. Private land located inside the outer boundaries is not Monument land – only federal public land inside outer Monument boundaries is Monument land and private land is unaffected by the Monument designation.

C. Contrary to assertions made by Secretary Zinke, many private landowners located within the outer boundary are on record in strong support of both the original Monument and its 2017 expansion. Private landowners for over 14,000 acres of land specifically requested inclusion inside expanded Monument boundaries (and these were only some large-acreage landowners who wrote letters; many more landowners favored Monument expansion, as well). In sum, Secretary Zinke’s concern about private land is, at best, unfounded and, at worst, disingenuous and misleading.

Beyond the quoted Cascade-Siskiyou section of Zinke’s report immediately above, the report’s preamble oddly focuses on the idea of private land within an outer monument boundary as a significant issue (pp. 2, 8). Private property within the outer boundaries of a federal jurisdiction is not at all a unique circumstance. In all cases in which there is private land within the outer boundaries of a federal jurisdiction, including this case, private land next to federal land remains private regardless of how adjacent federal land is managed.

Any national forest or BLM district includes significant private acreage within its jurisdictional boundary. As an example, consider the outer boundaries of the Medford District BLM, in which this monument is located. The outer boundaries of BLM’s Medford District include vast acres of private land, including the City of Medford. By the Zinke report’s false logic, so much private land within the outer boundaries of the Medford District BLM means the acreage of the Medford BLM District should be reduced or the Medford District itself should be functionally dismantled.

The Zinke report states on page 8 that some private landowners have expressed the “perception” that national monuments encumber their land, have “concern” that monument designations will limit access to their land, and have the “reported perception” that the goal of monument designations is “eventual acquisition of these lands by the Federal Government [*sic*].” The original Cascade-Siskiyou Monument was established over 17 years ago. No “encumbrances” of private land by Monument land have occurred, access to private lands has not been limited by BLM, and all BLM acquisitions of private land have been from willing-sellers. Zinke and monument opponents fail to provide any actual examples of how their

concerns about purported impacts to private land have actually occurred in the Cascade-Siskiyou National Monument's 17-plus-year history.

The Zinke report ignores two important points re: private land within outer Monument boundaries:

- A. **The report ignores the large majority of private landowners who support this Monument.** Again, numerous landowners and residents within the Monument's outer boundaries *requested and supported* expansion of this Monument. Most people would rather live next to protected Monument land than next to public land managed for commodity extraction. As with the public responses to Zinke's monuments review overall, the report selectively ignores the vast majority of private landowners and residents next to this Monument who are very glad that the BLM land next to them is now protected as Monument land.
- B. **Zinke completely ignores the scientific rationale that supports the Cascade-Siskiyou Monument's expanded boundaries.** The Antiquities Act does not require that national monuments consist of only contiguous public land. The Act only requires that monument land must be public land. To protect the natural communities and habitat connectivity that underpins the area's outstanding biodiversity, all parcels of BLM land here are anchors for the area's remarkable – but threatened – biodiversity. Scientists are clear that all BLM land here needs the best protection possible.

Also note: Scientists recommended larger outer boundaries for Monument expansion than Senators Merkley and Wyden proposed – and President Obama protected smaller outer boundaries than proposed by Wyden/Merkley. By these two reductions – the reduced proposal by Oregon's U.S. senators and by President Obama's reduced-yet-again expansion proclamation – this Monument is *already* smaller than scientists recommend. That Zinke would recommend even further boundary reduction, flies in the face of the comments he made during his mid-July 2017 visit here when he advocated “going with the science.” Zinke's report offers absolutely no scientific basis for reducing Monument boundaries and protections.

Moreover, at less than 114,000 acres, Cascade-Siskiyou is already one of the smallest national monuments being reviewed – most of them many hundreds of thousands of acres, several of them more than a million acres, some of them hundreds of millions of acres. The quite relatively small Cascade-Siskiyou acreage had already been reduced below its ecological needs via solicitous attention to public input before its boundaries were recently expanded.

- *A substantial number of acres within both the original monument and the expansion area are designated as Oregon and California Revested (O&C) Railroad Lands, which are lands statutorily set aside for permanent forest production under the Oregon and California Revested Lands Sustained Yield Management Act of 1937 (O&C Act). [5]*
- *In light of the direction in the O&C Act, commenters raised concerns about the legal authority to establish a national monument on O&C lands. [6]*

[5] FACT - According to data made available by BLM, the CSNM expansion includes 16,250 acres of O&C lands that were previously identified in BLM's 2016 Resource Management

Plan (RMP) as part of the harvest land base and would have been available for commercial timber harvest without Monument expansion. The remaining 23,335 acres (59%) of O&C monument expansion lands are comprised of BLM lands that were designated as “Reserves” in BLM’s 2016 RMP in order to comply with the Endangered Species Act, the Clean Water Act, and other environmental statutes.

