

# Judge declares Cascade-Siskiyou National Monument expansion invalid

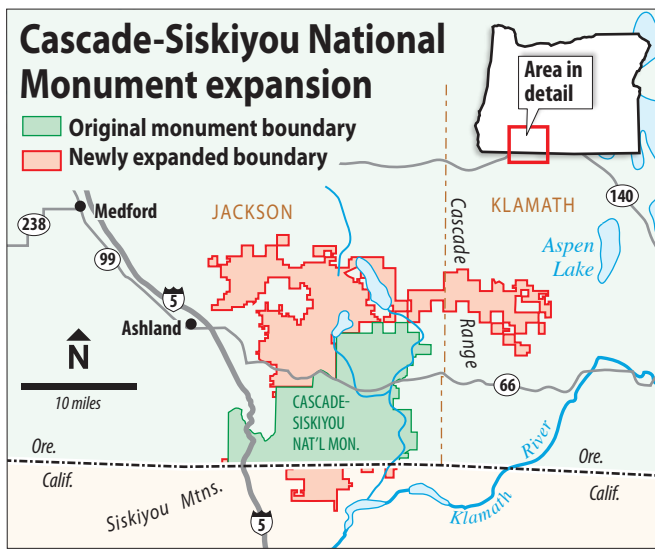
Ruling contradicts earlier decision about expansion's lawfulness

By MATEUSZ PERKOWSKI  
Capital Press

A federal judge in Washington, D.C., has determined the 2017 expansion of Oregon's Cascade-Siskiyou National Monument was largely invalid, contradicting an earlier ruling by a federal judge in Oregon.

U.S. District Judge Richard Leon of the District of Columbia has ruled the Obama Administration violated federal law by expanding the monument's logging restrictions onto roughly 40,000 acres of so-called O&C Lands, which must be managed for sustained timber production.

"Put simply, there is no way to manage land for sustained timber production, while simultaneously deeming the land unsuited for timber production and exempt



Alan Kenaga/Capital Press

from any calculation of the land's sustained yield of timber," Leon said.

The judge's invalidation of the monument's expansion was part of a broader opinion that determined there's "no doubt" the U.S. Bureau of Land Management's 2016 resource management plans for O&C Lands have reduced logging to unlawful levels.

"This Court must, therefore, conclude that the 2016 RMPs violate the O&C Act

by setting aside timberland in reserves where the land is not managed for permanent forest production and the timber is not sold, cut and removed in conformity with the principle of sustained yield," Leon said.

So-called O&C Lands are governed by a 1937 statute under which roughly 2 million acres of property were retaken from the Oregon and California Railroad by the federal government and dedicated to timber production.

In 2017, the Obama administration enlarged the 66,000-acre Cascade-Siskiyou National Monument by 48,000 acres, most of which were located on O&C Lands, prompting several lawsuits by timber industry organizations.

Earlier this year, a federal judge in Oregon held the expansion was lawful because President Obama had the authority under the Antiquities Act to add acreage to the monument.

The judge also held that logging within the monument's O&C Lands didn't have to be maximized to comply with the requirement of sustained timber production.

The more recent Washington, D.C., decision that invalidates the monument's 40,000-acre expansion and declares unlawful the resource management plans for O&C Lands will be appealed by the Klamath-Siskiyou Wildlands Center, Oregon Wild and Soda Mountain Wilderness Council, said Kristen Boyles, attorney for the environmen-

tal groups, which intervened in the lawsuit.

"They're directly contradictory because they even address the same claims," Boyles said of the two rulings.

Boyles said the judge in Washington, D.C., has been the first to adopt a hard-line interpretation of the 1937 O&C Lands Act that has been pushed by the timber industry for about 30 years and which doesn't take into account environmental protections from the more recent Clean Water Act and Endangered Species Act.

"It's an extreme view of the O&C Act, very broad," she said. "Regardless of the monument, that's going to be an important decision to exist alone in a vacuum of laws."

Coby Howell, an attorney for the BLM, said he could not comment on the ruling.

If both the rulings from Oregon and Washington, D.C. are upheld on appeal, that could set up a fight before the U.S. Supreme Court, but that process

would still be a lengthy one, according to attorneys involved in the case.

Environmental groups will urge the BLM not to take any action that would endanger the monument while the timber industry considers the expansion's invalidation to be effective until further notice.

"It's a big first step, but it's going to take a while," said Lawson Fite, attorney for the American Forest Resource Council, a plaintiff in the litigation.

The ruling out of Washington, D.C. is a great development for the communities and environment of Oregon and the Northwest, Fite said.

"The court has basically directed that the O&C Act means what it says, and we're grateful for that," he said.

The timber industry plaintiffs will now ask the judge to order the BLM to revise its resource management plans for O&C Lands so they're consistent with his ruling, Fite said. "Figuring out a timeline for a new plan is probably one of the big things that's going to happen there."

