

APPENDIX D

EFFECTS OF MANAGING A RIVER AS A COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

APPENDIX D – EFFECTS OF MANAGING A RIVER AS A COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

The information in this Appendix discloses the effects of managing a river as a component of the National Wild and Scenic Rivers System (National System). These effects would occur if a river determined suitable in a planning area is subsequently designated by Congress.

The management responsibilities associated with a designated wild and scenic river (WSR) are explained in detail in the Interagency Wild and Scenic Rivers Coordinating Council's (Council) technical report, *Wild and Scenic River Management Responsibilities (March 2002)*. The following discussion is excerpted from this source document and describes the effects of managing a river as a component of the National Wild and Scenic Rivers System (National System), based on the direction in the Wild and Scenic Rivers (Act).

The intent of each section of the Act relevant to management of WSRs is briefly presented, followed by specific management implications.

Purposes (WSRA Section 1(b))

The purposes for which WSRs are added to the National System are to protect the river's free-flowing condition, water quality, and outstandingly remarkable values (ORVs). Sections 7(a) and 10(a) make reference to these collective "values" for which rivers are added to the National System.

Management Implications:

- Focus the comprehensive river management plan (CRMP) and subsequent river management on protecting a river's free-flowing condition and water quality in addition to the ORVs.
- Thoroughly define the ORVs to guide future management actions and to serve as the baseline for monitoring.

Classification (WSRA Section 2(b))

The classification system describes the type and intensity of development in existence at the date of the river's designation. To be "administered" in a class means defining the river's initial landscape character and, through development of the CRMP, establishing standards relative to future in-corridor land uses. For example, administering a wild river will require more restrictive decisions to protect the river's character than on a scenic or recreational river. However, it must be emphasized that the intent of the Act, to preserve a river's free-flowing condition (Section 7(a)) and to protect and enhance the values for which it was designated (Section 10(a)), applies equally to each of the three classifications.

A river's classification does not represent the values for which it was added to the National System. For example, a "recreational" river segment denotes a level of in-corridor and water resources development and does not necessarily mean that the recreation resource has been determined an ORV. Similarly, a recreational classification does not imply that the river will be managed for recreational activities. For example, there are rivers in the National System paralleled by a road and hence classified as recreational for which the ORV is the fish resource. An appropriate intensity of recreation and other resource use will be allowed subject to an ability to protect and enhance those fish populations/habitats.

Management Implications:

- Describe a river's classification and landscape character at the date of designation in the CRMP to serve as the basis for evaluating proposed land uses and monitoring.

- Use classification to provide a general framework for the type and intensity of land management activities that may take place in the future.
- Consider allowing uses in existence at the date of designation that do not conform to the river's classification and that are not specifically addressed in the enabling legislation to continue, so long as the river's free-flowing condition, water quality, and ORVs are protected.
- Apply the protections under Sections 7 (water resources projects) and 10(a) (nondegradation policy) independent of classification.

Establishment of Boundaries and Classification (Sections 3(b) and 3(c))

The Act requires that each federally administered river in the National System have a legally established boundary. Congress has, in a few instances, specified the boundaries for a river in the designating legislation. Generally, however, this responsibility is left to the managing agency to be completed following designation. This section requires the administering agency to establish a detailed boundary of not more than 320 acres of land per river mile within one year of the date of designation. For the significant majority of rivers in the National System, Congress has included the classification in the designating legislation.

The notice of the availability of the boundaries and classification (if not included in the amendatory act) must be published in the *Federal Register* and transmitted to the Congress. Refer to *Establishment of WSR Boundaries*, a technical report of the Council (September 1998), for additional discussion of developing a boundary that provides necessary protection for identified values.

Management Implications:

- A bank-to-bank boundary is unacceptable (refer to *Establishment of WSR Boundaries* for a more detailed discussion).
- Use a river's ORVs as the basis for boundary establishment. They must be sufficiently described and properly referenced in establishing a detailed boundary for the river.
- The final WSR boundary is not required to be posted or otherwise located on the ground.

Management Plan (Section 3(d)(1))

The Act requires a "comprehensive management plan . . . to provide for protection of the river values" (Section 3(d)(1)). The CRMP must address: resource protection; development of lands and facilities; user capacities; and other management practices necessary or desirable to achieve the purposes of the Act.

The comprehensive river management plan (CRMP) is to be coordinated with, and incorporated into, a river-administering agency's resource management plan. The Act provides three full fiscal years after the date of designation for its completion and requires a notice of its completion and availability be published in the *Federal Register*.