[6] FACT - The O&C Act does not exclusively mandate commercial logging on every acre of O&C land, nor does this statute exclude the option of protecting BLM land via the Antiquities Act. In addition to permanent forest production, the 1937 O&C Act mandates that O&C lands contribute to watershed protection, recreation facilities, and sustainable economies. Expansion of the CSNM contributes to all of these. Furthermore:

- A. Most of the 16,250 harvest land base acres of O&C land in the Monument expansion are made up of relatively intact, higher-elevation forest surrounded by heavily logged lands, most of them private. These remnant native forests, now on public Monument land, provide important refugia for plant and animal species that depend on complex, late-successional habitats – especially as the impacts of climate change increase.
 - B. The original and expanded Monument proclamations do *not* prohibit forest management or the cutting of trees, but they do prohibit logging for commercial purposes. The value of the Monument proclamations is that they enable forest scientists to determine what kinds of management the Monument forests ecologically “need” – and when/where the forests need it – without mandated timber volumes skewing such considerations.
- *The 2000 CSNM monument designation required a study to assess the compatibility of grazing with the biodiversity of the area and the subsequent study found threats to riparian objects.* **[7]** *As a result, grazing has largely diminished in the original CSNM area. Many allotments were bought out as a result of a larger land package deal in the 2009 Omnibus Public Lands Management Act.* **[8]**

[7] FACT - The 2000 CSNM proclamation required BLM to study grazing impacts in the Monument and determine whether or not commercial livestock grazing was compatible with protecting the Monument’s biological objects of interest. The BLM’s grazing impacts study, finalized in 2008, documented adverse impacts (not simply “*threats*”) of grazing on more than the “*riparian objects*” noted in the Zinke report’s statement above. BLM’s extensive study found that Monument grazing allotments seriously failed to meet all five of the Rangeland Health Standards required of any BLM grazing allotment in Oregon and Washington: Watershed Function – uplands; Watershed Function – riparian; Ecological processes; Water Quality; and Native, Threatened & Endangered, and Locally Important Species. Based on these findings, BLM concluded that grazing is incompatible with protecting the Monument’s biological objects of interest.

[8] FACT - Despite BLM’s conclusions that grazing is incompatible with protecting the Monument’s biological objects of interest, and the Monument proclamation’s clear language about how to proceed, the agency never withdrew or retired any grazing allotments within the CSNM. Receiving payment of private funds, a number of commercial livestock operators voluntarily chose to donate their Monument grazing leases to BLM for retirement pursuant to the Cascade-Siskiyou National Monument portion of P.L. 111-011. The same buyout option is available for grazing allotments in the expanded Monument. Those lessees in the original

Monument who chose not to “take a buyout” – despite BLM’s 2008 “incompatible with protection” determination – continue to actively graze their Monument leases. Note well: 17 years after the original Monument was established, not a single rancher has been “forced off” a Monument BLM grazing allotment.

- *Motorized transportation off of roads was prohibited in the original CSNM designation. [9] The expansion area only allows for motorized transportation off of roads in limited circumstances and only after a transportation-management plan is completed. [10] To date, the plan has not been initiated. [11] Due to poor maintenance, remaining usable roads in CSNM are often unsuitable for use. [12]*

[9] FACT - Neither the original CSNM nor the CSNM expansion proclamations prohibit motorized transportation. In fact, there has been relatively little change in vehicular access on Monument lands outside of the congressionally-designated 2009 Soda Mountain Wilderness.

[10] FACT - Indiscriminant motorized travel "off of roads" is generally regulated not just on Monument lands, but on the large majority of BLM lands in western Oregon as a means to prevent excessive erosion, loss of water quality and other avoidable damage to natural resources associated with unrestricted off-road vehicular travel away from BLM’s designated transportation system.

[11] FACT - The June 2000 CSNM Proclamation identified the need to complete a monument-wide Transportation Management Plan (TMP) “within 3 years” to determine how the existing road system can be made compatible with the Monument proclamation while also meeting other objectives. A legal settlement agreement between conservationists and BLM re: BLM’s 2008 RMP required BLM to complete a TMP by September 2013. Contrary to Zinke’s report, the BLM did initiate a TMP analysis several years ago but it remains unfinished, largely due to lack of prioritized resources. To the best of our knowledge, local BLM funding requests for transportation planning in the Monument’s new expansion area have not yet been granted.

[12] FACT - For many years, the BLM has not had sufficient funding or resources available to maintain all roads within the Monument, many of which are simply dead-end former logging spurs. BLM documents are clear that the large majority of BLM roads in the Monument were constructed many years ago to facilitate commercial logging. As a result, a small and select subset of roads determined to be least necessary in the Monument area have not been regularly maintained and some may now be impassable to varying degrees. This situation inside the CSNM with respect to road maintenance is no different than on other BLM lands within the Medford District and/or western Oregon in general, where roads may not be maintained due to lack of need, reduced use, or lack of maintenance funds.

BLM’s Draft TMP (March 2016, page 1-1) shows that an average of 4.34 linear miles of road per square mile exists across all land ownerships (outside the Soda Mountain Wilderness) inside the original Monument boundary – a total of 412 miles of road over 60,434 total acres. According to the best available science, road densities higher than one-to-two miles per square mile are known to result in a number of adverse environmental impacts, including increased soil erosion, reduced water quality, and loss of habitat for sensitive wildlife. Yet Zinke’s report (in general and for the CSNM specifically) completely ignores the science regarding road impacts in this Monument that was set apart and reserved by presidential proclamation for the purpose of protecting this area’s unique natural values.

