Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Prohibition on Use of Appropriated Funds for Defense Golf Courses

File: B-277905

Date: March 17, 1998

DIGEST

Neither 10 U.S.C. § 2866 or 16 U.S.C. § 1531(c)(2) have the effect of overriding, modifying or repealing 10 U.S.C. § 2246 which prohibits the use of appropriated funds to "equip, operate, or maintain" a golf course at a facility or installation of the Department of Defense. Thus, appropriated funds cannot be used to install or maintain "greywater" pipelines on an Army golf course.

DECISION

The Budget Office of the United States Army Garrison, Fort Sam Houston, has requested our opinion regarding the availability of appropriated funds to install and maintain water pipelines to support the base golf course, notwithstanding the provisions of 10 U.S.C. § 2246(a) which prohibits the use of appropriated funds to "equip, operate, or maintain" a golf course. The Budget Office asserts that two other statutes may overcome this prohibition. As explained below, we conclude that appropriated funds may not be used to install or maintain water pipelines on the Fort Sam Houston golf course.[1]

BACKGROUND

The Edwards Aquifer is a unique underground system of water-bearing formations in central Texas. Water enters the aquifer through the ground as surface water and rainfall and leaves the aquifer through well withdrawals and springflows. The aquifer is the primary source of water for residents of central Texas including Fort Sam Houston. It supplies over one million people with water in San Antonio alone. In 1993 because of droughts and the anticipated increases in the withdrawal of water from the aquifer, the Texas Legislature enacted the Edwards Aquifer Act, creating a regulatory scheme to control and manage the use of the aquifer. Act of May 30, 1993, 73d Leg., Ch. 626, as amended by Act of May 29, 1995, 74th Leg., Ch. 261. An administrative body, the Edwards Aquifer Authority, was created to

[1]We have not been asked whether the Army could use funds to install pipelines to distribute "greywater" for irrigation of other facilities at the Fort.

oversee this regulatory scheme. Passage of the Aquifer Act generated a number of lawsuits in both the state and federal courts.[2] In 1996 the Texas Supreme Court unanimously upheld the facial constitutionality of the Act. Barshop v. Medina County Underground Water Conservation Dist., 925 S.W.2d 618 (Tex. 1996).

As a result of the Act, the local water systems have adopted water recycling and conservation regulations in order to preserve the Edwards Aquifer. In accordance with these conservation regulations, the Budget Office states that Fort Sam Houston will have to reduce the volume of water it pumps from the Edwards Aquifer for installation use, which includes watering of the installation golf course. One of the water use reduction efforts implemented by the City of San Antonio is the use of "greywater"--recycled waste water which is partially purified--for irrigation in lieu of aquifer water. Fort Sam Houston and other military installations will be able to use greywater if each installation installs the necessary pipelines.

The Budget Office acknowledges that appropriated funds may not be used to equip, operate, or maintain a golf course at a facility or installation of the Department of Defense. 10 U.S.C. § 2246 (1994). However, it asserts that two other provisions of law might allow the use of appropriated funds to install a "greywater" pipeline on the golf course notwithstanding the prohibition in section 2246(a). The first proviso, 10 U.S.C. § 2866, directs that the Secretary of Defense allow and encourage Department instrumentalities to participate in water conservation efforts. The second provision is a statement of Congressional policy which declares that federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species. 16 U.S.C. § 1531(c)(2). We conclude that neither of these provisions overrides the explicit statutory prohibition found in 10 U.S.C. § 2246.

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[2]Cases in the Texas courts centered on individual rights under the state constitution. See Barshop v. Medina County Underground Water Conservation Dist., 925 S.W.2d 618 (Tex. 1996). Another series of lawsuits bought in federal courts alleged that the Aquifer Act failed to adopt an adequate recovery plan under the Endangered Species Act. See Sierra Club v. Lujan, No. Mo-91-CA-069 (W.D. Tex. 1993); Sierra Club v. City of San Antonio, et al., 112 F.3d 789 (5th Cir. 1997)(vacating a district court grant of a preliminary injunction regulating the withdrawal of water from the aquifer).

ANALYSIS

Title 10 of the U.S. Code section 2246 states:

> (a) Limitation.--Except as provided in subsection (b), funds appropriated to the Department of Defense may not be used to equip, operate, or maintain a golf course at a facility or installation of the Department of Defense.[3]

As a general rule, a statute that is clear and unambiguous on its face should be construed to mean what it says. B-204874, July 28, 1982; see also 2A, A. Sutherland, Statutes and Statutory Construction § 46.01, at 81 (5th ed. 1992). Section 2246(a) plainly proscribes the use of appropriated funds for the maintenance and upkeep of military golf course facilities.[4] In addition, an understanding of how golf facilities operate under Army and DOD rules and regulations serves to underscore one of the reasons for the prohibition. Military recreational golf facilities operate as Morale, Welfare and Recreation Nonappropriated Fund Activities (NAFA). Army Regulation 215-1 (Sept. 29, 1995). As NAFAs, golf course funds are separate from appropriated funds of the U.S. Treasury, are not commingled with appropriated funds and are managed separately even when supporting common programs or activities. Id., § 3-1. While some NAFAs receive appropriated fund support, golf facilities are presumed to recover most operating expenses from income generated. Id. at § 4-1. Moreover, consistent with section 2246(a), Army regulations do not authorize the use of appropriated funds to finance construction of military MWR golf courses and facilities. Id. at page 118, Table E-1. Thus, section 2246(a) and implementing regulations clearly prohibit the use of appropriated funds to "equip, operate, or maintain" a DOD or NAFA golf course.