Management Implications:

- A CRMP is required for all congressionally designated WSRs.
- Include a detailed description of the ORVs as a platform for development of necessary management direction in the CRMP.
- Address the types and amounts of public use the river area can sustain without adverse impact to other values in the CRMP (Interagency Guidelines).
- Review and revise, as necessary, pre-1986 CRMPs to include all elements described in Section 3(d)(1).
- Prior to the completion of a CRMP, thoroughly analyze the effects of a proposed activity on the values for which the river was designated.

Acquisition Procedures and Limitations (Sections 6(a)(1) through 6(g)(1)-(3))

This section describes procedures and limitations for acquisition of lands and interests in lands by federal managers on congressionally designated WSRs. Acquisition of lands (fee-simple) or interests in lands (easements) from willing sellers is an appropriate tool in select circumstances on some rivers. Note: The provisions of Section 6 do not apply to rivers added under Section 2(a)(ii). Refer to *Protecting Resource Values on Non-Federal Lands*, a technical report of the Council (October 1996) for discussion of nonacquisition strategies for protecting river values.

Management Implications:

- Establish general principles for land acquisition in the CRMP (Interagency Guidelines), where appropriate. Consider acquisition of lands or interests in lands to provide resource protection and access and to facilitate appropriate recreation use.

Restrictions on Hydroelectric and Water Resources Projects (Section 7(a))

This section is one of the most important and powerful parts of the Act, directing federal agencies to protect the free-flowing condition and other values of designated rivers. More specifically, the Act prohibits the Federal Energy Regulatory Commission (FERC) from licensing the construction of hydroelectric facilities on rivers that have been designated as components of the National System. Further, the Act prohibits other federal agencies from assisting in the construction of any water resources project that would have a direct and adverse effect on a designated river. The Act also includes a standard that governs water resources projects below, above or on a stream tributary to a designated river or congressionally authorized study river. Determinations under Section 7(a) or 7(b) are made by the river-administering agency.

Refer to the *Wild and Scenic Rivers Act: Section 7*, a technical paper of the Council (May 1997), for a discussion of standards and presentation of procedures to evaluate the effects of proposed water resources projects. The Department of Agriculture has regulations governing the applicability of Section 7 at 36 CFR Part 297.

Management Implications:

- The Secretary of Agriculture or the Interior (or his/her designee) is responsible for making determinations under Section 7.
- Evaluate a water resources project based on its effects on the values for which a river is added to the National System, namely its free-flowing condition, water quality, and ORVs. The river's classification is not a factor in this evaluation.
- FERC-licensed facilities are prohibited within a designated river corridor. Other federally assisted water resources projects within a designated river corridor are evaluated as to their potential "direct and adverse effect" on the values for which the river was designated. Proposed water resources projects below, above, or on a stream tributary to a designated river are evaluated as to their potential to invade the designated river area or unreasonably diminish the scenic, recreational, fish or wildlife values of the designated river.
- Include direction in the CRMP to evaluate a water resources project under Section 7(a). It is also helpful to provide reference to, or include, the evaluation procedures in the CRMP (or appendix).

Limitations on Entry on Public Lands (Section 8(a))

This section requires all public lands within a WSR corridor to be retained in federal ownership, with allowances for exchange as conditioned in Section 6(d) and lease of federal lands as described in Section 14(A).

Management Implications

- Consider the potential for exchange in establishing general principles for land acquisition in the CRMP.

Limitations on Mineral Entry (Section 9(a))

In areas where mineral activity is permissible, the CRMP should address locatable, leasable and salable mineral materials. Locatable minerals are “valuable mineral deposits” located under the General Mining Law of 1872, as amended, and include, for example, gold, silver, copper and lead. Leasable minerals are defined by statute (e.g., oil, gas, coal, geothermal); a lease must be obtained from the government for their extraction. Salable minerals are disposed of by permit and consist, for example, of common varieties of sand, stone and gravel. Leasable and salable mineral activities are discretionary on the part of the administering agency.

The Act affects the development of federal minerals in several ways. First, subject to valid existing rights (i.e., subject to existing mining claims and mineral leases), the minerals located on federal lands within the bed or banks or 1/4 mile of the banks of any designated *wild* river are withdrawn from all forms of appropriation under the mining laws and from the operation of the mineral leasing laws. Second, subject to valid existing rights (i.e., subject to mining claims where the claimant has filed a proper patent application and paid the required fees prior to the river’s designation), mining claimants may only obtain title to the mineral deposits and such rights to the use of the surface and surface resources as are reasonably required for prospecting or mining. Third, the Act requires regulations be developed to govern mining and mineral leasing activities in WSR corridors. While the Secretaries of the Interior and Agriculture have not issued these regulations, the BLM and USFS use their existing regulations (43 CFR 3809 and 36 CFR 228, respectively) to meet, to the extent possible, the nondegradation standard of Section 10(a).

