

Public Law 95-200
95th Congress

An Act

To provide improved authority for the administration of certain National Forest System lands in Oregon.

Nov. 23, 1977

[H.R. 7074]

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

National Forest System Lands, Oreg.
Water resource management.
16 USC 482b note.

PREAMBLE

The Congress finds that an area of land in the State of Oregon known variously as the Bull Run National Forest and the Bull Run Forest Reserve is presently the source of the sole domestic water supply for the city of Portland, Oregon (hereinafter called the "city") and other local governmental units and persons in the Portland metropolitan area, reserved for the city by a Presidential proclamation issued in 1892 and furnishing an extremely valuable resource of pure clear raw potable water, the continued production of which should be the principal management objective in the area hereinafter referred to as "the unit"; that the said area is now managed under terms of a Federal court decree issued pursuant to turn of the century law which does not appropriately address present and future needs and opportunities for the protection, management, and utilization of the resources contained therein.

DESIGNATION OF UNIT

SECTION 1. There is hereby established, subject to valid existing rights, a special resources management unit within the Mount Hood National Forest, State of Oregon, comprising approximately 95,382 acres as depicted on a map dated April 1977, and entitled "Bull Run Watershed Management Unit, Mount Hood National Forest", which is on file and available for public inspection in the offices of the Chief, and the Regional Forester—Pacific Northwest Region, Forest Service, Department of Agriculture, minor adjustments in the boundaries of which may be made from time to time by the Secretary of Agriculture (hereinafter the "Secretary") after consultation with the city and appropriate public notice and hearings.

Bull Run Watershed Management Unit, Mount Hood National Forest.
Map, availability.
16 USC 482b note.

MANAGEMENT

SEC. 2. (a) The unit and the renewable resources therein, shall be administered as a watershed by the Secretary of Agriculture in accordance with the laws, rules, and regulations applicable to National Forest System lands except to the extent that any management plan or practice is found by the Secretary to have a significant adverse effect on compliance with the water quality standards referred to in section 2(b) hereof or on the quantity of the water produced thereon for the use of the city, and other local government units and persons using such water under agreements with the city (and the Secretary shall take into consideration the cumulative effect of individually insignificant degradations), in which case, and notwithstanding any other provision of law, the management plan and all relevant leases,

16 USC 482b note.

permits, contracts, rights-of-way, or other rights or authorizations issued pursuant thereto shall forthwith be altered by the Secretary to eliminate such adverse effect by application of different techniques or prohibitions of one or more such practices or uses: *Provided, however,* That use of such water for the production of energy and the transmission of such energy through and over the unit are deemed consistent with the purposes of this Act and the rights-of-way heretofore granted to Bonneville Power Administration by the Forest Service through and over the unit are validated and confirmed and deemed consistent with the purposes of this Act.

Land
management
plans.

Public
participation.

Completion date.

Data, annual
comparison.

Planned
management
programs, review.

Cooperative
agreements.

Arbitration
board,
establishment.

(b) The policy set forth in subsection (a) shall be attained through the development, maintenance, and periodic revision of land management plans in accordance with procedures set forth in section 5 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 477, as amended; 16 U.S.C. 1604), through the maintenance of systems for monitoring and evaluating water quality, and through supporting scientific research as the Secretary may deem necessary after consultation and in coordination with the city. In the development and revision of land management plans for the unit, the Secretary, except as otherwise provided in section 2(a) hereof, shall provide for public participation and shall consult and coordinate with appropriate officials and advisors of the city, and shall consider such data and research as the city may collect through its own monitoring systems and scientific efforts, if any. Such plans shall be prepared by an interdisciplinary team; be embodied in appropriate written material, including maps and other descriptive documents; shall contain water quality standards developed by the Secretary after consultation and in cooperation with the city, which standards shall be substantially based on and shall reflect a quality of water not significantly less than the quality reflected by percentile curves developed from data collected from 1967 through 1975 and, if none, from data collected in the first three years of record thereafter; and be available to the public at convenient locations. The initial plan or plans shall be completed as soon as practicable after the enactment of this Act, but not later than September 30, 1979. Current data shall be compared to historical data at least annually for the purpose of determining compliance with the standards and the significance of any deviation therefrom. Deviations occurring from operation, maintenance, alteration, or construction of water storage, or electrical generation and transmission facilities, seasonal fluctuations, variations in climate, and other natural phenomena, fire, or acts of God, shall not be considered in determining the historical or current percentile curves.

