

Introduction to IWSRCC WSRA Section 7 Examples
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Introduction

Section 7 is a key provision of the Wild and Scenic Rivers Act (Act) directing federal agencies to protect designated rivers and congressionally authorized study rivers from the harmful effects of water resources projects¹. It requires evaluation of federally assisted water resources projects² and a determination by the river-administering agency. The Council's *Wild and Scenic Rivers Act: Section 7* technical report (2004) defines terms, provides an interpretation of the standards in this provision, and includes suggested procedures to evaluate the effects of proposed water resources projects.

In response to requests from river program managers, Council members have selected examples of Section 7 determinations for common types of water resources projects. These examples are briefly introduced below with a link to the detailed determination. Each is an actual determination made by river-administering agency staff from across the country. In some cases, clarifying user notes are included in individual determinations. No single example is best; however, in reviewing the range of examples provided, the practitioner will gain an understanding of how to apply the procedures outlined in the technical report.

Evident in these examples is how the degree of analysis under the appropriate Section 7 standard directly relates to the magnitude and complexity of a proposed project. Less complex projects may require only a few pages to evaluate the effects and to support a

¹ Section 7(a) states in part:

The Federal Power Commission [FERC] shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is designated in section 3 of this Act as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation of a river as a component of the national wild and scenic rivers system.

² A water resources project under Section 7 of the Act is defined as any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (FPA), or other construction of developments which would affect the free-flowing characteristics of a wild and scenic or congressionally authorized study river (36 CFR 297). In addition to projects licensed by the FERC, water resources projects may also include: dams; water diversion projects; fisheries habitat and watershed restoration/enhancement projects; bridges and other roadway construction/ reconstruction projects; bank stabilization projects; channelization projects; levee construction; recreation facilities such as boat ramps and fishing piers; and activities that require a 404 permit from the ACOE.

determination. However every determination must be based on the best available science, professional judgment, and be consistent with the Act and agency policies.

In corresponding with the federal permitting/assisting agency, the river-administering agency must clearly and consistently state the:

- River-administering agency's authority to participate in review of a water resources project proposal under Section 7
- Aspect(s) of the project that are a water resources projects (i.e. the portions of the project to be constructed in the river's bed or its banks and therefore subject to review under Section 7)
- Appropriate standard to be applied under Section 7 (a function of which agency assists and the project's location as further described in the technical report)

Examples

Hydropower Licensing

New hydropower proposals or relicensing of existing projects located above, below or on a stream tributary to a designated wild and scenic river (WSR) require a determination under Section 7(a). A key step to facilitate Section 7 determinations for hydropower proposals is the early identification of the information the applicant must collect or analyze to address issues necessary for the determination. This information, which serves as the basis for the preliminary Section 7 determination, should be included in Exhibit E of the applicant's final license application (FLA) in the traditional licensing process, or in the applicant's preliminary draft environmental analysis (EA) and FLA in the alternative or integrated licensing process. Careful identification of information and analysis needs, at appropriate steps in the consultation process, will greatly simplify the work associated with completing a Section 7 determination in response to the FLA and draft/final environmental analysis documents.

The river-administering agency's evaluation must consider the effects (positive, negative and neutral) of proposed project operation on the designated WSR's scenic, recreational, fish, and wildlife values as present on the date of the river's designation. The standard also prohibits any part of the project or its operation to invade the river area (i.e., encroach or intrude upon through structure or changes in water elevation). Refer to the Council's *Wild and Scenic Rivers Act: Section 7* technical report (2004) and appendix D for detail.

The three examples that follow evaluate relicensing of existing hydropower projects that predated the designation of downstream segments of the same river as wild and scenic. The same evaluation standard and approach applies to a new hydropower proposal located above, below or on a stream tributary to a designated WSR.

- **Klamath Project** (Klamath WSR, CA)

This joint Forest Service/National Park Service preliminary determination is in response to the Federal Energy Regulatory Commission's (FERC) draft environmental impact statement (DEIS) and evaluates the range of action alternatives. The Klamath is a state-administered, federally designated WSR (2(a)(ii)) with federal Section 7 responsibility outlined in a MOU. The designated river begins directly below the lowermost dam of the Klamath Project. The determination is based on the FERC's DEIS and additional information presented in a well-researched and documented (100+ page) specialists report. After consideration of the mitigation measures included in each action alternative, negative effects to scenery, recreation, fish, and wildlife were identified as chronic and likely existing at the date of the river's designation (note: there is limited baseline information available for comparison and analysis of trends). The responsible officials determined the effects did not rise to a level of unreasonable diminishment.