## State, national groups defer to local leaders on Owyhee wilderness bill

By BRAD CARLSON  
Capital Press

The Oregon Cattlemen's Association Public Lands Committee and the national Public Lands Council are deferring to local ranchers and will not oppose federal legislation that places a more flexible type of wilderness designation on several parts of Malheur County.

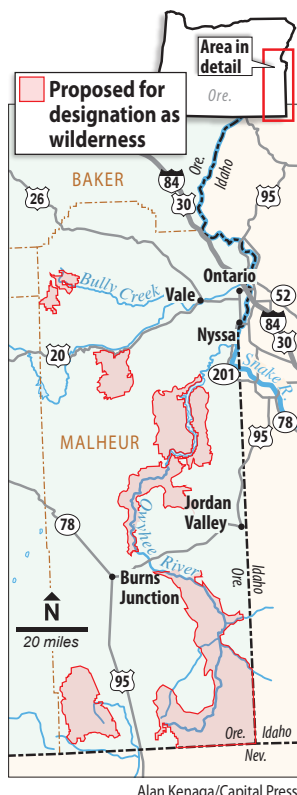
The designation allows cattle grazing to continue.

"We support what our local members feel is best for their local areas, so we did not oppose that," OCA Executive Director Jerome Rosa said. "That is what our local cattlemen wanted. So even though we follow national PLC policy, we are not going to oppose it. National PLC is the same way."

U.S. Sens. Ron Wyden and Jeff Merkley, both D-Ore., on Nov. 7 introduced the Malheur County Community Empowerment for the Owyhee Act, which would designate more than 1.1 million acres of the Owyhee River Canyonlands in Malheur County as wilderness.

The senators said collaboration among ranchers, conservation groups, researchers, business people and others was instrumental in the proposal. The bill supports efficient ranching as a conservation tool, and an adaptive-management approach that allows for adjustments based on results.

The Owyhee Basin Stewardship Coalition, which includes ranchers and business owners, for more than three years has played a key role in discussions that led to the legislation. The coalition includes Oregon Cattle-



Alan Kenaga/Capital Press

men's Association members who presented the plan to state and national policy representatives during OCA's annual convention Nov. 21-23 in Bend.

Rosa said the national PLC, by not opposing the legislation and remaining neutral, left the matter to the state association. OCA's Public Lands Committee "took the same neutral position on the bill."

OCA typically follows PLC policy, which opposes wilderness designations "because generally that designation removes cattle from being able to graze in these areas," he said.

The difference in the current legislation is it calls for adaptive management, meaning grazing, roads and vehicles will be allowed in wilderness-designated areas, Rosa said.

## Environmentalists want stronger Oregon species protections

By MATEUSZ PERKOWSKI  
Capital Press

Environmentalists have called on state lawmakers to strengthen Oregon's wildlife protection statutes in the wake of revised federal Endangered Species Act regulations.

Farm and ranch organizations, meanwhile, believe the rule changes won't fundamentally alter the ESA and will actually increase opportunities for habitat collaboration with the federal government.

Last month, the Trump administration enacted updated ESA regulations that environmentalists decried as weakening species protections, prompting Oregon and numerous other state governments to sue to block the changes.

Representatives of several environmental groups recently testified before the House Natural Resources Committee, urging heightened state safeguards for species to make up for the "assault" on federal protections.

"Our concern is deepened because Oregon is not well-positioned to compensate for these changes," said Bob Sallinger, conservation director for the Audubon Society of Portland.

Specifically, the Trump administration's regulatory changes will prevent federal agencies from considering long-term challenges, such as climate change, when deciding whether to list species as



National Park Service

**The streaked horned lark was once abundant in parts of the Northwest. Revisions to the Endangered Species Act have spurred debate about protections for this protected species and others.**

threatened or endangered, the environmental groups said.

The revisions will also weaken protections for critical habitat that's not yet occupied by threatened and endangered species, and remove the "blanket" protections for species that have been declared threatened, among other problems, the groups claimed.

Oregon lawmakers scored several environmental "victories" during the most recent legislative session, such as shielding data about species location and encouraging habitat "connectivity," which could be broadened, said Sristi Kamal, senior representative of the Defenders of Wildlife.

"We need to build more on these policies to act as a backstop to the current weakening at the federal level," Kamal said.

For example, the environmental representatives said Oregon should expand Senate Bill 2250, which requires state agencies to monitor for federal reductions to Clean Air Act and Clean Water Act standards and recommend state-level compensations.

Oregon should "step into the void" for wildlife by adopting this approach for the Endangered Species Act as well, Sallinger said.

"As it has in other contexts, the state of Oregon should push back against these rollbacks and look to strengthen its own laws to conserve biological diversity," said Dan Rohlf, an environmental law professor at Lewis and Clark Law School.

