Public Law 102-402
102d Congress

An Act

To direct the Secretary of the Army to transfer jurisdiction over the Rocky Mountain Arsenal, Colorado, to the Secretary of the Interior.

Oct. 9, 1992
[H.R. 1435]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Rocky Mountain Arsenal National Wildlife Refuge Act of 1992.
Real property.
16 USC 668dd note.

SECTION 1. SHORT TITLE AND DEFINITIONS.

(a) SHORT TITLE.—This Act may be cited as the "Rocky Mountain Arsenal National Wildlife Refuge Act of 1992".

(b) DEFINITIONS.—For purposes of this Act:

(1) The term "Arsenal" means the Rocky Mountain Arsenal in the State of Colorado.

(2) The term "refuge" means the Rocky Mountain Arsenal National Wildlife Refuge established pursuant to section 4(a).

(3) The term "hazardous substance" has the meaning given such term by section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)).

(4) The term "pollutant or contaminant" has the meaning given such term by section 101(33) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)).

(5) The term "response action" has the meaning given the term "response" by section 101(25) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(25)).

(6) The term "person" has the meaning given that term by section 101(21) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(21)).

SEC. 2. TRANSFER OF MANAGEMENT RESPONSIBILITIES AND JURISDICTION OVER THE ROCKY MOUNTAIN ARSENAL.

(a) TRANSFER OF MANAGEMENT RESPONSIBILITIES.—(1) Not later than October 1, 1992, the Secretary of the Army and the Secretary of the Interior shall enter into a memorandum of understanding under which—

(A) the Secretary of the Army shall transfer to the Secretary of the Interior, without reimbursement, all responsibility to manage for wildlife and public use purposes the real property comprising the Rocky Mountain Arsenal in the State of Colorado, except the property and facilities required to be retained under subsection (c) or designated for disposal under section 5; and

(B) the Secretary of the Interior shall manage that real property as if it were a unit of the National Wildlife Refuge System established for the purposes provided in section 4.

(2) The management of the property by the Secretary of the Interior shall be subject to (A) any response action at the Arsenal

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carried out by or under the authority of the Secretary of the Army under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and other applicable provisions of law, and (B) any action required under any other statute to remediate petroleum products or their derivatives (including motor oil and aviation fuel) carried out by or under the authority of the Secretary of the Army. In the case of any conflict between management of the property by the Secretary of the Interior and any such response action or other action, the response action or other action shall take priority.

(b) TRANSFER OF JURISDICTION.—(1) Upon receipt of the certification described in paragraph (2), the Secretary of the Army shall transfer to the Secretary of the Interior jurisdiction over the real property comprising the Arsenal, except the property and facilities required to be retained under subsection (c) or designated for disposal under section 5. The transfer shall be made without cost to the Secretary of the Interior and shall include such improvements on the property as the Secretary of the Interior may request in writing for refuge management purposes.

(2) The transfer of real property under paragraph (1) may occur only after the Administrator of the Environmental Protection Agency certifies to the Secretary of the Army that response action required at the Arsenal and any action required under any other statute to remediate petroleum products or their derivatives (including motor oil and aviation fuel) at the Arsenal have been completed, except operation and maintenance associated with those actions.

(3) The exact acreage and legal description of the real property subject to transfer under paragraph (1) shall be determined by a survey mutually satisfactory to the Secretary of the Army and the Secretary of the Interior. The Secretary of the Army shall bear any costs related to the survey.

(c) PROPERTY AND FACILITIES EXCLUDED FROM TRANSFERS.—

(1) PROPERTY USED FOR ENVIRONMENTAL CLEANUP PURPOSES.—The Secretary of the Army shall retain jurisdiction, authority, and control over all real property at the Arsenal to be used for water treatment; the treatment, storage, or disposal of hazardous substances, pollutants, or contaminants; or other purposes related to response action at the Arsenal and any action required under any other statute to remediate petroleum products or their derivatives (including motor oil and aviation fuel) at the Arsenal. The Secretary of the Army shall consult with the Secretary of the Interior regarding the identification and management of all real property retained under this paragraph and ensure that activities carried out on that property are—

(A) consistent with the purposes for which the refuge is to be established under section 4(c), to the extent practicable; and

(B) consistent with the provisions of sections 2(a)(2) and 4(e).

(2) PROPERTY USED FOR LEASE OF PUBLIC FACILITIES.—(A) The Secretary of the Army shall retain jurisdiction, authority, and control over the following real property at the Arsenal:

(i) Approximately 12.08 acres containing the South Adams County Water Treatment Plant and described in Department of the Army lease No. DACA 45-1-87-6121.

(ii) Approximately 63.04 acres containing a United States Postal Service facility and described in Department of the Army lease No. DACA 45-4-71-6185.