Hydropower Licensing (continued)

- **Hells Canyon Complex Project** (Snake WSR, OR/ID)

This Forest Service final determination is in response to the FERC's FEIS and evaluates the FERC staff recommended alternative. The Snake WSR begins directly below Hells Canyon Dam, the third component of the Hells Canyon Complex. The determination is based FERC's FEIS and additional Forest Service research on key issues presented in a well-researched and documented specialist's report. After consideration of mitigation measures included in the staff recommended alternative, negative effects to fish and wildlife habitat were identified as chronic, although not determined by the responsible official to rise to a level of unreasonable diminishment. However, the continued depletion of sand beaches and bars was estimated to result in complete elimination of this important attribute of scenery and recreation by the end of the new license period (note: no significant tributaries provide sediment for nearly 60 miles of the designated river). The official determined that operation under the staff recommended alternative would not result in unreasonable diminishment of scenery or recreation, subject to a mitigation fund. This fund was established for sandbar maintenance and restoration activities developed by the Forest Service and included as a condition of the license by FERC under Section 4(e) of the Federal Power.

- **North Umpqua Project** (North Umpqua WSR, OR)

This joint Bureau of Land Management/Forest Service package includes three documents:

- Preliminary determination in response to the licensee's final license application (FLA)
- Preliminary determination in response to the FERC's DEIS
- Final determination in response to the FERC's FEIS

The North Umpqua WSR begins directly below the Soda Springs Dam, the lowermost component of the North Umpqua Hydropower Project. After consideration of the licensee's PME measures and FERC's mitigation measures, respectively, several chronic effects, which existed at the date of the river's designation, were identified relative to scenery, recreation, fish, and wildlife. The responsible officials determined these effects did not rise to a level of unreasonable diminishment.

Bridge Construction or Replacement

The portions of new bridge construction or replacement of existing bridges across designated WSRs with activity in the river's bed or its banks qualify as a federally assisted water resources project and thus require a determination under Section 7(a). A key step is the early identification of the information that will be necessary to prepare the Section 7(a) determination. It is the responsibility of the project proponent to collect or analyze the data and provide it to the river-administering agency. This information serves as the basis for the Section 7(a) determination.

Proposals will be evaluated by the river-administering agency to determine if there are "direct and adverse effects" to the river's free-flowing condition, water quality and its outstandingly remarkable values. Refer to the Council's *Wild and Scenic Rivers Act: Section 7* technical report (2004) and appendix C for detail.

The three examples that follow evaluate replacement of existing bridges that predated designation of the river. The same evaluation standard and approach applies to a new bridge proposal.

- **County Road 36 Bridge Replacement** (Big and Little Darby Creeks WSR, OH)
This National Park Service determination is for replacement of the Amity Pike Bridge (County Road 36) across the Big Darby Creek WSR. Big and Little Darby Creeks WSR is a state-administered, federally designated (2(a)(ii)) WSR. On the Big and Little Darby Creeks WSR, the National Park Service is responsible for Section 7(a) of the Act. The responsible official provided project measures and conditions to be implemented by the project proponent to avoid an adverse determination.

Note: The project proponent was not able to fully meet required project conditions. New designs were submitted (which avoided the use of work pads). The project changes were evaluated in a new Section 7(a) analysis in response to an amended Section 404 (Clean Water Act) permit and were, ultimately, approved.

- **Lower Innaha Road Bridge Replacement** (Innaha WSR, OR)
This Forest Service determination is for replacement of the Lower Innaha Road Bridge on the Innaha WSR. The responsible official found project effects to be neutral or providing enhancements over the existing situation. The official, however, appropriately made the finding conditional on a concurrence letter from the State Historic Preservation Office.

- **Sturgeon River Bridge Replacement** (Sturgeon WSR, MI)
This Forest Service determination is for replacement of an existing bridge that was removed to its concrete abutments in 2006. The new bridge is to be placed on the same alignment. A detailed hydrological report was developed to evaluate the effects of the new bridge on the river's free-flow, concluding the increased span would better connect the river to its floodplain. The responsible official found no other adverse effects.