Management Implications:

- Provide direction for discretionary mineral activity in the CRMP, as appropriate.
- Consider the opportunity to recommend a withdrawal of scenic and recreational river segments from the General Mining Law of 1872, as amended through the river planning process, as appropriate. Such a recommendation, however, will require a detailed analysis of the values to be protected and rationale for the recommendation. This proposal should be closely coordinated with the BLM, the agency responsible for the mineral withdrawal.

Management Direction (Section 10(a))

The Interagency Guidelines interpret Section 10(a) as a “nondegradation and enhancement policy for all designated river areas, regardless of classification.” Existing uses on federal lands may continue where they do not conflict with river protection. Adverse effects to the values made explicit in Section 1(b) of the Act on federal and nonfederal lands must be identified in development of the CRMP, with appropriate strategies detailed for their resolution. To achieve a nondegradation standard, the river-administering agency must document baseline resource conditions and monitor changes to these conditions.

Management Implications:

- This section is interpreted as a nondegradation and enhancement policy for all rivers, regardless of classification (Interagency Guidelines). The river manager must seek to protect existing river-related values and, to the greatest extent possible, enhance those values.
- Provide for public recreation and resource uses that do not adversely impact or degrade the values for which the river was designated (Interagency Guidelines).
- Protect rivers by documenting and eliminating adverse impacts on values (free-flow, water quality, ORVs), including activities that were occurring on the date of designation. Enhance rivers by seeking opportunities to improve conditions.

Management of WSRs in Wilderness (Section 10(b))

Section 10(b) removes the potential for conflict on WSRs flowing in designated wilderness by applying the more restrictive provisions of the WSRs or Wilderness Acts in any situation of conflict. This section recognizes the importance of designating river systems by removing any potential for conflict in dual designations.

Management Implications:

- River managers must be familiar with provisions of both acts when developing the CRMP.

WSRs Administered by the USDA Forest Service (Section 10(d))

This section provides the USFS the authority to use its general statutory authorities to protect WSR values. Some of the most important laws applicable to the USFS include the Organic Administration Act, Multiple Use-Sustained Yield Act, and National Forest Management Act.

This section also allows the USFS to require special-use permits for all commercial guiding services on WSRs flowing through federal or private lands. The authority is codified in regulation (36 CFR, Part 261), with its scope defined as “an act or omission” within the designated boundaries of a component of the National Wild and Scenic Rivers System.” Specifically, Section 261.10(c) prohibits conducting any business activity within the boundaries of a WSR “unless authorized by federal law, regulation, or special-use authorization.” If use regulation is necessary to protect river values, Section 261.58(z) allows the USFS to prohibit by order “entering or being on lands or waters within the boundaries of a component of the National Wild and Scenic Rivers System.”

Requiring special-use permits for commercial guides and, as appropriate, nonregulatory or regulatory permits for private on-river and/or in-corridor river use allows the USFS to provide a level of public safety, to maintain a desired recreation experience, and to protect biological and physical values. On-river limitations may include, for example, restrictions on the numbers of private and commercial boaters, timing of use, and type and size of craft. In-corridor limitations may include, for example, restrictions on party size, timing of use, and type of activities.

Management Implications:

- Apply general statutory authorities, in addition to the requirements of the Act, to protect WSR values.

Cooperative Agreements (Section 10(e))

This section encourages a federal-state partnership in WSR administration. It recognizes the benefits from collaborative development and implementation of a CRMP and the role of state and local government in directing activities on nonfederal lands (e.g., water pollution abatement, zoning). Refer also to Section 12(a) of the Act that directs federal agencies to, where appropriate, enter into written cooperative agreements with the state river-administering agency for the management of federal lands within the boundaries of a state-administered (Section 2(a)(ii)) river.

Management Implications:

- Identify opportunities in the CRMP for the river-administering agency to effect specific written cooperative agreements in administration of a WSR.

Federal Assistance to Others (Section 11(b)(1))

This section authorizes the Secretary of the Interior, the Secretary of Agriculture, or the head of any federal agency to provide technical (i.e., nonmonetary) assistance and the use of agency funds to states, their political subdivisions, private organizations, and individuals to “plan, protect, and manage river

resources.” This authority applies to projects/activities on nonfederal lands within and proximate to a WSR corridor. It provides a mechanism to effect partnerships for projects/activities distant from the designated WSR yet with the potential to affect designated WSR values. Opportunities for such partnerships should be identified in the CRMP and implemented through a properly documented written agreement to assure the public’s interests and the private landowner’s rights are protected.