(B) Nothing in this Act shall affect the validity or continued operation of leases of the Department of the Army in existence on the date of the enactment of this Act and involving the property described in subparagraph (A).

SEC. 3. CONTINUATION OF RESPONSIBILITY AND LIABILITY OF THE SECRETARY OF THE ARMY FOR ENVIRONMENTAL CLEANUP.

(a) RESPONSIBILITY.—Notwithstanding the memorandum of understanding required under section 2(a), the Secretary of the Army shall, with respect to the real property at the Arsenal that is subject to the memorandum, continue to carry out (1) response action at that property under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and other applicable provisions of law, and (2) any action required under any other statute to remediate petroleum products or their derivatives (including motor oil and aviation fuel). The management by the Secretary of the Interior of such real property shall be subject to any such response action or other action at the property being carried out by or under the authority of the Secretary of the Army under such provisions of law.

(b) LIABILITY.—(1) Nothing in this Act shall relieve, and no action may be taken under this Act to relieve, the Secretary of the Army or any other person from any obligation or other liability at the Arsenal under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and other applicable provisions of law.

(2) After the transfer of jurisdiction under section 2(b), the Secretary of the Army shall retain any obligation or other liability at the Arsenal under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and other applicable provisions of law and shall be accorded all easements and access as may be reasonably required to carry out such obligation or other liability.

(c) DEGREE OF CLEANUP.—Nothing in this Act shall be construed to restrict or lessen the degree of cleanup at the Arsenal required to be carried out under applicable provisions of law.

(d) PAYMENT OF RESPONSE ACTION COSTS.—Any Federal department or agency that had or has operations at the Arsenal resulting in the release or threatened release of hazardous substances, pollutants, or contaminants shall pay the cost of related response actions or related actions under other statutes to remediate petroleum products or their derivatives, including motor oil and aviation fuel.

(e) CONSULTATION.—In carrying out response actions at the Arsenal, the Secretary of the Army shall consult with the Secretary of the Interior to ensure that such actions are carried out in a manner—

(1) to the extent practicable, consistent with the purposes set forth in section 4(c) for which the refuge will be established after the certification required under section 2(b)(2); and

(2) consistent with the provisions of sections 2(a)(2) and 4(e).

(f) EXISTING LAW.—The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act

(16 U.S.C. 703 et seq.), and the Bald Eagle Protection Act (16 U.S.C. 668 et seq.) shall apply to all actions at the Arsenal.

(g) RESPONSE ACTIONS.—(1) The future establishment of the refuge shall not restrict or lessen in any way any response action or degree of cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or other applicable provisions of law, or any response action required under any other statute to remediate petroleum products or their derivatives (including motor oil and aviation fuel), required to be carried out by or under the authority of the Secretary of the Army at the Arsenal and surrounding areas, including (but not limited to)—

(A) the substance or performance of the remedial investigation and feasibility study or endangerment assessments;

(B) the contents and conclusions of the remedial investigation and feasibility study or the endangerment assessment reports; or

(C) the selection and implementation of response action and any action required under any other statute to remediate petroleum products or their derivatives (including motor oil and aviation fuel) for the Arsenal and surrounding areas.

(2) All response action and action required under any other statute to remediate petroleum products or their derivatives (including motor oil and aviation fuel) carried out at the Arsenal shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants that, at a minimum, is sufficient to fully meet the purposes set forth in section 4(c) for which the refuge will be established and to permit access to all real property comprising the refuge by refuge personnel, wildlife researchers, and visitors.

SEC. 4. ESTABLISHMENT OF THE ROCKY MOUNTAIN ARSENAL NATIONAL WILDLIFE REFUGE.

(a) ESTABLISHMENT.—Not later than 30 days after the transfer of jurisdiction under section 2(b), the Secretary of the Interior shall establish a national wildlife refuge that shall be known as the Rocky Mountain Arsenal National Wildlife Refuge and consist of the real property required to be transferred under such section. The Secretary of the Interior shall publish a notice of the establishment of the refuge in the Federal Register.

Federal Register, publication.

(b) ADMINISTRATION.—

(1) IN GENERAL.—The Secretary of the Interior shall manage the refuge in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) and other applicable law.

(2) CONSULTATION.—In developing plans for the management of fish and wildlife at and public use of the refuge, the Secretary of the Interior shall—

(A) consult with the Colorado Department of Natural Resources and local governments adjacent to the refuge; and

(B) provide an opportunity for public comment on such plans.

(3) The Secretary of the Interior and the Administrator of the Federal Aviation Administration shall confer from time to time as necessary to coordinate the management of the refuge with the operations of the Denver International Airport.

(c) PURPOSES OF THE REFUGE.—The refuge is established for the following purposes:

(1) To conserve and enhance populations of fish, wildlife, and plants within the refuge, including populations of waterfowl, raptors, passerines, and marsh and water birds.

