Section 7 Flowchart (see separate flowchart for FERC* hydro)

Does project include federal assistance[1] for construction[2] such as a permit (e.g., USACE Section 404), license, loan, grant, or other?**

Yes

Is project located within a Wild and Scenic River (WSR) corridor[3], or Section 5(a) study or Section 2(a)(ii)[4] application area?[5]

Yes

Is activity a hydropower project regulated by FERC* under Part 1 of the Federal Power Act?

Yes

See separate flowchart for FERC* hydro projects

No

Is project located upstream, downstream or on a tributary to a WSR corridor, or Section 5(a) study or Section 2(a)(ii)[4] application area?

No

Is activity a water resources project[6]

Yes

Evaluate project under the "direct and adverse effect" standard. Determine effects on free-flowing condition, water quality and each outstandingly remarkable value. Use procedure outlined in Appendix C of Council's technical report.

No

Is activity a hydropower project regulated by FERC* under Part 1 of the Federal Power Act?

Yes

See separate flowchart for FERC* hydro projects

No

Is activity a water resources project[6]

Yes

Evaluate the project[7] under the "invade[8] the area or unreasonably diminish" standard for WSRs, or "invade the area or diminish" standard for Section 5(a) study and Section 2(a)(ii)[4] application rivers. Determine encroachment (e.g., backwater) and effects on scenery, recreation, and fish and wildlife values present at time WSR was designated, 5(a) study was authorized, or 2(a)(ii)[4] recommendation was received. Use procedure outlined in Appendix D or E of Council's technical report.

Project not subject to Section 7. Document and transmit finding to project proponent or federal assisting agency.

Transmit preliminary or final determination to federal assisting agency.

Legend

- Proponent, federal assisting agency, and WSR agency[9]
- *WSR agency[9] evaluation (BLM, NPS, USFS or USFWS)*
- WSR agency[9] transmittal (BLM, NPS, USFS or USFWS)

*FERC: Federal Energy Regulatory Commission
**USACE: US Army Corps of Engineers

Section 7 Flowchart – End Notes

[1]**Federal Assistance:** Any assistance by an authorizing agency before, during, or after construction. Such assistance may include, but is not limited to: a license, preliminary permit, permit, or other authorization granted by the FERC; a license, permit or other authorization granted by the USACE, pursuant to the Rivers and Harbors Act and Section 404 of the Clean Water Act. Assistance also includes federal funding of projects such as state highway proposals (36 CFR 297).

[2]**Construction:** Means any action carried on with Federal assistance affecting the free-flowing characteristics or the scenic or natural values of a Wild and Scenic River or Study River (36 CFR 297).

[3]**WSR (River) Corridor:** Means a river and the adjacent area within the boundaries of a designated river, or a river and the adjacent area within one-quarter mile on each side of the banks of a Section 5(a) study or Section 2(a)(ii) application river (one-half mile for designated/study rivers authorized under the Alaska National Interest Lands Conservation Act).

[4]**Section 2(a)(ii) Application Area:** If a river was authorized by Congress for study through Section 5(a), and the governor of a state(s) subsequently applies for designation through Section 2(a)(ii), that river is protected for one year following receipt of the application for designation to the Secretary of the Interior. This one-year protection only applies to 2(a)(ii) application rivers that first were authorized for study by Congress through Section 5(a).

[5]**Undesignated Tributaries within WSR Corridor:** Projects on undesignated tributaries are evaluated under "direct and adverse" standard when they also are located within the boundary of the designated WSR, or Section 5(a) study or Section 2(a)(ii) application area. Generally this area is within 1/4 to 1/2 miles upstream along the tributary from the confluence with the mainstem (IWSRCC WSR Questions & Answers; https://www.rivers.gov/documents/q-a.pdf).

[6]**Water Resources Projects:** Construction of developments [including emergency repairs] that would affect the free-flowing characteristics of a Wild and Scenic River or [Section 5(a)] Study River, [or Section 2(a)(ii) application area] (36 CFR 297). Water resources projects located below the **ordinary high water mark (OHWM)** of the river always are subject to WSR agency Section 7 review. Examples of water resources projects include, but are not limited to, bank stabilization/revetments; bridges (e.g., abutments, piers, approaches); channelization; channel restoration; culverts; dams and dam removal; dredging or excavation; fish habitat/passage restoration or enhancement; gravel mining, in-channel transmission towers; levees; pipelines; recreation facilities like boat ramps and fishing piers; water diversions/wells; and activities that are authorized under Section 404 of the Clean Water Act by the US Army Corps of Engineers (USACE), Department of the Army. Projects located above the OHWM within uplands in the WSR corridor, such as cell towers, electrical transmission towers/lines, livestock grazing, solar arrays, timber harvesting, and wind turbines, are not subject to Section 7 review, but may be subject to review under Sections 10(a) and 12.

> **Ordinary High Water Mark:** is an interpretation of the term *waterway* under Section 16(b) of the WSRA, which defines free-flowing, in part, as "existing or flowing in natural condition without impoundment, diversion, straightening, riprapping, or other modification of the waterway" (16 U.S.C. 1286(b)). Generally the applicability of Section 7 is limited to the area below the OHWM of the river. OHWM is defined in 33 CFR Part 328.3(e) as "…that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas." The lowest potential boundary of the OHWM in a given river is within the active channel, especially in deeply incised systems. The highest potential upper boundary of the OHWM may be on the valley flat or floodplain out-side of the active channel in locations where these features are inundated in more years than not (ERDC/CRREL SR-16-5; http://acwc.sdp.sirsi.net/client/en_US/search/asset/1054567).

[7]**Projects with Potential to Invade or Diminish:** Water resources projects with the potential to invade or diminish scenic, recreational, fish or wildlife values in the designated WSR, or Section 5(a) study or Section 2(a)(ii) application area typically include, but are not limited to, dams, upstream diversion structures, and other water resources projects that are visible from the river.

[8]**Invade:** Encroach or intrude upon.

[9]**WSR Agency:** Bureau of Land Management (BLM), National Park Service (NPS), USDA Forest Service (USFS) or US Fish and Wildlife Service (USFWS).