The remaining question is whether the two provisions of law cited by the Army can be read to override, modify or repeal the specific prohibition on the use of appropriated funds found in section 2246(a) and Army/DOD regulations. As summarized above, 10 U.S.C. § 2866, directs that the Secretary of Defense allow and encourage Department instrumentalities to participate in water conservation efforts. It authorizes DOD instrumentalities to enter into financial incentives and other

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[3]Subsection 2246(b) provides that the prohibition does not apply to any golf facilities outside the United States or remote or isolated facilities in the United States as designated by the Secretary of Defense. Therefore, subsection (b) does not apply to this case.

[4]The only legislative history regarding the limitation restates the unambiguous language of the statute: "This section would prohibit the use of any appropriated funds for the operations of the Department of Defense golf courses." H.R. Rep. No. 200, 103rd Cong., 1st Sess. 267 (1993).

agreements with water utilities to implement water conservation programs. Id. The Secretary of Defense may carry out a military construction project for water conservation, not previously authorized, using funds appropriated or otherwise made available to the Secretary for water conservation. The second provision cited by the Budget Office declares that federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species. 16 U.S.C. § 1531(c)(2).

Neither provision has the effect of overriding, modifying or repealing section 2246(a). The first provision cited by the Budget Office is a law intended to allow the Army to enter into agreements with water utilities to implement water conservation programs using funds appropriated or otherwise made available to the Secretary for water conservation. 10 U.S.C. § 2866. The general authorization in section 2866 makes appropriations an available source of funds for water conservation, if otherwise proper. A more specific statute, section 2246(a), explicitly prohibits the use of appropriated funds for maintenance or operations of military golf installations. Clearly, watering a golf course, whether with aquifer water or "greywater" under a water conservation measure, is an essential activity in maintaining and operating most golf courses. Thus, while the proposal may have merit as a significant conservation effort, the specific prohibition found in 10 U.S.C. § 2246(a) cannot be overcome by the more general statute authorizing the use of appropriations for water conservation efforts. See, e.g., 62 Comp. Gen. 617 (1983). The same can be said for the provision found in 16 U.S.C. § 1531(c)(2) which is a general declaration of Congressional policy. Such a declaration of Congressional policy, without more, does not make inapplicable definite statutory restrictions otherwise applicable. See, 37 Comp. Gen. 268, 270-271 (1957). Thus, 16 U.S.C. § 1531(c)(2) cannot be read to overcome the more specific provision found in section 2246(a).

While Congress is free to amend or repeal prior legislation, rules of statutory construction presume that Congress amends or repeals a statute directly and explicitly. Morton v. Mancari, 417 U.S. 535, 550 (1974); see also Tennessee Valley Authority v. Hill, 437 U.S. 153, 189-190 (1978). Although one statute may implicitly amend or repeal a prior statute, repeals by implication are disfavored, and statutes are construed to avoid this result whenever reasonably possible. See, e.g., T.V.A. v. Hill, 437 U.S. at 189-90 (1978); 58 Comp. Gen. 687, 691-92 (1979). Indeed, the presumption is always against repeal unless "the intention of the legislature to repeal [is] clear and manifest" Posadas v. National City Bank, 296 U.S. 497, 503 (1936), and no reasonable basis exists to give effect to both statutes.

This presumption is particularly strong where, as with 10 U.S.C. §§ 2246 and 2866, Congress considered and enacted the two provisions in the same Act, namely, the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, 107 Stat. 1618 and 1884 (1993). Their location in the same Act is forceful evidence that

Congress intended the two provisions to stand separately. Cf. B-198096, May 8, 1980. One section generally authorizes the use of appropriated funds for water conservation activities at military installations; the other specifically prohibits the use of appropriated funds to equip, operate or maintain a golf course. Had Congress intended to allow the use of appropriated funds for water conservation projects on military golf facilities it would have done so. Instead it enacted a broad statutory prohibition prescribing the use of appropriated funds for any activity to "equip, operate, or maintain" military golf courses.

As for 16 U.S.C. § 1531(c)(2), as noted above, it is a general declaration of Congressional policy and, without more, does not repeal or make inapplicable definite statutory restrictions otherwise applicable. See, 37 Comp. Gen. 268, 270-271 (1957). Thus, we do not read section 1531(c)(2) as impliedly amending or repealing the explicit prohibition found in section 2246.

Accordingly, without more explicit authority, appropriated funds may not be used to install or maintain water pipelines for the purpose of irrigating the Fort Sam Houston golf course.

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