

Establishment of Wild and Scenic River Boundaries

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INTRODUCTION

Establishing a boundary for a wild and scenic river (WSR) is an important step in delineating the area which will receive the greatest effort in resource protection. The boundary defines the area in which interest in lands may be acquired for WSR purposes. When rivers flowing partially or wholly through non-federally owned lands are added to the National Wild and Scenic Rivers System (National System), inclusion of private lands in the boundary is often controversial. In response to landowner concerns, agencies sometimes have considered “bank-to-bank” boundaries. Given the clear intent of the Wild and Scenic Rivers Act (Act) to protect the river and its “immediate environment,” such boundaries could jeopardize fulfillment of the intent of the Act. Guidance for establishing WSR boundaries is necessary.

STATUTORY BACKGROUND

With passage of the Act, Congress declared it to be:

. . . the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.

The Act requires that each federally administered river in the National System have a legally established boundary.¹ In a few instances, Congress has 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. Section 3(b) of the Act provides specific direction to river-administering agencies.

¹ Neither the requirement for establishing a boundary nor the acreage limitation for federally administered rivers applies to rivers designated pursuant to Section 2(a)(ii) of the Act.

The agency charged with the administration of each component of the national wild and scenic rivers system designated by subsection (a) of this section shall, within one year from the date of designation of such component under subsection (a) (except where a different date if [is] provided in subsection (a)), establish detailed boundaries therefor (which boundaries shall include an average of not more than 320 acres of land per mile [640 acres of land per mile for rivers in Alaska] measured from the ordinary high water mark on both sides of the river). . . . Notice of the availability of the boundaries and classification, and of subsequent boundary amendments shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives.

Section 4(d) specifies that until boundaries are officially established for designated rivers, an interim boundary will be in effect, generally comprising “that area measured within one-quarter mile from the ordinary high water mark on each side of the river.” Land below the ordinary high water mark and islands are within the designated area, but note that the definition “from the ordinary high water mark” used in Sections 3(b) and 4(d) means that acreage in the bed of the river does not count against the acreage limitation. However, island acreage above the ordinary high water mark does count against the acreage limitation.

Section 10(a) of the Act describes factors which must be considered in WSR management and, therefore, provides direction on features which must be included within boundaries.

Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration, primary emphasis shall be given to protecting its aesthetic, scenic, historic, archeologic, and scientific features.

DISCUSSION

Establishing a WSR boundary that includes identified river-related values is essential as a basis from which to provide necessary protection. Where private lands are involved, the boundary marks the area within which the manager will focus work with local communities and landowners in developing effective strategies for protection. The boundary also defines the area in which the managing agency has land acquisition authority. Existing land ownership, whether federal or non-federal, should not be a factor in determining boundaries.

Landowners are often concerned about which lands will be included in a WSR boundary, in part due to a fear of government land acquisition and/or regulation. The Act does permit fee acquisition of up to an average of 100 acres per mile and easement acquisition on any land within the boundary. It does not provide the federal administering agency the authority to regulate non-federal lands. The concerns about federal land acquisition and/or regulation have led to proposals for “bank-to-bank” boundaries. A “bank-to-bank” boundary may be considered, but it is unlikely that a managing

agency will be able to demonstrate that adoption of such a boundary will provide necessary protection and, therefore, compliance with the law. Even if the values for which the river was designated are instream values only, such as anadromous fish, a bank-to-bank boundary will not suffice to provide protection. While anadromous fish can be affected by anything occurring in a watershed, land uses immediately adjacent to the river have the highest potential for affecting water quality.

Boundary determinations should not be confused with “take lines,” i.e., acquisition lines. Besides acquisition, other protection tools—such as locally adopted and enforced zoning laws, donations of easements to land trusts, and cooperative agreements—are techniques to be considered. When the river flows largely across private lands, it can be anticipated in the study process that these will be significant protection tools. The study agency and local governments can determine in advance of designation appropriate boundaries and protective measures. Refer to the Council paper *Protecting Resource Values on Non-Federal Lands*.

As a practical matter in delineating boundaries, some form of on-the-ground identification, either physical features (canyon rims, roads, etc.) or legally identifiable lines (survey or property lines) may be used so that boundaries can be more easily identified on the landscape or accurately described legally. These do need to conform closely to the values to be protected.

Except where established by legislation, boundaries do not become effective until notice of their availability has been published in the *Federal Register* and until 90 days after they have been sent to the President of the Senate and the Speaker of the House of Representatives while Congress is in session. They also may be amended following this same notification procedure. Boundaries may be modified if it is determined that previous boundaries did not include all the values for which the river was designated or additional outstandingly remarkable values have been discovered. This usually will be determined through a planning process. Care must be taken to assure that the boundary limitations of Section 3(b) are not exceeded.

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