(2) To conserve species listed as threatened or endangered under the Endangered Species Act and species that are candidates for such listing.

(3) To provide maximum fish and wildlife oriented public uses at levels compatible with the conservation and enhancement of wildlife and wildlife habitat.

(4) To provide opportunities for compatible scientific research.

(5) To provide opportunities for compatible environmental and land use education.

(6) To conserve and enhance the land and water of the refuge in a manner that will conserve and enhance the natural diversity of fish, wildlife, plants, and their habitats.

(7) To protect and enhance the quality of aquatic habitat within the refuge.

(8) To fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats.

(d) LIMITATIONS.—

(1) PROHIBITION AGAINST ANNEXATION.—Notwithstanding section 4(a)(2) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)(2)), the Secretary of the Interior shall not allow the annexation of lands within the refuge by any unit of general local government.

(2) PROHIBITION AGAINST THROUGH ROADS.—Public roads may not be constructed through the refuge.

SEC. 5. DISPOSAL OF CERTAIN REAL PROPERTY AT THE ARSENAL FOR COMMERCIAL, HIGHWAY, OR OTHER PUBLIC USE.

(a) PROPERTY DESIGNATED FOR DISPOSAL UNDER THIS SECTION.—The following areas of real property at the Arsenal are designated for disposal under this section for commercial, highway, or other public use purposes:

(1) An area of real property consisting of approximately 815 acres located at the Arsenal, the approximate legal description of which is section 9, T3S–R67W, the W2W2 of section 4 and the W4E2W2 of section 4, T3S–R67W, and the SW4SW4 of section 33, the W4E2W2 of section 33, and the W2NW4 of section 33, T2S–R67W; except that the area designated shall not include the approximately 63.04 acres containing a United States Postal Service facility and described in Department of the Army lease No. DACA 45–4–71–6185 and the water wells located in buildings 385, 386, and 387 at the Arsenal and associated facilities and easements necessary to operate and maintain the water wells, which shall be treated in the manner provided in section 2.

(2) To permit the widening of existing roads, an area of real property of not more than 100 feet inside the boundary of the Arsenal on—

(A) the Northwest side of the Arsenal adjacent to Colorado Highway #2;

(B) the Northern side of the Arsenal adjacent to 96th Avenue; and

(C) the Southern side of the Arsenal adjacent to 56th Avenue.

(b) TRANSFER FOR HIGHWAY PURPOSES.—The Secretary of the Army shall convey those parcels of real property described in subsection (a)(2) to the State or the appropriate unit of general local government at no cost to allow for the improvement of public roads in existence on the date of the enactment of this Act or for the provision of alternative means of transportation.

(c) TRANSFER FOR SALE.—(1) The Secretary of the Army shall transfer to the Administrator of the General Services Administration those parcels of the area of real property described in subsection (a)(1). The transferred property shall be sold in advertised sales as surplus property under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), except that the provisions of such Act relating to reduced- or no-cost transfers to other governmental entities shall not apply to this property.

(2) Any amounts realized by the United States upon the sale of property as described in paragraph (1) shall be transferred to the Director of the United States Fish and Wildlife Service to be used, to the extent provided for in appropriation Acts, to supplement the funds otherwise available for construction of a visitor and education center at the refuge.

(d) LIMITATIONS.—

(1) PERPETUAL RESTRICTIONS.—(A) The disposal of real property under this section shall be subject to perpetual restrictions that are attached to any deed to such property and that prohibit—

(i) the use of the property for residential or industrial purposes;

(ii) the use of ground water located under, or surface water located on, the property as a source of potable water;

(iii) hunting and fishing on the property, excluding hunting and fishing for nonconsumptive use subject to appropriate restrictions; and

(iv) agricultural use of the property, including all farming activities such as the raising of livestock, crops, or vegetables, but excluding agricultural practices used in response action or used for erosion control.

(B) Nothing in subparagraph (A) shall be construed to restrict or lessen the degree of cleanup required to be carried out under applicable provisions of law at the property designated for disposal under this section.

(2) DISPOSAL IN ACCORDANCE WITH CERCLA.—The disposal of real property under this section shall be carried out in compliance with section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) and other applicable provisions of law.

Approved October 9, 1992.

LEGISLATIVE HISTORY—H.R. 1435:

HOUSE REPORTS: No. 102-463, Pt. 1 (Comm. on Armed Services) and Pt. 2 (Comm. on Merchant Marine and Fisheries).
CONGRESSIONAL RECORD, Vol. 138 (1992):
July 7, considered and passed House.
Sept. 18, considered and passed Senate, amended.
Sept. 25, House concurred in Senate amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 28 (1992):
Oct. 9, Presidential statement.