(c) The Secretary or his representative shall, upon request, and at least annually, meet with appropriate officials of the city for the purpose of reviewing planned management programs and the impact thereof on the quality and quantity of the water produced on the unit and assuring that their respective management and operational activities within the unit are appropriately coordinated. The Secretary shall negotiate in good faith cooperative agreements with appropriate officials of the city to effectuate activity coordination.

(d) In the event there is disagreement between the city and the Secretary with respect to the development or revision of the water quality standards provided for herein, or with respect to the effect or the significance of such effect of one or more proposed or existing programs, practices, uses, regulations, or boundary adjustments (except as otherwise specifically provided for herein), on the quantity of the water produced on said unit, or on compliance with the water

quality standards referred to in section 2 (a) and (b) hereof and, therefore, with respect to the necessity for an alteration or prohibition of any such program, practice, use, regulation, or boundary adjustment as required in section 2(a) hereof, an arbitration board for resolving such disagreements shall be established. The Secretary and the city shall, each, forthwith appoint one member to such board and those two members shall select a third. In the event agreement cannot be reached on the third member within seven days after the appointment of the first two, the third member shall be appointed by the presiding judge of the United States District Court for the District of Oregon within seven days after being notified of such disagreement by either of the first two members. All of said members shall be qualified to make a scientific determination of the facts. The contentions of the city and the Secretary shall be submitted to the board in the form of written contentions of fact together with the evidence and analysis that tends to support the position being presented. The board shall forthwith consider and decide, on a scientific basis, the issues in disagreement by majority vote, taking into consideration the evidence and data presented by the parties and such other tests and data which the board by majority vote may require. The decision of such board shall be in the form of written findings of fact and conclusions based thereon and shall be final and binding on the parties. The Secretary and the city shall compensate their designees and share equally the compensation of the third member, and shall provide such technical and administrative support as required.

(e) The Secretary is authorized, after consultation with the city, to promulgate regulations for controlling entry into the unit by all persons including but not limited to—

(1) employees or contractors of the city engaged in the inspection, maintenance, construction, or improvement of the city's facilities;

(2) (i) Federal, State, and local government officers and (ii) employees thereof acting in an official capacity;

(3) Federal, State, and local government permittees and contractors conducting authorized activities;

(4) members of advisory groups formed pursuant to this Act or ordinances of the city in the performance of their official duties: *Provided*, That no regulation promulgated pursuant to this subsection shall prohibit ingress or egress to non-Federal lands or to authorized occupancies on, or uses of, Federal lands: *Provided further*, That the Secretary may independently and directly prohibit or restrict all entry into the unit during fire or other emergencies as he may determine.

EFFECT ON OTHER LAWS

SEC. 3. (a) Nothing in this Act shall terminate or affect any lease, permit, contract, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act and otherwise valid except for the provisions of section 1862 of title 18 of the United States Code.

(b) Nothing in this Act shall in any way affect any law governing appropriation or use of, or Federal right to, water on National Forest System lands; or as expanding or diminishing Federal, State, or local jurisdiction, responsibility, interests, or rights in water resources development or control.

Members,
appointment.

Qualifications.

Decisions.

Compensation
and
administrative
support.

Regulations.

Emergencies.

Savings
provision.
16 USC 482b
note.

Repeal.

(c) Section 1862 of title 18 of the United States Code is hereby repealed.

Preemption of State and local laws.

(d) Except as otherwise provided for herein, this Act shall take precedence over and supersede all State and local laws dealing with or affecting the subject matter of this Act.

Challenges.

(e) Challenge to actions taken by any governmental unit or official under the provisions of this Act shall not be sustained by any court except upon a showing or arbitrary, unreasonable, capricious, or illegal action or an absence of substantial good faith compliance with the procedural provisions hereof substantially prejudicing the rights of an interested party.

Approved November 23, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-622 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 123 (1977):

Nov. 2, considered and passed House.

Nov. 4, considered and passed Senate.