Stabilization Projects

The portions of a proposed stabilization measure (e.g. rock revetment, gabion, or groin) within the river's bed or its banks qualify as a federally assisted water resources project and thus require a determination under Section 7(a). These types of projects typically require a permit under Section 404 of the Clean Water Act; this program, except for two states, is administered by the Army Corps of Engineers. Whether authorized under a nationwide or individual permit, the project proponent is responsible to provide information sufficient for a determination by the river-administering agency.

Proposals will be evaluated by the river-administering agency to determine if there are "direct and adverse effects" to the river's free-flowing condition, water quality and its outstandingly remarkable values. Refer to the Council's *Wild and Scenic Rivers Act: Section 7* technical report (2004) and appendix C for detail.

- **Section 14 Study Erosion Project** (Little Miami WSR, OH)

This National Park Service determination is for placement of stone riprap and fill material to stabilize approximately 1400 linear feet of eroding bank. The project was designed to prevent loss of archeological resources and park facilities. The responsible official found the project to have a direct and adverse effect on the river's free-flowing condition, scenic and recreational values. The official, however, recommended further exploration with other agencies to develop alternatives compatible with the Act and the management goals for the river and the park. The project was redesigned based on NPS recommendations and resubmitted relying on bioengineering techniques. This second application was determined consistent with the Act and has been implemented.

- **Garnett Bank Protection Project** (Imnaha WSR, OR)

This Forest Service determination is for placement of large woody material (logs, rootwads, and limited anchor rock) to stabilize a bank and thereby allow for recovery of the structure and function of the riparian area. The responsible official found the short-term nature of the bank protection material and its intent to allow for reestablishment of riparian vegetation consistent with the Act. The official had previously determined a rock revetment (riprap) proposal to have direct and adverse effects on free-flow and other values. Representatives of the Forest Service, federal and state agencies, and the landowner worked together to develop this alternative approach.

- **Mills Bioengineering Project** (Deschutes WSR, OR)

This Forest Service determination is for a bioengineering project designed to improve bank stability, increase riparian and upland vegetation, maintain channel integrity, improve aesthetics and provide for landowner access to the river (floating community dock). The responsible official found this project consistent with the Act and a significant improvement over current site conditions, which included rock riprap, other site hardening measures, and multiple structures to access the river (e.g. stairways and docks).

Infrastructure Projects

The portions of proposed infrastructure projects such as boat ramps and docks, fishing platforms, and decks with construction in the river's bed or its banks qualify as a federally assisted water resources project and thus require a determination under Section 7(a). These types of projects typically require a permit under Section 404 of the Clean Water Act; this program, except for two states, is administered by the Army Corps of Engineers. Whether authorized under a nationwide or individual permit, the project proponent is responsible to provide information sufficient for a determination by the river-administering agency.

Proposals will be evaluated by the river-administering agency to determine if there are "direct and adverse effects" to the river's free-flowing condition, water quality and its outstandingly remarkable values. Refer to the Council's *Wild and Scenic Rivers Act: Section 7* technical report (2004) and appendix C for detail.

- **Great Egg Boat Dock** (Great Egg WSR, NJ)

This National Park Service determination is for an after-the-fact permit application for a boat dock. The proposed dock, 165 feet into the main channel, was determined by the responsible official to have a direct and adverse effect on river values, including recreation and scenery. The responsible official offered to reconsider a design that would better protect river values. Through discussion between the landowner, New Jersey Department of Environmental Protection and the ACOE, permits were issued requiring substantial modifications, including removing 150 feet of the dock and related gazebo.

- **Forest School Outfall Pipe** (Allegheny WSR, PA)

This Forest Service determination is for construction of an outflow structure for discharge of treated sewage into the Allegheny WSR. A portion of the 6-inch pipe and the pre-cast concrete headwall would be constructed in the river's bank, with the headwall at about the current water level. The responsible official found this project consistent with the Act subject to several mitigation measures and the water quality standards agreed to by the Pennsylvania Department of Environmental Services and the US Fish and Wildlife Service (to protect federally endangered mussel species).

- **Boyle Boat Ramp and Dock** (Allegheny WSR, PA)

This Forest Service determination is for installation of a 12 by 50 feet boat ramp on private property and a floating boat dock. The responsible official found this project consistent with the Act subject to several mitigation measures, including those required by the US Fish and Wildlife Service (to protect federally endangered mussel species).