Recommendations:

- *The Proclamation should be amended, through the use of appropriate authority, including lawful exercise of your discretion granted by the Act, to ensure compliance with the provisions and intent of the Act while also prioritizing public access; infrastructure upgrades, repair, and maintenance; traditional use; tribal cultural use; and hunting and fishing rights.*^[13]

[13] FACT - Revising the proclamation is unnecessary to address any of the supposed needs or issues listed above because these are already addressed and provided for under the Monument's approved Resource Management Plan. Revising the proclamation to allow for more logging, livestock grazing and other commercial uses would directly conflict with protecting the unique natural values of the area for which the Monument was originally established. Hunting and fishing rights have been completely unaffected by creation of the Monument or its expansion and remain, as before the original Monument was designated, under the jurisdiction of the Oregon Department of Fish and Wildlife.

More fundamentally, subsequent presidents have no “appropriate authority” to reduce the protections of and in monument proclamations made by previous presidents.

- *The boundary should be revised through the use of appropriate authority, including lawful exercise of your discretion granted by the Act, in order to address impacts on private lands*^[14] *and to address issues concerning the designation and reservation of O&C Lands as part of the monument and the impacts on commercial timber production.*^[15]

[14] FACT – First – and, again, most fundamentally – the Antiquities Act does not give subsequent presidents any “appropriate authority, including lawful exercise” to diminish national monuments established by previous presidents. Second, as addressed above under [4], this report has failed to present any real or substantiated evidence of conflicts between the Monument and adjacent private lands. BLM management does not in any way affect adjacent private lands, and many landowners within the outer Monument boundary are on record in support of the Monument and prefer this designation over other BLM land use allocations. To assert that reducing the Monument boundary is necessary "in order to address impacts on private lands" is without any basis in fact.

[15] FACT - The Zinke report continues to erroneously claim that O&C lands cannot be included in the Monument because the sole or primary management objective of O&C lands is to maximize commercial timber production. Again, as noted above under [6], O&C lands must be managed for a number of “multiple use” objectives including forest production, protecting watersheds, regulating stream flow, contributing to the economic stability of local communities, and providing recreational facilities. The monument’s two Proclamations deliver on all of those objectives, and more, including protecting outstanding levels of forest plant and animal diversity.

The majority of legal scholars agree that the Antiquities Act allows presidents to designate – but not alter existing – national monuments. According to additional well-accepted legal principles, because the 1906 Antiquities Act preceded the Oregon and California Lands Act of 1937 by nearly three decades, there is no conflict between the two laws. Because Congress could have – but did not – exempt the O&C lands from operation of the earlier Antiquities Act, a monument on these lands was well within the president’s authority to designate.

- *The monument management plan should be revised to continue to protect objects and prioritize public access; infrastructure upgrades, repair, and maintenance; traditional use; tribal cultural use; and hunting and fishing rights. [16]*

[16] **FACT** - Zinke appears to functionally ignore the purpose statement of the Cascade-Siskiyou National Monument’s Proclamation in which the Monument is “set apart and reserved” *solely* for the “purpose of protecting” the Monument’s (mostly) biological objects of interest. The proclamation acknowledges valid existing rights. But, apart from valid existing rights, all “public access” (by which Zinke means motorized access), “infrastructure upgrades, repair, and maintenance” (by which Zinke mostly means no-road-closures); “traditional use” (by which Zinke means commercial logging, commercial cattle grazing, and off-road motorized recreation) are only legal to the extent that they are compatible with protecting the Monument’s native species, natural features, and historical objects.

Also note:

- The Klamath Tribes (Klamath, Modoc, and Yahooskin Paiute) are on record in support of the Monument and have made no public complaints about the Monument inhibiting their “tribal cultural use.”
- As mentioned above, the Monument did not diminish “hunting and fishing rights.” Hunting and fishing continue unchanged – before and after the original and expanded Monument proclamations – under the jurisdiction of the Oregon Department of Fish and Wildlife. The Monument has had zero effect on that state jurisdiction. The Zinke report recommends fixing a “hunting and fishing” problem that does not exist.

CONCLUSION

As noted above, the Zinke report is rife with factual errors and disturbingly misleading statements. **But most of all – and again – by recommending that the president reduce Monument boundaries and Monument proclamation protections, Zinke is recommending actions for which the president has no legal authority.**

A current president cannot reduce a past president’s monument boundaries and/or diminish a past president’s monument protections. **The Zinke report seems designed to unnecessarily burden the court system in an attempt to pacify political allies.**

According to KeyLogic’s analysis, 99.2% of the public responses to Zinke’s monument review were in favor of leaving our country’s national monuments as they are or making them larger. Despite his claims to the contrary during his very brief visits to a handful of national monuments during his “review,” Secretary Zinke’s recommendations show little love for the public lands dedicated as America’s national monuments. **His recommendations for Cascade-Siskiyou are out of step with the vast majority of Americans who very much love their national monuments and have spoken out – as Zinke’s report itself admits – “overwhelmingly.”**