Representatives of the Oregon Farm Bureau, Oregon Cattlemen's Association and Oregonians for Food and

Shelter defended the federal revisions as being aligned with the language of the Endangered Species Act and allowing for more flexibility to the benefit of landowners and species.

By prioritizing the protection of occupied habitat, the regulations prevent federal agencies from establishing unnecessarily large "buffers" of unoccupied habitat that complicate management without helping species, said Kathy Hadley, a Willamette Valley farmer.

"It lends to the credibility of the rules and the trust the landowner has that the process will work, instead of overreach," Hadley said.

Instead of automatically implementing endangered species restrictions for threatened species, the rules will allow federal officials to tailor management practices specific to threatened species, she said.

For example, the streaked horned lark actually prefers areas that are cultivated for agriculture, so the stricter level of regulation would be counterproductive, Hadley said. "Our doing our daily jobs is what helps that bird."

Out in the field, some current requirements for unoccupied critical fish habitat have ranchers going to great expense without actually helping the species, said Todd Nash, treasurer of the Oregon Cattlemen's Association.

"We're going to run these guys out of business with that much to maintain," he said.

## Consolidation continues in the tree fruit industry

By DAN WHEAT  
Capital Press

SEATTLE — The sale of a tree fruit and berry processor in Grandview, Wash., to a Richmond, Va., tobacco company is the latest example of the continuing financial squeeze of the Washington tree fruit industry, a Seattle investment banker says.

Michael Butler, CEO of

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Unit AS-93 - Dallas Wilson  
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Unit 196 - Kenneth Kish  
Unit 222C - Ashley Bailey  
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Cascadia Capital in Seattle, represented the seller, FruitSmart Inc., in the transaction. He told Capital Press that he's working on two other deals involving vertically integrated Washington tree fruit companies, one likely to be announced in January and another in the second quarter of 2020.

A vertically integrated company is one that grows, stores, packs and sells its own fruit.

"I expect a real robust year next year," Butler said. "Commercial banks have been calling us that lend to these companies, saying they can't lend anymore and that the companies need help by a merger or investment capital."

Commercial banks are forcing these companies to raise equity capital or sell to pay loans to be able to continue as viable organizations, he said.

The problem is exacerbated by this season's large apple crop and declining prices, he said.

Universal Corp., of Richmond, Va., announced its purchase of FruitSmart on Nov. 20. FruitSmart produces juices, purees, concentrates and dried ingredients of fruits and berries and has a 128,000-square-foot facility in Grandview and a 335,000-square-foot outside storage facility in Prosser.

FruitSmart has about 200 employees. Family members of the previous owners, Jim Gauley and Jim Early, will remain in management, said Scott Porter, a Cascadia Capital senior vice president.

Universal Corp. is a \$2 billion company looking to invest outside tobacco and has the capital to grow FruitSmart, Butler said.

Two years ago at the Washington State Tree Fruit Association annual meeting in Kennewick, Butler spoke to more than 1,000 growers and said more industry consolidation was likely because companies were running new, expensive packing

lines too far below capacity to pay debt.

Individual companies needed more fruit for their packing lines but collectively the industry has too much fruit and too many packing facilities, he said.

He said some attendees did not believe him but that several mid-sized companies had already approached him for investments.

Mid-size companies of less than 1,500 acres of orchard, running at or under 30% packing capacity and not vertically integrated are most at risk, he said. Only companies controlling 10% of industry sales would be long-term competitors, he said.

Chelan Fresh Marketing of Chelan, Stemilt Growers of Wenatchee, Zirkle-Rainier of Selah, Washington Fruit & Produce of Yakima and Domex Superfresh Growers of Yakima are all in that top tier. Two large companies raised significant outside capital by late 2018, Butler said.

### SECRETARY OF STATE NOTICE OF PERMANENT RULEMAKING

Oregon Department of Agriculture, Natural Resources Program, Administrative Rules Chapter #603, Amy Bingham, Rules Coordinator, (503) 986-4583. NOTICE: OAR 603-074-0010-0020. NOTICE OF INTENT TO AMEND PERMANENT RULE. RULE SUMMARY: The proposed rule increases application, transfer, and annual license fees for the Confined Animal Feeding Operations. Application fees and annual license fees are based on the size of the operation in numbers of animals and are also based on whether the operation is registered to a general or individual permit. The transfer fee is the same regardless of the size of operation and permit type. Additional definitions have been added. Full rule text available at <https://secure.sos.state.or.us/oard>. Last Day for comment December 20, 2019 at 5:00 pm. Public Hearing will be held December 12, 2019 beginning at 10:00 am in the 3<sup>rd</sup> floor conference room at the Oregon Department of Agriculture located at 635 Capitol St NE, Salem, Or. 97301. Contact the Department of Agriculture at least 5 business days prior to the hearing if auxiliary aids and services (assistive listening devices, sign language interpreters, etc.) will be needed.

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