Management Implications:

Identify opportunities in the CRMP for the river-administering agency to effect specific written cooperative agreements in administration of a WSR.

Management Policies (Section 12(a))

This section applies to activities conducted by a federal department or agency that are within or proximate to a WSR designated under Sections 2(a)(ii) or 3(a). It also applies to rivers under study pursuant to Section 5(a) and to rivers being considered pursuant to Section 2(a)(ii). Through the language of this section, Congress directs other federal agencies to protect river values in addition to meeting their agency mission. Refer to *Implementing the Wild and Scenic Rivers Act: Authorities and Roles of Key Federal Agencies*, a technical report of the Council (January 1999), for a description of the authorities of other federal agencies in river protection.

Management Implications:

- In addition to preparing a CRMP for lands within the river corridor, the river-administering agency must consider actions on lands it administers adjacent to this area and make certain such actions protect WSR values.
- Other federal agencies must protect WSR values in actions for which they are responsible within and adjacent to a WSR corridor.

Existing Rights (Section 12(b))

Section 12(b) qualifies that nothing in Section 12(a) is to be construed to eliminate existing rights or privileges affecting federal lands without the owner’s consent.

Management Implications:

- Consider existing rights or privileges affecting federal lands when evaluating management actions on lands within or adjacent to the river corridor administered by the river-administering agency or other federal agency.

Water Pollution (Section 12(c))

Section 12(c) directs the river-administering agency to cooperate with the U.S. Environmental Protection Agency (EPA) and state water quality agencies in addressing water quality concerns in WSRs. Cooperation requires active participation by the river-administering agency in evaluation of existing water quality, identification of limitations, and development of the often long-term strategies necessary to address water quality-related problems.

Management Implications:

- Seek enforcement of water quality laws through the EPA and state water-quality agencies.
- Work in cooperation with the EPA and state water quality agencies to establish baseline conditions, identify water-quality related issues, and develop a strategy to improve/ protect water quality.

Jurisdiction and Responsibilities of State with Respect to Fish and Wildlife (Section 13(a))

This section clarifies that the role of the states in management of fish and wildlife is unaffected by the Act. The river-administering agency remains responsible, however, for evaluation of components of fish

or wildlife restoration or enhancement projects that are also water resources projects and subject to Section 7(a) of the Act. In most instances, such projects would have a beneficial effect on WSR values; however, they must be designed to avoid adverse effects on free flow and other river-related values.

Management Implications:

- Develop an effective partnership with state fish and wildlife agencies to achieve mutual goals in river protection.

Federal Reservation of Water (Section 13(c))

This section expressly reserves the quantity of water necessary to achieve the Act's purposes, including protecting the values for which a river is designated.

Management Implications:

- Describe the dependency of ORVs to flow in the CRMP.
- Establish baseline conditions, identify water-quantity related issues, and develop a strategy to protect flow-dependent ORVs.

Interstate Compacts (Section 13(e))

This section clarifies that interstate compacts are unaffected by the Act.

Management Implications:

- Determine if an interstate compact exists and identify its tenets.

Navigable Rivers (Section 13(f))

Section 13(g) clarifies that nothing in the Act affects a state's rights to navigable waterways. A body of water is determined to be navigable under federal law when, at the time of statehood, it was used or was capable of being used as a public highway for transporting goods or for travel in the customary modes of trade and travel on water (the Daniel Ball case, U.S. Supreme Court). State ownership of the underlying riverbed does not, however, preclude the river-administering agency from regulating uses (e.g., private and commercial boating) on the water column as necessary to meet the purposes of the Act. The need to regulate on-water use includes providing a level of public safety, maintaining a desired recreation experience, and protecting biological and physical values. On-river limitations may include, for example, restrictions on the numbers of private and commercial boaters, timing of use, and type and size of craft.

Management Implications:

- Work in partnership with the state to assure that the state's public trust interest in navigability and the purposes of the Act are met.

Easements and Rights-of-Way (Section 13(g))

An easement or right-of-way may be granted within the boundary of a WSR, subject to conditions to protect values.

Management Implications:

- Evaluate any component of a project proposal requiring an easement or right-of-way that is a water resources project under Section 7(a) of the Act prior to further consideration of the easement/right-of-way.
- Grant an easement or right-of-way subject to the nondegradation policy of Section 10(a) and if it is in accordance with all laws applicable to the area.